5-9-80
Vol. 45 No. 92
Pages 30611-31044

# Federal Register

Friday
May 9, 1980

## Highlights

Briefings on How To Use the Federal Register—For details on briefings in Washington, D.C.; Salt Lake City, Utah; Seattle, Wash.; Chicago, Ill.; St. Louis, Mo.; and Pittsburgh, Pa., see announcement in the Reader Aids section at the end of this issue.

30980 PCBs (Polychlorinated Biphenyls) USDA/FSQS, HEW/FDA and EPA propose to prohibit or limit the amount found in various facilities, plants and establishments; comments by 7-8-80 (3 documents) (Part IV of this issue)

31040 Minorities and Women Interior proposes to establish programs for participation in all activities related to leasing in the Outer Continental Shelf; comments by 7-8-80 (Part IX of this issue)

30733 Grants—Research on Employment Outcome Labor/ETA announces availability of awards to study the social, economic and institutional factors affecting Hispanic Americans; apply by 6-30-80

30694 Grants—Health HEW/HDSO announces program to support development of Long Term Care Gerontology Centers; receipt by 7-18-80

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# Highlights

30623 **Grants—Historic Preservation** Interior/HCRS clarifies duties of officers with respect to participation in the fund grants program; effective 5-9-80; comments by 7-8-80

31006 **Health** HEW/HDSO proposes new regulations which will implement the Developmental Disabilities Program; comments by 8-7-80 (Part VII of this issue)

30611 **Health Insurance** OPM increases the amount of Government contribution for persons covered under programs for retired Federal employees; effective 1-1-80

30693 **Laser Products** HEW/FDA announces variance from performance standard; effective 3-11-80

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30733 **Alien Agricultural Workers** Labor/ETA announces minimum wage rates which must be offered and paid by employers; effective 5-9-80

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# Rules and Regulations

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

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 891

### Retired Federal Employees Health Benefits Program; Change in Amount of Government Contribution

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** Recent legislation has amended the Retired Federal Employees Health Benefits (RFEHB) Act, increasing the amount of Government contribution for persons covered under the RFEHB Program. OPM is revising the RFEHB regulations to conform with these changes.

**EFFECTIVE DATE:** January 1, 1980.

**FOR FURTHER INFORMATION CONTACT:** Gus Ghessie, 202–632–4684.

**SUPPLEMENTARY INFORMATION:** Section 9 of the RFEHB law empowers OPM to prescribe regulations which are necessary to properly administer the RFEHB Program, the health benefits program established for former employees who retired before July 1, 1960, their survivors, and survivors of employees who died before July 1, 1960. Pub. L. 96–156 amended the law by providing that the amount of Government contribution for an enrollment in the Program will be based on the premium cost for supplementary medical insurance coverage under Medicare. The following changes will amend the RFEHB regulations so that they will conform to the law. In accordance with 5 U.S.C. 553 (b) and (d) the Director, OPM, finds good cause for waiving the public comment period and 30-day delay in effectivity before publication as final rule.

OPM has determined that this is a significant regulation for the purposes of E.O. 12044.

Office of Personnel Management.
Kathryn Anderson Fetzer,
*Assistant Issuance System Manager.*

Accordingly, 5 CFR Part 891.401 is revised to read as follows:

**§ 891.401 Government contributions.**

(a) *For retired employees and survivors receiving an annuity.*

(1) Each month, an amount equal to the current monthly premium paid by an individual for supplementary medical insurance under title XVIII of the Social Security Act (Medicare) for such month shall be paid by the Office of Personnel Management, through the appropriate retirement office, to each retired employee or survivor who:

(i) Is in receipt of annuity for such month;

(ii) Is eligible for coverage under this part; and

(iii) Elects to receive a Government contribution toward his or her cost of coverage for:

(A) A private health insurance plan in which he or she is a subscriber for self-only; or

(B) Supplementary medical insurance under Medicare.

(2) Each month, an amount equal to the current monthly premium paid by an individual for supplementary medical insurance under title XVIII of the Social Security Act (Medicare) for such month shall be contributed, by the Office of Personnel Management, for each retired employee or survivor who is in receipt of annuity and who has elected to enroll for self-only in the uniform plan.

(3) Each month, an amount equal to twice the current monthly premium paid by an individual for supplementary medical insurance under title XVIII of the Social Security Act (Medicare) for such month shall be paid by the Office of Personnel Management, through the appropriate retirement office, for each retired employee or survivor who:

(i) Is in receipt of an annuity for such month;

(ii) Is eligible for coverage under this part; and

(iii) Elects to receive a Government contribution toward the cost of coverage for self and family under:

(A) A private plan or plans; or

(B) Supplementary medical insurance under Medicare.

(4) Each month, an amount equal to twice the current monthly premium paid by an individual for supplementary medical insurance under title XVIII of the Social Security Act (Medicare) for such month shall be contributed, by the Office of Personnel Management, for each retired employee or survivor who is in receipt of annuity and who has elected to enroll for self and family in the uniform plan.

(b) *For retired employees and survivors receiving compensation.*

(1) For each retired employee or survivor who is in receipt of compensation and who meets the requirements of paragraph (a)(1) of this section, other than the requirement of being in receipt of an annuity, the Office of Personnel Management shall contribute, through the Office of Workers' Compensation Programs, an amount equal to 93⅓ percent of the current monthly premium paid by an individual for supplementary medical insurance under title XVIII of the Social Security Act (Medicare) rounded to the nearest cent, counting one-half cent and over as a whole cent, for each 4-week period in which payment of such compensation is made.

(2) For each retired employee or survivor who is in receipt of compensation and who has elected to enroll for self-only in the uniform plan, the Office of Personnel Management shall contribute, during each 4-week period in which payment of such compensation is made, an amount equal to 93⅓ percent of the current monthly premium paid by an individual for supplementary medical insurance under title XVIII of the Social Security Act (Medicare) rounded to the nearest cent, counting one-half cent and over as a whole cent.

(3) For each retired employee or survivor who is in receipt of compensation and who meets the requirements of paragraph (a)(3) of this section, other than the requirement of being in receipt of an annuity, the Office of Personnel Management shall contribute, through the Office of Workers' Compensation Programs, an amount equal to 186⅔ percent of the current monthly premium paid by an individual for supplementary medical insurance under title XVIII of the Social Security Act (Medicare) rounded to the nearest cent, counting one-half cent and over as a whole cent, for each 4-week

period in which payment of such compensation is made.

(4) For each retired employee or survivor who is receiving compensation and has elected to enroll for self and family in the uniform plan, the Office of Personnel Management shall contribute, during each 4-week period in which payment of such compensation is made, an amount equal to 186⅔ percent of the current monthly premium paid by an individual for supplementary insurance under title XVIII of the Social Security Act (Medicare) rounded to the nearest cent, counting one-half cent and over as a whole cent.

(5) If the current monthly rate for supplementary medical insurance under Medicare changes to a new rate within a 4-week period in which compensation is paid, the amount to be contributed for that 4-week period will be a prorated amount determined by:

(i) Multiplying the number of days in the 4-week pay period occurring at the former monthly rate (the rate in effect at the beginning of the pay period) by the former rate for a 4-week pay period;

(ii) Multiplying the number of days in the 4-week pay period occurring at the new rate (the rate in effect at the end of the 4-week pay period) by the new 4-week rate;

(iii) Adding the products of paragraphs (b)(5) (i) and (ii) of this section; and

(iv) Dividing the sum by 28 and rounding to the nearest cent, counting one-half cent and over as a whole cent.

(c) So that the Government contribution provided under this section is paid or contributed in advance, it shall be included in the payment of annuity or compensation for the month or pay period immediately preceding the month or pay period for which the Government contribution is due.

(d) An election to subscribe to the uniform plan constitutes an agreement by the retired employee or survivor that the retirement office may withhold from his or her annuity or compensation his or her share of the cost of the plan, as provided by this part.

(e) The Government shall contribute to the Retired Federal Employees Health Benefits Fund two percent of the total Government contribution authorized by this section for payment of expenses incurred by the Office of Personnel Management in administering this part.

(Pub. L. 86-724)

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 910

**[Lemon Reg. 251; Lemon Reg. 250, Amdt. 1]**

### Lemons Grown in California and Arizona; Limitation of Handling

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period May 11–17, 1980, and increases the quantity of such lemons that may be so shipped during the period May 4–10, 1980. Such action is needed to provide for orderly marketing of fresh lemons for the period specified due to the marketing situation confronting the lemon industry.

**DATES:** The regulation becomes effective May 11, 1980, and the amendment is effective for the period May 4–10, 1980.

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

**SUPPLEMENTARY INFORMATION:** *Findings.* This regulation and amendment are 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 available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1979–80 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on July 31, 1979. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on May 6, 1980, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is good.

It is further found that there is insufficient time between the date when information became available upon which this regulation and amendment are based and when the actions must be taken to warrant a 60 day comment period as recommended in E.O. 12044, and 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), and the amendment relieves restrictions on the handling of lemons. 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 times.

1. Section 910.551 is added as follows:

**§ 910.551 Lemon Regulation 251.**

*Order.* (a) The quantity of lemons grown in California and Arizona which may be handled during the period May 11, 1980 through May 17, 1980, is established at 285,000 cartons.

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

**§ 910.550 [Amended]**

2. Paragraph (a) of § 910.550 Lemon Regulation 250 (45 FR 29265) is amended to read as follows: "(a) The quantity of lemons grown in California and Arizona which may be handled during the period May 4, 1980 through May 10, 1980, is established at 275,000 cartons."

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

Dated: May 7, 1980.

D. S. Kuryloski,

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

[FR Doc. 80-14620 Filed 5-8-80; 11:45 am]
BILLING CODE 3410-02-M

## Animal and Plant Health Inspection Service

### 9 CFR Part 82

### Exotic Newcastle Disease and Psittacosis or Ornithosis in Poultry; Areas Released From Quarantine

**AGENCY:** Animal and Plant Health Inspection Service (USDA).

**ACTION:** Final rule.

**SUMMARY:** The purpose of this amendment is to release a portion of Fairfax County in Virginia from the areas quarantined because of exotic Newcastle disease. Surveillance activity indicates that exotic Newcastle disease no longer exists in the area quarantined.

**EFFECTIVE DATE:** May 6, 1980.

**FOR FURTHER INFORMATION CONTACT:** C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, Federal Building, Room 751, Hyattsville, MD 20782, 301–436–8093.

**SUPPLEMENTARY INFORMATION:** This amendment excludes a portion of Fairfax County in Virginia from the areas quarantined because of exotic Newcastle disease under the regulations in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will not apply to the excluded area.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respect.

§ 82.3 [Amended]

In § 82.3, in paragraph (a) (1) relating to the State of Virginia the premises of Kevin Smith, 4548 Eisenhower Avenue, Alexandria, Fairfax County is deleted.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111–113, 115, 117, 120, 123–126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

This amendment relieves certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease, and must be made effective immediately to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the Federal Register.

Further, this final rule has not been designated as "significant" and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by E. C. Sharman, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for prior public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 6th day of May 1980.

R. P. Jones,

*Acting Deputy Administrator, Veterinary Services.*

[FR Doc. 80-14392 Filed 5-8-80; 8:45 am]

BILLING CODE 3410-34-M

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## 9 CFR Part 82

## Exotic Newcastle Disease and Psittacosis or Ornithosis in Poultry; Area Quarantined

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

**ACTION:** Final rule.

**SUMMARY:** The purpose of this amendment is to quarantine a portion of Kane County in Illinois because of the existence of vectors of exotic Newcastle disease in such area. Therefore, in order to prevent the dissemination of exotic Newcastle disease, it is necessary to quarantine this area.

**DATES:** Effective date: May 2, 1980. Comments by: July 8, 1980.

**ADDRESS:** Written comments to C. G. Mason, Chief, National Emergency Programs, Veterinary Services, USDA, Federal Building, Room 751, Hyattsville, MD 20782, 301–436–8073.

**FOR FURTHER INFORMATION CONTACT:** C. G. Mason, Chief, National Emergency Field Operation, Emergency Programs, Veterinary Services, USDA, Federal Building, Room 751, Hyattsville, MD 20782, 301–436–8073.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant." The emergency nature of the action warrants publication of this final action without completion of a final impact statement. A final impact statement will be developed after public comments have been received.

Dr. E. C. Sharman, Acting Assistant Deputy Administrator, Animal Health Programs, VS, APHIS, USDA, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this final action because the area wherein vectors of exotic Newcastle disease exist must be quarantined immediately in order to prevent the spread of this disease.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest; and good cause is found for making this emergency final action effective less than 30 days after publication of this document in the Federal Register. Comments have been solicited for 60 days after publication of this document, and this emergency final action will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the Federal Register as soon as possible.

This amendment quarantines a portion of Kane County in Illinois because of the existence of birds exposed to exotic Newcastle disease, which are vectors of exotic Newcastle disease in such area. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah, and psittacine birds, and birds of all other species under any form of confinment, and their carcasses and parts thereof, and certain other articles, from quarantined areas, as contained in 9 CFR Part 82, as amended, apply to the quarantined area.

Section 1 of the Act of March 3, 1905, as amended (21 U.S.C. 123), authorizes the Secretary of Agriculture to quarantine any State, Territory, or the District of Columbia or any portion thereof, when he determines that any animals and/or live poultry in such area are affected with any contagious, infectious, or communicable disease of livestock or poultry, or that the contagion of any such disease exists in such area or that vectors which may disseminate the disease exist in such area. Consequently, § 82.3 is revised to better reflect this statutory authority.

Accordingly, Part 82, Title 9, Code of Federal Regulations, as amended, restricting the interstate movement of poultry and birds because of exotic Newcastle disease, is hereby amended in the following respect:

Section 82.3 is revised to read as follows:

§ 82.3 Areas quarantined.

(a) Notice is hereby given that the contagion or vectors of exotic Newcastle disease, a contagious, infectious and communicable disease, exist in the following areas or that animals and/or live poultry affected with or exposed to

exotic Newcastle disease exist in the following areas, and, therefore, the following areas are hereby quarantined because of said disease:

* * * * *

(2) *Illinois.*

The premises of George Kroesen (Zoological Enterprises, Inc.), 35 North 11th Street, St. Charles, Kane County.

* * * * *

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132 (21 U.S.C. 111–113, 115, 117, 120, 123–126, 134b, 134f); 37 FR 28464, 28477, 38 FR 19141.)

Done at Washington, D.C., this 2nd day of May 1980.

Norvan L. Meyer,

*Acting Deputy Administrator, Veterinary Services.*

[FR Doc. 80-14395 Filed 5-8-80; 8:45 am]

BILLING CODE 3410-34-M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

### Periodic Updating of Final Safety Analysis Reports

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission is amending its regulations to require each person licensed to operate a nuclear power reactor to submit periodically to the Commission revised pages for its Final Safety Analysis Report (FSAR). These revised pages will indicate changes which have been made to reflect information and analyses submitted to the Commission or prepared as a result of Commission requirement. The amendment is being made to provide an updated reference document to be used in recurring safety analyses performed by the licensee, the Commission, and other interested parties.

**EFFECTIVE DATE:** July 22, 1980.

Note.—The Nuclear Regulatory Commission has submitted this rule to the Comptroller General for such review as may be appropriate under the Federal Reports Act, as amended, 44 U.S.C. 3512. The date on which the reporting requirement of this rule becomes effective, unless advised to the contrary, accordingly, reflects inclusion of the 45-day period which that statute allows for such review (44 U.S.C. 3512(c)(2)).

**FOR FURTHER INFORMATION CONTACT:** Mr. Morton R. Fleishman, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone 301–443–5921.

**SUPPLEMENTARY INFORMATION:** On November 8, 1976, the Nuclear Regulatory Commission published in the Federal Register (41 FR 49123) a notice of proposed rule making inviting written suggestions or comments on the proposed rule by December 23, 1976. A notice of correction and extension of comment period was published in the Federal Register on December 27, 1976 (41 FR 56204) in which the comment period was extended to January 26, 1977. The notices concerned proposed amendments to 10 CFR Part 50, "Licensing of Production and Utilization Facilities," to require each applicant for, or holder of, a power reactor operating license which would be or was issued after January 1, 1963 to submit periodically to the Commission revised pages for its Final Safety Analysis Report (FSAR). These revised pages would indicate changes made in the facility or the procedures for its operation and any analyses affected by these changes. Thirty-one persons submitted comments regarding the proposed amendments. The commenters could be roughly divided into three groups with seventeen supporting the rule with comments, eleven opposed to the rule, and three neutral. Copies of the comments received may be examined in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C.

The substantive areas of comment can be categorized generally as follows:

1. Clarification of Rule
2. Applicability of Rule
3. Content of FSAR
4. Scope of Rule
5. Timing of Submittals
6. Relation of Rule to Other Rules and Reports
7. Legal Status of Updated FSAR
8. Cost/Benefit of Rule

In response to the comments received, the Commission is modifying the rule to (a) extend its applicability to all power reactors licensed to operate, (b) exclude applicants for operating licenses, (c) clarify the wording of the rule, (d) reduce its impact on power reactor licensees by relaxing some of the time requirements, and (e) require the initial revision to be a complete FSAR.

When the proposed rule was published for public comment, its applicability was limited to those plants licensed after January 1, 1963 in order to exempt five (5) older facilities. The Commission believed that it would not be feasible for these licensees to implement the rule because there is no integrated document comparable to an FSAR for their facilities. Since publication of the proposed rule, the Commission has initiated a program in which the NRC staff is making a systematic safety evaluation of eleven (11) nuclear power facilities licensed for operation before 1972. The purpose of this systematic evaluation program (SEP) is to determine and document the degree to which the eleven (11) facilities meet current licensing requirements for new plants. Of the five (5) plants licensed prior to January 1, 1963 that are still licensed to operate, three (3) are included in the SEP. The remaining two (2) plants,[1] which presently are shut down, will be subject to the provisions of the rule as long as their licenses authorize operation.

The licensees participating in the SEP probably will be requested to supply a considerable amount of information during the program. Requiring them, in addition, to update their FSARs could prove to be excessively burdensome and could result in duplication of reports. The information generated during the program and the manner in which it is collated will result in a completed FSAR at the conclusion of the program. For these reasons licensees of facilities being subjected by the NRC to a systematic evaluation program will not be required to comply with the provisions of this rule until they are notified by letter by the NRC's Director of the Office of Nuclear Reactor Regulation that, for their particular facility, the program has been completed. Because of the considerations just mentioned, that part of the proposed rule which limited the applicability to facilities licensed after January 1, 1963 has been deleted and the rule will apply to all power reactors licensed to operate.

The FSAR required to be updated by the rule is the original FSAR submitted as part of the application for the operating license. It would not include the subsequent supplements and amendments to the FSAR or the license that may have been submitted either in response to NRC questions or on the applicant's or licensee's own initiative following the original submittal. These various supplements and amendments must be appropriately incorporated into the original FSAR to create a single, complete and integral document. The initial revision to be filed should contain those pages from the originally submitted FSAR that are still applicable plus new replacement pages that appropriately incorporate the effects of supplements, amendments and other changes that have been made. This will result in a single, complete document

[1] The two facilities are Indian Point Unit No. 1 and Humboldt Bay Unit No. 3.

being filed, that can then serve as the baseline for future changes.

Commenters have asked about the proper format to be used when making the FSAR submittal. Since the format of the FSAR is not covered by regulation, the rule does not specify a particular format. The NRC staff has provided guidance for the preparation of FSARs in Regulatory Guide 1.70, Revision 2, "Standard Format and Content of Safety Analysis Reports for Nuclear Power Plants." However, many FSARs were developed prior to any specific guidance on format. The format to be used for the FSAR revisions is the option of the licensee, but the Commission expects that the format will probably be the same as the format of the original FSAR. No analyses other than those already prepared or submitted pursuant to NRC requirements (either originally with the application, or as part of the operating license review process, or as required by § 50.59 or other NRC requirement, or to support license amendments) are required to be performed by the licensee because of this rule. However, analyses existing in the FSAR which are known to be inaccurate or in error as a result of new analyses performed by the licensee pursuant to NRC requirements, would have to be revised. Specialized studies provided in the FSAR, such as on volcanic hazards or quality assurance, should include the latest information that has been developed in response to NRC requirements. New analyses (i.e., analyses not previously included in FSAR) which were required during consideration of unreviewed safety questions,[2] technical specification changes, or other licensing questions, may be incorporated as appendices or otherwise appropriately inserted within the FSAR.

Program type material that is referenced by the FSAR, such as the Quality Assurance Program or the Emergency Plan, should be referenced accurately. If such material has been revised or amended, the latest revision should be referenced. A description of physical changes to the facility should be included in the update after the changes have been approved for use and are operable. The level of detail to be maintained in the updated FSAR should be at least the same as originally provided. Minor differences between actual and projected population figures or other such changes in the site environment need not be reported unless the conclusions of safety analyses relative to public health and safety are affected and the licensee has prepared new analyses as a result of NRC requirements.

Commenters have questioned the relation of the proposed FSAR updating requirements to other reporting requirements such as the Annual Operating Report and § 50.59(b) reporting. It is not the Commission's intention to require submittal of duplicative reports. The Commission is eliminating the requirement for the Annual Operating Report. This will reduce significantly the reporting burden of licensees. There has been no requirement that § 50.59(b) reporting be part of the licensee's Annual Operating Report. This information generally has been included in the Annual Operating Report as a convenience, but it could have been submitted separately and the licensee still would have complied with § 50.59(b) which merely requires reporting "annually or at such shorter intervals as may be specified in the license." Furthermore, the report required under § 50.59(b) is only "a brief description of such changes, tests, and experiments, including a summary of the safety evaluation of each." The § 50.59(b) reporting may not be detailed sufficiently to be considered adequate to fulfill the FSAR updating requirement. The degree of detail required for updating the FSAR will be generally greater than a "brief description" and a "summary of the safety evaluation." However, there is nothing that precludes submitting the § 50.59(b) report along with the FSAR update submittal and thus satisfy § 50.59(b) along with § 50.71(e). Parts of the FSAR submittal may be referenced by the § 50.59(b) report.

Several commenters have raised legal questions concerning the proposed rule including questions relative to the purpose of the rule, the implication concerning re-reviews, the status of completed hearings, and prior license approvals. The rule is only a reporting requirement to insure that an updated FSAR will be available. Submittal of updated FSAR pages does not constitute a licensing action but is only intended to provide information. It is not intended for the purpose of re-reviewing plants. Matters which have been considered previously during hearings will not be reconsidered as a result of the FSAR submittals. Thus, for example, approvals of license amendments and technical specification changes are independent of the FSAR updating process and once approved would not be subject to further consideration simply because the FSAR is updated. This, of course, does not preclude the reevaluation of previous positions based on new information or new considerations. The material submitted may be reviewed by the NRC staff but will not be formally approved. The new pages will be accepted as representing the licensee's position at the time of submittal and will be utilized in any subsequent reviews or NRC staff activities concerning that facility.

After consideration of the comments that were received and other factors, the Commission has adopted the amendment to Part 50 as set forth below.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of title 5 of the United States Code, the following amendment to 10 CFR Part 50 is published as a document subject to codification.

## PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

Section 50.71 is amended by adding a new paragraph (e) to read as follows:

**§ 50.71 Maintenance of records, making of reports.**

* * * * *

(e) Each person licensed to operate a nuclear power reactor pursuant to the provisions of § 50.21 or § 50.22 shall update periodically, as provided in paragraphs (e)(3) and (e)(4) of this section, the final safety analysis report (FSAR) originally submitted as part of the application for the operating license, to assure that the information included in the FSAR contains the latest material developed. This submittal shall contain all the changes necessary to reflect information and analyses submitted to the Commission by the licensee or prepared by the licensee pursuant to Commission requirement since the submission of the original FSAR or, as appropriate, the last updated FSAR. The updated FSAR shall be revised to include the effects of: all changes made in the facility or procedures as described in the FSAR; all safety evaluations performed by the licensee either in support of requested license amendments or in support of conclusions that changes did not involve an unreviewed safety question; and all analyses of new safety issues performed by or on behalf of the licensee at

[2] As defined in § 50.59(a)(2), "A proposed change, test, or experiment shall be deemed to involve an unreviewed safety question (i) if the probability of occurrence or the consequence of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased; or (ii) if a possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report may be created; or (iii) if the margin of safety as defined in the basis for any technical specification is reduced."

Commission request. The updated information shall be appropriately located within the FSAR.

(1) Revisions containing updated information shall be submitted on a replacement-page basis and shall be accompanied by a list which identifies the current pages of the FSAR following page replacement. One signed original and 12 additional copies of the required information shall be filed with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) The submittal shall include (i) a certification by a duly authorized officer of the licensee that either the information accurately presents changes made since the previous submittal, necessary to reflect information and analyses submitted to the Commission or prepared pursuant to Commission requirement, or that no such changes were made; and (ii) an identification of changes made under the provisions of § 50.59 but not previously submitted to the Commission.

(3)(i) A revision of the original FSAR containing those original pages that are still applicable plus new replacement pages shall be filed within 24 months of either July 22, 1980, or the date of issuance of the operating license, whichever is later, and shall bring the FSAR up to date as of a maximum of 6 months prior to the date of filing the revision.

(ii) Not less than 15 days before § 50.71(e) becomes effective, the Director of the Office of Nuclear Reactor Regulation shall notify by letter the licensees of those nuclear power plants initially subject to the NRC's systematic evaluation program that they need not comply with the provisions of this section while the program is being conducted at their plant. The Director of the Office of Nuclear Reactor Regulation will notify by letter the licensee of each nuclear power plant being evaluated when the systematic evaluation program has been completed. Within 24 months after receipt of this notification, the licensee shall file a complete FSAR which is up to date as of a maximum of 6 months prior to the date of filing the revision.

(4) Subsequent revisions shall be filed no less frequently than annually and shall reflect all changes up to a maximum of 6 months prior to the date of filing.

(5) Each replacement page shall include both a change indicator for the area changed, e.g., a bold line vertically drawn in the margin adjacent to the portion actually changed, and a page change identification (date of change or change number or both).

(Sec. 161b., Pub. Law 83-703, 68 Stat. 948, Sec. 201, Pub. Law 93-438, 88 Stat. 1242 (42 U.S.C. 2201(b), 5841)).

Dated at Washington, D.C., this 1st day of May 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

*Secretary of the Commission.*

[FR Doc. 80-14389 Filed 5-8-80; 8:45 am]

BILLING CODE 7590-01-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 303

### Applications, Requests, Submittals, and Notices of Acquisition of Control; Delegations of Authority

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Final rule.

**SUMMARY:** On July 16, 1979 the Board of Directors of the Federal Deposit Insurance Corporation delegated authority to grant exceptions under § 348.4(b)(3) of FDIC's regulations to the Director of the Division of Bank Supervision and anyone the Director designated in writing. Section § 348.4(b)(3) permits an otherwise prohibited management official interlock between depository institutions when one of the depository institutions faces conditions endangering its safety or soundness and the interlock is necessary to provide operating or management expertise. These amendments make conforming changes in the list of delegated authorities found in Part 303. In additon, the amendments create a new delegation of authority to grant or deny extensions of time to reduce outstanding loans to executive officers and principal shareholders that exceed the statutory loan ceiling.

**EFFECTIVE DATE:** These amendments are effective May 9, 1980.

**FOR FURTHER INFORMATION CONTACT:** Pamela E. F LeCren, Attorney (202-389-4433), Room 4126E, 550 17th Street, NW., Washington, D.C. 20429.

**SUPPLEMENTARY INFORMATION:** The Board of Directors of the Federal Deposit Insurance Corporation adopted final regulations (12 CFR Part 348) implementing the Depository Institutions Management Interlocks Act (12 U.S.C. 3201 *et seq.*) on June 25, 1979. Those regulations permit the establishment of otherwise prohibited management official interlocks under certain circumstances with prior approval by the Board of Directors. The authority to approve an interlock under § 348.4(b)(3) of the regulations when one of the institutions faces conditions that endanger its safety or soundness was delegated by resolution #29618 on July 16, 1979 to the Director of the Division of Bank Supervision. The delegation was made to expedite the processing of requests under that section. The Board of Directors concluded that the delegation was important to insure that urgent situations accompanying such requests could be met. This amendment will in part conform Part 303 to reflect the action taken on July 16, 1979 by adding a new subparagraph (14) to § 303.11(a). Subparagraph (14) will list the authority of the Director of the Division of Bank Supervision to approve interlocks under § 348.4(b)(3).

In addition to the above, the changes set out below will create a new delegation of authority to the Director of the Division of Bank Supervision and FDIC's Regional Directors, by adding a new subparagraph (15) to § 303.11(a). It gives the Director of the Division of Bank Supervision and the FDIC Regional Directors, where confirmed in writing, the authority to grant or deny requests under § 215.6(b) of the Federal Reserve Board's Regulation O (12 CFR Part 215). Regulation O implements Section 22h of the Federal Reserve Act which is made applicable to insured nonmember banks under Section 18(j) of the Federal Deposit Insurance Act. Section 215.6(b) permits two one-year extensions of time for banks to comply with certain ceilings on the amounts of loans that can be made by banks to their executive officers and principal shareholders. The delegation is being made so that requests for extensions of time may be handled in a timely fashion.

Opportunity for public comment is being dispensed with under the authority of section 553(b)(A) of the Administrative Procedure Act to amend an agency rule of procedure or practice without the solicitation of public comment. The amendments will be effective immediately upon publication. This action is being taken under section 553(d) of the Administrative Procedure Act which authorizes elimination of the thirty-day delay period when there is good cause to do so. The Board of Directors has found good cause to eliminate the delayed effective date since (1) the delegation will permit prompt handling of requests and (2) listing the July delegation is merely procedural and will better serve the informational needs of interested parties.

The amendments will not affect the recordkeeping or reporting requirements for any insured nonmember bank; nor, will they affect the competitive status of

the banks. Furthermore, there are no adverse direct or indirect costs to the banks that are associated with these changes. Accordingly, no cost/benefit analysis has been undertaken.

## PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, AND NOTICES OF ACQUISITION OF CONTROL

In view of the foregoing, the Board of Directors of the Federal Deposit Insurance Corporation amends certain portions of 12 CFR Part 303 to read as follows:

In § 303.11(a) new subparagraphs (14) and (15) added to read as follows:

**§ 303.11 Delegation of authority to act on certain applications and on notices of acquisition of control.**

(a) *General.* * * *

(14) Requests for prior approval to establish a management official interlock pursuant to § 348.4(b)(3) of FDIC's regulations. This authority shall extend to the approval but not the denial of such requests.

(15) Requests pursuant to § 215.6(b) of Federal Reserve Board Regulation O (12 C.F.R. Part 215) for extensions of time in which to bring outstanding loans to executive officers and principal shareholders into compliance with § 215.6(a) of Regulation O. This authority extends to approval and denial of such requests but will terminate on March 10, 1982.

* * * * *

(Sec. 209, Pub. L. 95-630, 92 Stat. 3675 (12 U.S.C. 3207; Sec. 2(9), Pub. L. 797, 64 Stat. 881 (12 U.S.C. 1819)))

By Order of the Board of Directors of the Federal Deposit Insurance Corporation on May 5, 1980.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

*Executive Secretary.*

[FR Doc. 80-14387 Filed 5-8-80; 8:45 am]

BILLING CODE 6714-01-M]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### 15 CFR Parts 385 and 399

## Restriction on Exports for the Kama River Truck Complex (Kam AZ) in the U.S.S.R. of Truck Engine Assembly Lines

**AGENCY:** Office of Export Administration, International Trade Administration, U.S. Department of Commerce.

**ACTION:** Interim rule.

**SUMMARY:** The Export Administration Regulations are revised to establish a validated license requirement for the export of truck engine assembly lines for the Kama River truck complex (Kam AZ) in the U.S.S.R. This action is taken to further significantly the foreign policy of the United States in light of the Soviet invasion of Afghanistan.

**DATES:** These regulatory changes are effective 4:00 PM EDT, May 6, 1980. Comments must be received by the Department of Commerce by July 7, 1980.

**ADDRESS:** Written comments (six copies when possible) should be sent to: Richard J. Isadore, Acting Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, Room 1617M, Washington, D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** Mr. Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377-5247 or 377-4811).

**SUPPLEMENTAL INFORMATION:**

### Regulatory Changes

Trucks produced at the Kama River truck complex were used in the Soviet invasion of Afghanistan. In light of the continued Soviet presence in Afghanistan, it would be inconsistent with U.S. policy to permit U.S. firms to supply major components to increase the productive capacity of the Kama complex.

Consequently, as of the effective date, a validated license is required for the export of truck engine assembly lines, incuding parts and components therefor, for the Kama River truck complex (Kam AZ). Also, the general policy is established to deny applications for licenses to export such commodities.

This action is taken under section 6 of the Export Administration Act of 1979 to further significantly the foreign policy of the United States based on a recommendation from the Acting Secretary of State. The Department has consulted with appropriate persons in industry and the Congress, and has considered the criteria set forth in section 6(b) of the Act. Pursuant to section 4(c), it has been determined that, notwithstanding foreign availability, absence of these controls would be detrimental to the foreign policy of the United States. In addition, pursuant to section 6(d) it has been determined that reasonable efforts have been made to achieve the purposes of these controls through negotiation or other alternative means. Pursuant to section 6(g), all feasible steps are being taken to initiate and conclude negotiations with appropriate foreign governments to secure their cooperation in controlling such exports.

### Rulemaking Requirements

Section 13(a) of the Export Administration Act of 1979 (Pub. L. 96-72, to be codified at 50 U.S.C. App. 2401 et seq.) (the "Act") exempts regulations promulgated under the Act from the public participation in rulemaking procedures of the Administrative Procedure Act. Because they relate to a foreign affairs function of the United States, it has also been determined that these regulations are not subject to Department of Commerce Administrative Order 218-7 (44 FR 2082, January 9, 1979) and the Industry and Trade Administration Administrative Instruction 1-6 (44 FR 2093, January 9, 1979) which implement Executive Order 12044 (43 FR 12661, March 23, 1978), "Improving Government Regulations."

However, because of the importance of the issues raised by these regulations and the intent of Congress set forth in section 13(b) of the Act, these regulations are issued in interim form and comments will be considered in developing final regulations. The period for submission of comments will close on July 7, 1980. No comments received after the close of the comment period will be accepted or considered by the Department in the development of the final regulations. Public comments which are accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason, will not be accepted. Such comments and materials will be returned to the submitter and will not be considered in the development of the final regulations.

All public comments on these regulations, will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by written memoranda which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign government will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration, Freedom of Information Records Inspection Facility, Room 3012, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W.,

Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Mrs. Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

Accordingly, the Export Administration Regulations are amended as follows:

## PART 385—SPECIAL COUNTRY POLICIES AND PROCEDURES

### § 385.2 [Amended]

1. Section 385.2 is amended by adding a new paragraph (f) as follows:

* * * * *

(f) As authorized by section 6 of the Export Administration Act of 1979, a validated license is required for the export to the U.S.S.R. of truck engine assembly lines, including parts and components therefor, for the Kama River truck complex (Kam AZ). The general policy is established to deny licenses for such exports.

## PART 399—COMMODITY CONTROL LIST AND RELATED MATTERS

### § 399.1 [Amended]

2. The Commodity Control List (incorporated by reference at 15 CFR 399.1) is amended by adding a new entry and a footnote as follows:

| Unit | Processing code | Validated license required | GLV dollar value limits | | |
|---|---|---|---|---|---|
| | | | T | V | Q |
| Export control commodity number and commodity description 6398G Truck engine assembly lines, and subassemblies, components, and parts therefor | MG | SZ[1,2,3] | | | |

* * * * * *

[1,2,3] Under the foreign policy authority contained in section 6 of the Export Administration Act of 1979 a validated license is also required for export to the U.S.S.R. of such commodities for the Kama River Truck Complex (Kam AZ). See section 385.2(f).

(Sections 4, 6, 13, 15, Pub. L. 96–72, to be codified at 50 U.S.C. App. 2401 *et seq.*, Executive Order No. 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10–3. (45 FR 6141, January 25, 1980); Department Organization Order 41–1 (45 FR 11862, February 22, 1980))

Dated; May 6, 1980.

Eric Hirschhorn,

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 80–14412 Filed 5–7–80; 9:38 am]

BILLING CODE 3510–25–M

**19 CFR Part 353**

## Portable Electric Typewriters From Japan; Antidumping Duty Order

**AGENCY:** U.S. Commerce Department.

**ACTION:** Antidumping Duty Order.

**SUMMARY:** This notice is to inform the public that separate investigations conducted under the Antidumping Act, 1921, and its superseding legislation, the Tariff Act of 1930, as amended, by the Commerce Department, the Treasury Department and the United States International Trade Commission have resulted in determinations that portable electric typewriters from Japan are being sold at less than fair value and that these sales are materially injuring an industry in the United States. All unappraised entries of this merchandise made on and after January 4, 1980, the date on which liquidation was suspended, will be liable for the possible assessment of special dumping duties. Deposits of estimated antidumping duties shall be required of all entries made on and after the date of publication of this antidumping duty order in the Federal Register.

**EFFECTIVE DATE:** May 9, 1980.

**FOR FURTHER INFORMATION CONTACT:** Steven Lim, Office of Investigations, International Trade Administration, U.S. Commerce Department, 14th St. and Constitution Ave., NW., Washington, D.C. 20230. Telephone: (202) 377–1776.

**SUPPLEMENTARY INFORMATION:** Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) gave the Secretary of the Treasury responsibility for determining whether imported merchandise is being sold at less than fair value. Pursuant to that authority, the Secretary of the Treasury tentatively determined that portable electric typewriters from Japan are being sold at less than fair value within the meaning of section 201(a) of the Antidumping Act of 1921 (19 U.S.C. 160(a)). (Published in the Federal Register of January 4, 1980 (45 FR 1220–2)). Pursuant to section 102(b)(2) of the Trade Agreements Act of 1979 (93 Stat. 189, 19 U.S.C. 1671) the tentative determination of the Secretary of the Treasury under the 1921 Act, was treated as a preliminary determination under section 733(b) of the Tariff Act of 1930, as amended (93 Stat. 163, 19 U.S.C. 1673b(b)) ("the Act"). Pursuant to section 735(a) of the Act (93 Stat. 169, 19 U.S.C. 1673d(a)), the Administering Authority made a final determination that portable electric typewriters from Japan are being sold at less than fair value, (Published in the Federal Register of March 21, 1980 (45 FR 18417–8)).

Section 735(b) of the Act (93 Stat. 170, 19 U.S.C. 1673d(b)), gives the United States International Trade Commission responsibility for determining whether by reason of such sales at less than fair value a domestic industry is being or is likely to be materially injured. The Commission has determined, and on May 1, 1980, it notified the Secretary of Commerce that an industry in the United States is materially injured by reason of the importation of portable electric typewriters from Japan that are being sold at less than fair value within the meaning of the Act.

In accordance with section 736 of the Act (93 Stat. 172, 19 U.S.C. 1673e), Customs officers are directed to assess an antidumping duty equal to the amount by which the foreign market value of the merchandise exceeds the United States price of the merchandise for all entries subject to the "Withholding of Appraisement" notice published in the Federal Register on

January 4, 1979 (45 FR 1220–2) and all future entries until further notice. On or after the date of publication of this notice, Customs officers shall require, at the same time as estimated normal customs duties on the merchandise are deposited, a deposit of estimated antidumping duties pending liquidation of entries of the subject merchandise on all entries, or withdrawals from warehouse, for consumption. Deposits shall be collected in the following amounts: Nakajima All: 4.36 percent *ad valorem;* Silver Seiko: 36.53 percent *ad valorem;* Brother Industries: 48.70 percent *ad valorem;* for any other exporters of the subject merchandise: 37.12 percent *ad valorem.*

I hereby make public these determinations, which constitute an antidumping duty order with respect to portable electric typewriters from Japan.

For the purposes of this notice, the term "portable electric typewriters" are those provided for in item 676.0510, Tariff Schedules of the United States Annotated.

Accordingly, Annex I, Part 353 of the Commerce Regulations (19 CFR Part 353, 45 FR 8208) is being amended by adding the following to the list of antidumping duty orders currently in effect:

| Merchandise | Country | Treasury decision |
|---|---|---|
| Portable electric typewriters. | Japan | (45 FR——) |

(Section 736 of the Act (93 Stat. 172, 19 U.S.C. 1673e), and Section 353.48 of the Department of Commerce Regulations (19 CFR 353.48, 45 FR 8204))

John D. Greenwald,

*Deputy Assistant Secretary for Import Administration.*

May 6, 1980.

[FR Doc. 80-14388 Filed 5-8-80; 8:45 am]

BILLING CODE 3510-22-M

## 19 CFR Part 355

## Countervailing Duties—Pig Iron From Brazil; Correction

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Correction. In FR Doc. 80–10282, appearing on page 23045 of Book 1 of the Federal Register for April 4, 1980, the final sentence in the third to the last paragraph in the middle column of page 23046 should read "the amount to be deposited for each company is listed as a percentage of the FOB Brazil price in the appendix to this notice." Additionally, the dollar sign ($) which appears next to the figure "7.04" in the appendix to the notice should be deleted.

**FOR FURTHER INFORMATION CONTACT:** Michael Ready, International R Trade Administration, Department of Commerce, (202) 377–2613.

April 21, 1980.

John D. Greenwald,

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 80-14420 Filed 5-8-80; 8:45 am]

BILLING CODE 3510-25-M

## DEPARTMENT OF STATE

## 22 CFR Part 51

**[Departmental Regulation 108.790]**

## Special Validation of Passport for Travel to Restricted Areas

**AGENCY:** State Department.

**ACTION:** Final rule.

**SUMMARY:** The Department of State is amending the regulation relating to special validation of a passport for travel to restricted areas. The purpose of the amendment is to narrow the categories of applications that must be considered. Narrowing of these categories is deemed desirable during the present crisis in our relations with Iran. The effect of this amendment is both to narrow the categories of applications that must be considered and to expedite the consideration of applications for validations.

**EFFECTIVE DATE:** May 8, 1980.

**FOR FURTHER INFORMATION CONTACT:** William B. Wharton, Ofice fo Citizenship appeals and Legal Assistance, Passport Services, Bureau of Consular Affairs, Department of State, (292) 632–0801.

**SUPPLEMENTARY INFORMATION:** The provisions of the 5 U.S.C. § 553 relative to notice of proposed rule making are inapplicable to this regulation since the regulation involves a foreign affairs function. The exigencies of the situation in Iran make it impracticable and contrary to the public interest to comply with the notice and comment provisions of Section 553. Accordingly 22 CFR 51.73 is amended to read as follows:

**§ 51.73 Special validation of passports for travel to restricted areas.**

(a) A United States National wishing a validation of his passport for travel to, in, or through a restricted coutry or area may apply for a special validation to the Office of Passport Services, a passport agency, or a foreign service post authorized to issue passports. The application shall be accompanied by evidence that the applicant falls within the standards set out in paragraph (c) of this section.

(b) The Assistant Secretary of State for Consular Affairs or an authoried designee of that official shall decide whether or not to grant a special validation. The special validation shall be granted only when such action is determined to be in the national interest of the United States.

(c) An application may be considered if:

(1) The applicant is a professional reporter, the purpose of whose trip is to obtain, and make available to the public, information about the restricted area; or

(2) The applicant is a representative of the American Red Cross; or

(3) The applicant establishes that his or her trip is justified by compelling humanitarian considerations; or

(4) The applicant's request is otherwise in the national interest.

(Sec. 1, 44 Stat. 887, as amended (22 U.S.C. 211a); sec. 4, 63 Stat. 111, as amended (22 U.S.C. 2658); E.O. 11295, 36 FR 10603; 3 CFR 1966–70 Comp., 507; E.O. 12211, 45 FR 26685)

Dated: May 6, 1980.

Warren Christopher,

*Acting Secretary of State.*

[FR Doc. 80-14513 Filed 5-7-80; 3:18 p.m.]

BILLING CODE 4710-06-M

## DEPARTMENT OF THE TREASURY

## Office of the Secretary

## 31 CFR Part 13

## Procedures for Providing Assistance to State and Local Governments in Protecting Foreign Diplomatic Missions

**AGENCY:** Office of the Secretary of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of the Treasury Regulations which prescribe the procedures governing protection and financial assistance to State and local governments when an extraordinary protective need requires the protection of foreign diplomatic missions. The amendments more clearly delineate the circumstances authorizing reimbursement to State and local governments for protecting foreign diplomatic missions. Additions to the regulations would provide for payments to State and local governments for the cost of protection for motorcades and at other places associated with a visit. This document substitutes the name United

States Secret Service Uniformed Division for the name Executive Protective Service in these regulations.

**EFFECTIVE DATE:** May 9, 1980.

**FOR FURTHER INFORMATION CONTACT:** J. Robert McBrien, Special Assistant to the Assistant Secretary (Enforcement and Operations), Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, Telephone 202–566–8534.

**SUPPLEMENTARY INFORMATION:**

## Background

Pub. L. 94–196 (89 Stat. 1109), which is codified as §§ 202(7) and 208 of Title 3, U.S. Code, authorizes the Secretary of the Treasury to reimburse State and local governments for certain costs of protecting foreign diplomatic missions under special conditions. Implementing regulations were first adopted on December 17, 1976. However, the Department's experience in administering the regulations indicated a need to modify them in order to clarify certain areas of ambiguity and to define more clearly the scope of the reimbursement authority. Furthermore, a technical amendment to the regulations was necessary to implement Pub. L. 95–179 which changed the name of the Executive Protective Service to the United States Secret Service Uniformed Division. Accordingly, on June 25, 1979, a Notice of Proposed Rulemaking was published in the Federal Register (44 FR 36988) which proposed to clarify and amend certain provisions of the regulations of the Office of the Secretary of the Treasury implementing Pub. L. 94–196 (31 Code of Federal Regulations, Subtitle A, Part 13). The proposed modifications were as follows:

a. The definition of "extraordinary protective need" is redefined to include, in certain cases, potential violence instead of actual violence, and to include confrontations between, or threats of violence from, groups other than the nationalists or terrorist groups permitted under current regulations.

b. An extraordinary protective need entitling a State or local government to Federal assistance in providing protection to foreign diplomatic missions may now clearly arise from a specific international event.

c. Reimbursement would now be authorized for protection of foreign diplomatic missions, including consular offices, if the need for such protection constitutes an extraordinary protective need and arises from a visit of a foreign dignitary or official of the same country as the foreign diplomatic mission to participate in an activity of the international organization.

d. There is a clarification of authority to reimburse for protection at a mission to an international organization required by extraordinary protective need absent a visit by a foreign dignitary.

e. Reimbursement would be permitted for special arrival and departure security assignments at a qualified mission, as well as for additional personnel assignment costs at an otherwise qualified mission if the vulnerability of the mission is increased due to a particular visit.

f. Costs for establishing protective perimeters around an otherwise qualified location, but outside of the immediate area, would be made reimbursable when they are shown to be necessary for the adequate protection of the qualified location.

g. Administrative and overhead costs would be made reimbursable, for the first time, as either a flat percentage of the total extraordinary protective need cost or on a dollar-for-dollar basis, whichever the requesting government selects.

h. The name United States Secret Service Uniformed Division would be substituted throughout the Part for the name Executive Protective Service.

i. Requests for reimbursement submitted before the effective date of these amended regulations may be resubmitted in order for the requesting government to seek any additional reimbursements permitted under the amendments as finally promulgated. Resubmissions should identify clearly the expenditures for which additional reimbursement is sought.

## Discussion of Comments

Interested parties were given until July 25, 1979, to submit comments on the proposed amendments. Only the City of New York responded. The City contended that Pub. L. 94–196 authorized reimbursement for expenses incurred in protecting individual foreign dignitaries as well as the protection of foreign diplomatic missions and the temporary domicile of a visiting foreign official. The Treasury Department determined that the statute as adopted did not allow for such an interpretation. As noted below, however, because of Congress amendments to Treasury's Appropriations Act (Pub. L. 96–74), during Fiscal Year 1980, security both for motorcades and at other places visited by foreign representatives would be subject to reimbursement in addition to that security provided for premises only under Pub. L. 96–196.

Although the particular suggestions from New York City, based on the position that the statute authorizes the protection of persons rather than places, were not accepted, other suggestions made by the City in its comments were adopted. In § 13.3 (b), (c), and (d), language has been added to make more explicit that the standards governing eligibility for protection also govern eligibility for reimbursement. Related changes have also been made in § 13.4.

Section 13.5 of the regulations had not permitted reimbursement for utilization of State or local protection in cases where the Secret Service Uniformed Division was also providing protection. That section has been amended at the suggestion of the City since instances have arisen where both Secret Service Uniformed Division and local police forces have been required to provide an adequate level of security.

The regulations also clarify that reimbursement will be allowed for fixed posts assigned because of an extraordinary protective need.

A major change in the regulations is the decision to allow reimbursement for overhead and administrative costs. The original regulations had specifically prohibited such reimbursement although Pub. L. 94–196 and its legislative history do not address this issue. In its notice of proposed rulemaking, the Treasury Department indicated that the local jurisdiction could choose either a flat percentage formula of 5 percent of the total direct protection costs or an actual cost reimbursement. New York City urged that an 18 percent flat reimbursement rate should be used based upon the procedures outlined in Federal Management Circular 74–4 for administering Federal grants. The Federal Office of Management and Budget, which issued FMC 74–4, agreed that FMC 74–4 serves as a sound and reasonable basis for calculating the administrative and overhead costs under Pub. L. 94–196. Consequently, Treasury has adopted New York City's recommendation.

## Appropriations Act Provision

Pub. L. 96–74, an act making appropriations to the Treasury Department for Fiscal Year 1980, expressly makes available funds for payment to State and local governments providing protection for motorcades and at other places associated with a visit qualifying under section 202(7) of title 3, United States Code. Language authorizing reimbursement for motorcades and at other places associated with the visit of a foreign dignitary has not appeared in prior appropriations acts. Accordingly, a new section, § 13.8, has been added to the regulations which authorizes reimbursement for motorcades and security at other places visited by a

foreign dignitary when the dignitary's visit otherwise qualifies for reimbursement. This proviso will remain in effect until October 1, 1980, the beginning of Fiscal Year 1981 and will apply to payments made during the period out of all the funds available from this and prior years' appropriations.

Drafting Information

The principal author of this document is J. Robert McBrien, Special Assistant to the Assistant Secretary (Enforcement and Operations), Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. However, other persons participated in developing the regulations both on matters of substance and style.

Amendments to the Regulations

Part 13, Subtitle A, Office of the Secretary Regulations, (31 CFR, Subtitle A, Part 13), is amended as set forth below.

Amendments to the Office of the Secretary Regulations

## PART 13—PROCEDURES FOR PROVIDING ASSISTANCE TO STATE AND LOCAL GOVERNMENTS IN PROTECTING FOREIGN DIPLOMATIC MISSIONS

Section 13.2, *Definitions*, is amended by revising the definitions of the terms "Assistant Secretary" and "extraordinary protective need" to read as follows:

### § 13.2 Definitions.

(a) The term "Assistant Secretary" means the Assistant Secretary of the Treasury (Enforcement and Operations).

(b) The term "extraordinary protective need" means a need for protection requiring measurable reinforcements of police personnel or equipment, or both, significantly beyond the ordinary deployment of the State or local government, arising out of actual or potential violence related to: (1) confrontations between nationalist or other groups, (2) threats or acts of violence by terrorist or other groups, (3) a specific diplomatic event or visit, or (4) a specific international event.

Section 13.3 is revised to read as follows:

### § 13.3 Eligibility to receive protection or reimbursement.

(a) Protection, as determined by the Assistant Secretary, will be provided by the United States Secret Service Uniformed Division, pursuant to section 202 of title 3, U.S. Code, as amended by Pub. L. 94–196, only to foreign diplomatic missions located in metropolitan areas (other than the District of Columbia) where there are located twenty or more such missions, as determined by the Secretary of State, which are headed by full time officers. According to present State Department figures, the following metropolitan areas have 20 or more such foreign diplomatic missions: Chicago, Houston, Los Angeles, Miami, New York City, New Orleans and San Francisco. The protection provided by State or local governments rather than the United States Secret Service Uniformed Division will be reimbursed pursuant to section 208(a) of title 3, U.S. Code and §§ 13.6, 13.7 and 13.8 of this part.

(b) Protection or reimbursement will be provided for the metropolitan areas described in paragraph (a) of this section only if:

(1) The affected metropolitan area requests such protection or reimbursement;

(2) The Assistant Secretary determines that an extraordinary protective need exists; and

(3) The extraordinary need arises in association with a visit to or occurs at or, pursuant to § 13.6, in the vicinity of: (i) a permanent mission to an international organization of which the United States is a member, (ii) an observer mission invited to participate in the work of an international organization of which the United States is a member, or (iii) in the case of a visit by a foreign official or dignitary to participate in an activity of an international organization of which the United States is a member, a foreign diplomatic mission, including a consular office of the same country as the visitor.

(c) Protection (or reimbursement) may be extended at places of temporary domicile in connection with a visit under paragraph (b) of this section.

(d) Where an extraordinary protective need exists, protection (or reimbursement) may be extended to missions as described in §§ 13.3(b)(3) (i) and (ii) whether or not associated with a visit by a foreign dignitary.

Section 13.4 is revised to read as follows:

### § 13.4 Requests for protection and advance notices of reimbursement requests.

(a) In cases where they believe that an extraordinary protective need exists, the State or local governments may request that protection be provided by the United States Secret Service Uniformed Division; or they may give advance notice of their intention to provide, on a reimbursable basis, all or part of the protection themselves.

(1) Requests for protection or advance notices of reimbursement requests shall be made to: Assistant Secretary (Enforcement and Operations), Department of the Treasury, Washington, DC 20220. Each government requesting the protection authorized pursuant to section 202 of title 3, U.S. Code, as amended by Pub. L. 94–196, or which intends to seek reimbursement pursuant to section 208(a) of title 3, U.S. Code and §§ 13.6 and 13.7 of this part, shall submit an application describing the extraordinary protective need. Applications made pursuant to this section shall be submitted to the Assistant Secretary 14 days before the extraordinary protective need arises. In association with a visit, the application shall include the name and title of the visiting foreign official or dignitary, the country he represents, and the name and location of the international organization or mission he will be visting. The application shall also include, if available, the temporary domicile of the visiting official or dignitary and his schedule, including dates and times of arrival and departure from the United States. If the extraordinary protective need occurs at a permanent mission to an international organization of which the United States is a member or an observer mission invited to participate in the work of such organization, or if another foreign diplomatic mission of the country qualifies under §§ 13.3 (b) or (d), the application shall include the name and location of the mission.

(b) State and local governments shall also indicate on the application whether they are requesting the use of the United States Secret Service Uniformed Division or whether they are giving advance notice of their intention to provide, on a reimbursable basis, all or part of the protection themselves. In order to assist the Assistant Secretary in determining whether to utilize the United States Secret Service Uniformed Division to meet all or part of the extraordinary protective need, or to utilize, with their consent, the services, personnel, equipment, and facilities of the State or local government, or both, the application must include an estimate of the approximate number of personnel by grade and rank, the services, equipment, and facilities required, along with an estimate of the cost of such personnel, services, equipment and facilities. This application must be submitted in a format consistent with that illustrated in Appendix I of this part.

(b) Upon receipt of a request for protection pursuant to paragraph (a)(1)

of this section and for the purposes of reimbursement pursuant to Sections 13.6 and 13.7, the Assistant Secretary will determine whether an extraordinary protective need exists and whether the United States Secret Service Uniformed Division will be used for all, part or none of the protection. In making determinations, the Assistant Secretary may consult with appropriate Federal, State and local government agencies.

Section 13.5 is revised to read as follows:

**§ 13.5 Utilization of the services, personnel, equipment, and facilities of State and local governments.**

The Assistant Secretary may decide to utilize, on a reimbursable basis, the services, personnel, equipment, and facilities of State and local governments of the affected metropolitan area desiring to provide protection, or he may utilize the United States Secret Service Uniformed Division, or both. If the United States Secret Service Uniformed Division is utilized to meet all the extraordinary protective need, the governments of the affected metropolitan area will not be reimbursed. If the United States Secret Service Uniformed Division is utilized to meet part of the extraordinary protective needs, the governments of the affected metropolitan area will be reimbursed for that qualifying portion of the protection which is provided by State and local police authorities. If the Assistant Secretary decides to utilize, with their consent, the services, personnel, equipment, and facilities of such State and local governments to meet the extraordinary protective need, he will so notify the government as soon as possible after receipt of a request for protection or an advance notice of a reimbursement request made pursuant to Section 13.4.

Section 13.6 is amended to read as follows:

**§ 13.6 Reimbursement of State and local governments.**

(a) State and local governments providing services, personnel, equipment, or facilities to the affected metropolitan area pursuant to Section 13.5 may forward to the Assistant Secretary a bill for reimbursement for the personel, equipment, facilities, and services utilized in meeting the extraordinary protective need. The bill shall be in accordance with the format in Appendix II of this part. The Assistant Secretary will reimburse only those costs directly related to the extraordinary protective need including personnel and equipment costs resulting from assignments made to assist in providing security at an otherwise qualified location in connection with the arrival, departure, or during the visit of a foreign dignitary. Reimbursable costs will also include the costs for establishing both fixed posts at a qualified location and protective perimeters outside of a qualified location when it is clearly established to the satisfaction of the Assistant Secretary that such assignments were necessary to assure the safety of the qualified location. Overhead and administrative costs associated with an extraordinary protective need are reimbursable as either a flat 18 percent of the total extraordinary protective need costs, or, if such costs can be clearly segregated from routine police costs, on a dollar-for-dollar basis. The jurisdiction seeking such reimbursement may select either method but may not use both. For the purposes of reimbursement the Assistant Secretary will, in all cases, determine when the extraordinary protective need began and terminated.

Section 13.7(a) is revised to read as follows:

**§ 13.7 Reimbursement when the Assistant Secretary makes no determination to utilize State and local government services, personnel, equipment and facilities.**

(a) Where events require the State or local governments of the affected metropolitan area to provide protection to meet an extraordinary protective need otherwise qualifying for reimbursement, such reimbursement may be made even if the provisions of §§ 13.4 and 13.5 have not been complied with fully. In such circumstances the provisions of Section 13.6 shall apply.

Section 13.8 is revised to read as follows:

**§ 13.8 Protection for motorcades and other places associated with a visit qualifying under section 202(7) of title 3, U.S. Code.**

(a) State and local governments furnishing services, personnel, equipment, and facilities to provide protection for motorcades and at other places associated with a visit qualifying under section 202(7) of title 3, U.S. Code may forward to the Assistant Secretary a bill for reimbursement for the personnel, equipment, facilities, and services utilized in providing such protection.

(b) Requests for payments under this section shall conform to the procedures established elsewhere in this Part governing reimbursements arising out of an extraordinary protective need.

Richard J. Davis,

*Assistant Secretary (Enforcement and Operations).*

April 14, 1980.

**Appendix I (F)—Estimated Overhead and Administrative Costs**

Date: _____

*Select Only One Method*

——— 1. Reimbursement for overhead and administrative costs will be requested as a flat 18 percent of the total extraordinary protective need cost as provided in section 13.6 of these regulations.

——— 2. Reimbursement for overhead and administrative costs will be requested on a dollar-for-dollar basis. Computation of these costs will be made using the below described method:

(Explain in detail how all of these costs can be directly and exclusively attributed to the extraordinary protective need.)

**Appendix II (F)—Overhead and Administrative Costs**

Date: _____

*Select Only One Method*

——— 1. Reimbursement for overhead and administrative costs is requested as a flat 18 percent of the total extraordinary protective need costs as provided in section 13.6 of these regulations.

——— 2. Reimbursement for overhead and administrative costs is requested on a dollar-for-dollar basis. Computation of these costs has been made using the below described method:

(Explain and show in detail how all of these costs have been directly and exclusively attributed extraordinary protective need costs).

Dated: _____

**Appendix I—Form of Request for Assistance**

I hereby request assistance from the Department of the Treasury pursuant to Section 202 of Title 3, U.S. Code, as amended by Pub. L. 94-196. This assistance is needed to enable the affected metropolitan area of _____ to meet an extraordinary protective need, which is expected to arise on _____ (date).

The nature of the extraordinary protective need prompting this request is as follows:

(If in association with a visit, include the name and title of the visiting foreign official or dignitary, the country represented and the name and location of the international organization involved and/or mission to be visited. The temporary domicile of the visiting official or dignitary and his schedule, including dates and times of arrival and departure from the United States, if available, must also be included. If the extraordinary protective need occurs at or, pursuant to § 13.6 of 31 CFR Part 13, in the vicinity of, a permanent mission to an international organization of which the United States is a member or at an observer mission invited to participate in the work of the organization,

the application shall include the name and location of the mission. If the extraordinary protective need occurs at a foreign diplomatic mission, including a consular office, in conjunction with a qualifying visit by a foreign official or dignitary of the same country as that mission, the application shall include the name and location of the mission or office. If, pursuant to § 13.8, the visiting foreign official is to travel by motorcade and/or visit locations other than his foreign mission or temporary domicile, the application shall include a description of the anticipated motorcade routes and all stops on the routes as well as the name (or description) and location of any other places to be visited.

The ———— (Government entity) ———— (is or is not) ———— prepared to provide ———— (all or a portion of) the protection required to meet this need. Attached is an estimate of the appropriate number of personnel, by grade and rank, and the specific services, equipment and facilities which will be required to meet this extraordinary protective need, along with an estimate of the cost of such personnel, services, equipment, and facilities.

(Date) ————

(State or local government of the affected metropolitan area)

(Signature)

(Title)

Appendix II—Form of Bill for Reimbursement

I hereby request that ———— (Governmental entity) be reimbursed by the Department of the Treasury pursuant to sections 202 and 208 of title 3, U.S. Code, as amended and added, respectively, by Public Law 94-196 (89 Stat. 1109) (and/or pursuant to Public Law 96-74) for expenses incurred while providing an adequate level of protection during the extraordinary protective need arising in association with a visit of ———— (Official or dignitary's name and title) of ———— (Country) to participate in the work of ———— (International Organization) or occurring at the ———— (Permanent or observer mission) to ———— (International organization) during the period ———— (Date) through ———— (Date).

I certify that the level of protection provided was both reasonable and necessary; that the costs herein billed are only those direct costs associated with meeting the extraordinary protective need; and that the costs herein billed are not costs of an indirect nature such as administrative costs, overhead, and depreciation, except as provided in § 13.6(a) of 31 CFR 13.

Access to all records, accounts, receipts, etc., pertaining to the costs herein billed will be accorded to representatives of the Assistant Secretary (Enforcement and Operations) and the General Accounting Office at such reasonable times and places as may be mutually agreed upon by said representatives and ———— (Governmental entity).

Date: ————

(Signature)

(Title)

[FR Doc. 80-14394 Filed 5-8-80; 8:45 am]

BILLING CODE 4810-25-M

## DEPARTMENT OF DEFENSE

## 32 CFR Ch. I

## Subcontracting Under Federal Contracts; Subcontracting With Women's Business Enterprises Under Federal Contracts; Contract Disputes Regulatory Coverage and Contract Disputes Clause

Cross Reference: For three documents issued by the Office of Federal Procurement Policy that relate to regulations contained in the Defense Acquisition Regulations (32 CFR Chapter I), *see* Part VIII of this issue. Refer to the table of contents at the front of this issue under "Federal Procurement Policy Office" for the appropriate page number.

BILLING CODE 3110-01-M

## DEPARTMENT OF THE INTERIOR

## National Park Service

## 36 CFR Part 61

## Criteria for Comprehensive Statewide Historic Surveys and Plans

**AGENCY:** National Park Service, Interior.

**ACTION:** Redesignation of Part 61, Chapter I to Part 1201, Chapter XII.

**SUMMARY:** Since the Heritage Conservation and Recreation Service was established on January 25, 1978, regulations currently published in Title 36, Chapter I which pertain to the programs of the Service must be transferred to Title 36, Chapter XII. So that the Service's regulations are consolidated under one Title and Chapter, this document redesignates 36 CFR Chapter I, Part 61 to 36 CFR Chapter XII, Part 1201.

**EFFECTIVE DATE:** May 9, 1980.

**FUR FURTHER INFORMATION CONTACT:** Stephanie Toothman, Historian, or Division of State Plans and Grants, United States Department of the Interior, Heritage Conservation and Recreation Service, Washington, D.C. 20243 (202) 343-6221.

**SUPPLEMENTARY INFORMATION:** This document transfers and redesignates 36 CFR, Chapter I, Part 61 to 36 CFR, Chapter XII, Part 1201. Therefore, Part 61 is deleted from Title 36. Elsewhere in this Federal Register 36 CFR, Chapter XII, Part 1201 is amended on an interim basis.

Dated: April 16, 1980.

Bob Herbst,

*Assistant Secretary of the Interior.*

[FR Doc. 80-14402 Filed 5-8-80; 8:45 am]

BILLING CODE 4310-03-M

## Heritage Conservation and Recreation Service

## 36 CFR Part 1201

## Criteria for Comprehensive Statewide Historic Surveys and Plans

**AGENCY:** Heritage Conservation and Recreation Service (HCRS), Interior.

**ACTION:** Redesignation and interim rule.

**SUMMARY:** Since the Heritage Conservation and Recreation Service was established on January 25, 1978, regulations currently published in Title 36 Chapter I which pertain to the programs of the Service must be transferred to Title 36 Chapter XII. So that the Service's regulations are consolidated under one Title and Chapter, this document adopts the transfer of 36 CFR Chapter I, Part 61 with amendments.

The amendments clarify the duties of State Historic Preservation Officers (SHPO's) with respect to participation in the Historic Preservation Fund grants program. The major changes reduce the minimum staff and review board requirements and allow flexibility for HCRS to approve alternative requirements for States demonstrating special needs or problems with respect to the established minimum.

**DATES:** Effective date May 9, 1980. Comments on the interim rule must be received on or before July 8, 1980.

**ADDRESS:** Written comments should be addressed to Chief, Division of State Plans and Grants, Heritage Conservation and Recreation Service, Department of the Interior, Washington, D.C. 20243.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Toothman, Historian, Division of State Plans and Grants, HCRS, Washington, D.C. 20243, (202) 343-6221.

**SUPPLEMENTARY INFORMATION:** The existence of professional qualifications requirements for State staffs and Review Boards has been a major impetus toward strengthening the professionalism of State historic preservation programs. However, continuous and annual review of the State staff and Review Board members' qualifications by HCRS has been an administrative burden without yielding

sufficient benefits for either the States or HCRS. In addition, several States have had to request waivers of requirements either because they could not find individuals for their staffs or Review Boards who met HCRS qualifications or because the composition of staffs and Review Boards required in HCRS regulations was not appropriate to their resources or needs. To alleviate this problem, HCRS proposes three major changes in the requirements: (1) The State Historic Preservation Officer (SHPO) will certify annually that his or her staff and Review Board meets these requirements; (2) HCRS will consider and, if appropriate, approve proposals for long term alternative staff and/or Review Board compositions for States having demonstrated that such alternatives would better serve their needs and resources; and (3) The requirement for historic architect on the SHPO staff has been removed, except for States operating under "expanded participation." In addition, the definition of qualifications for historic architects has been changed to make the level of experience and/or training more consistent with the other disciplines.

HCRS is moving toward decentralization of decisionmaking in areas such as National Register nominations, determinations of eligibility and others. We considered requiring, as a way to insure the professionalism of such decisions at the State level, that the SHPO be a professional in one of the disciplines of archeology, architectural history, history, or architecture. We received extensive comments from SHPO's raising questions about this proposed requirement and the difficulties it would impose upon management of State programs. After considering these comments, we have concluded that because of the position of the SHPO as manager of the State historic preservation program, the disciplines defined in § 1201.5 do not necessarily reflect the full range of skills necessary or appropriate to the SHPO and that the requirements for professional staff are adequate to provide resource evaluation decisions based on professional judgement.

In addition, we considered modifying the requirements for composition of the State Review Boards to assure that these reflected the ethnic and cultural diversity of each State's population. This has been deferred because the States have recently begun operating under broad Historic Preservation Fund (HPF) program policies and requirements to expand the opportunities of the public to influence preservation programs. It is now the responsibility of the States to respond by developing innovative and effective public participation programs appropriate to their own circumstances if they have not already done so.

This amendment is intended to deal only with State Historic Preservation Officer, State staff, and State Review Board requirements. Because the provision for annual certification by the SHPO that his or her staff and review board meet these requirements will significantly reduce administrative paperwork for both HCRS and the SHPO's, the decision was made to make these regulations effective immediately on an interim basis. Review of survey and planning requirements will occur at a later time.

This amendment is developed under the authority of the National Historic Preservation Act of 1966 as amended, 16 U.S.C. 470 *et seq.* Because these amendments have to do with administration of the Historic Preservation Fund program and have no impact upon the environment, an environmental impact statement is not necessary. The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

The originator of these procedures is Stephanie Toothman of the Division of State Plans and Grants, (202) 343-6221.

(National Historic Preservation Act of 1966, as amended, 16 U.S.C. Sections 470-470t., Pub. L. 89-665, 80 Stat. 1915-1919)

Dated: April 16, 1980.

Bill Herbst,

*Assistant Secretary of the Interior.*

In consideration of the foregoing, 36 CFR 1201.1-1201.6 are amended on an interim basis as follows:

1. In § 1201.1, (a), (c) and (d) are revised to read as follows:

**§ 1201.1 Definitions.**

As used in this chapter: (a) "State" means, in addition to the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, The Trust Territory of the Pacific Islands, and any other jurisdictions that may be authorized by Congress to receive grants under the Historic Preservation Act.

(b) * * *

(c) "Historic Preservation Fund (HPF) Program" means the program of matching grants-in-aid for survey, planning, the National Register, acquisition and development that has evolved under the Secretary of the Interior's authority in §§ 101(a)(1) and 101(a)(2) of the National Historic Preservation Act. This program includes but is not limited to the responsibilities of the State Historic Preservation Officers as outlined in § 1201.2.

(d) "Expanded Participation" means the procedure which permits designated States, as part of the State Historic Preservation Officer's responsibility, to conduct primary review of acquisition and development project applications and to certify that the project work will be executed according to the Secretary of the Interior's Standards for Historic Preservation Projects (36 CFR 1207). This certification permits abbreviated Heritage Conservation and Recreation Service (HCRS) review of projects.

* * * * *

2. Section 1201.2 is revised as follows:

**§ 1201.2 Designation and responsibilities of the State Historic Preservation Officer.**

(a) The State Historic Preservation Officer is the official within each State who has been designated by the Governor or chief executive of the State to administer the HPF program within the State.

(b) For purposes of the HPF program, the responsibilities of the State Historic Preservation Officer shall include:

(1) Development of an administrative framework for the State historic preservation program, consisting of (i) the State historic preservation office; (ii) a professional staff working under the direction of the State Historic Preservation Officer; and (iii) a State Review Board designated by the State Historic Preservation Officer unless otherwise provided by State law. The State Historic Preservation Officer shall insure that the professional staff and State Review Board members meet the minimum requirements outlined in §§ 1201.3—5.

(2) Implementation, subject to the approval of the Secretary, of a resource management system for comprehensive statewide historic preservation planning which establishes the objectives and priorities for the statewide preservation program.

(3) Direction of a comprehensive statewide survey of historic properties.

(4) Registration or official recognition of historic properties through (i) preparation and submission of nominations to the National Register, and (ii) provision of professional judgments on determinations of eligibility requested by Federal agencies.

(5) Cooperation in the development of effective working relationships with

Federal agencies, other State offices, and local governmental units that participate in the identification, registration, protection, enhancement, and management of historic properties and in project planning that may affect historic properties.

(6) Cooperation in the integration of historic preservation planning with all levels of planning in order to insure that the need to preserve historic properties is taken into consideration by all planning and development agencies.

(7) Cooperation in the development and maintenance of a review procedure for publicly funded, assisted, and licensed undertakings that may affect historic properties within the State.

(8) Participation in the review of Federal, federally assisted, and federally licensed undertakings that may affect historic properties included in or eligible for inclusion in the National Register under section 106 of the National Historic Preservation Act and Executive Order 11593, in accordance with the Advisory Council on Historic Preservation's "Procedures for the Protection of Historic and Cultural Properties" (36 CFR Part 800), and participation in the review of non-federal undertakings when required or permitted by State law.

(9) Assisting Federal agencies in fulfilling their historic preservation responsibilities under Federal laws and regulations.

(10) Liaison with organizations of professional archeologists, historians, architects, architectural historians, planners, and others concerned or potentially concerned with historic preservation.

(11) Development and operation of a program of public information and education concerning the HPF program.

(12) Administration of the HPF program within the State, including development of a mechanism to insure open selection of grant projects.

(13) Reviewing and providing recommendations to the Secretary on requests for certification of significance, certification of rehabilitation, and certification of local districts and State and local statutes for the purposes of participation in section 2124 of the Tax Reform Act of 1976 and the Revenue Act of 1977 as defined in Part 1208.

(c) When a new State Historic Preservation Officer is designated by a Governor, a letter from the Governor shall be sent to the Director of HCRS providing notice of the designation. Similar written notification shall also be sent in cases involving a successor to the State Historic Preservation Officer when the original designation was made to the office rather than specifically to the individual (by name) holding the office. HCRS also requires notification when the State Historic Preservation Officer delegates authorities to other parties. Changes of address or telephone number shall also be brought promptly to the attention of HCRS.

(d) Questions concerning authorized signatures shall be addressed to the Associate Director, Cultural Programs, HCRS, Washington, D.C. 20243.

3. Section 1201.3 is revised as follows:

**§ 1201.3 State professional staff.**

(a) Except as approved pursuant to paragraph (b) of this section, the staff of the State historic preservation office shall include at a minimum, one full-time professional in each of the following disciplines: history, archeology and architectural history. To be approved for expanded participation a State must have a professional in the discipline of historical architecture on the staff as well. Required professional State staff members shall meet the minimum qualifications set forth in § 1201.5. Two or more part-time staff members may be substituted for one full-time professional in any of the required disciplines as long as the equivalent of one full-time professional is achieved in each discipline. The State Historic Preservation Officer shall determine what other professional disciplines, such as planning and law, are needed to carry out the responsibilities of the HPF program. State professional staff members approved by the Secretary prior to September 21, 1977, shall remain approved until such time that they are no longer employed on the State staff.

(b) The Secretary will consider proposals for alternative staff and/or Review Board minimum requirements for States with resources and needs which cannot be served or met by the staff or Review Board composition outlined in §§ 1201.3(a) and 1201.4(b). Such alternative requirements must insure adequate professional expertise on the staff and Review Board, comparable to that required in § 1201.3(a) and 1201.4(b), to perform the required functions of the HPF program in the State. Such proposals will be reviewed and approved by the Secretary on a State-by-State basis. Approved alternatives will remain in effect until they are reviewed, at the Secretary's discretion or at the request of the SHPO.

(c) The SHPO shall annually certify to the Secretary that the minimum staff requirements are met.

4. In § 1201.4, (b), (c), (d), (e) and (g) (1)–(3) are revised and (g)(4) is added to read as follows:

**§ 1201.4 State Review Board.**

* * * * *

(b) The State Review Board shall consist of at least five persons. A majority of Review Board members shall be recognized professionals in the disciplines defined in § 1201.5. Except as provided in paragraph 1201.3(b), the State Review Board shall include a minimum of one professional in each of the following disciplines: history, prehistoric and historic archeology, and architectural history and architecture. All of these professionals shall meet the minimum standards of professional qualifications set forth in § 1201.5. The State Historic Preservation Officer shall determine what other professional disciplines and/or additional members are needed. Non-professional citizen members with demonstrated interest or competence in historic preservation may be appointed to the State Review Board as long as the majority of the membership consists of professionals.

(c) The professional in archeology shall be qualified in both prehistoric and historic archeology, or an additional professional shall be appointed to the State Review Board so that expertise in both prehistoric and historic archeology will be represented.

(d) The professional in architectural history and architecture shall be qualified in both architectural history and architecture or an additional professional shall be appointed to the State Review Board so that expertise in both architectural history and architecture will be represented.

(e) The State Historic preservation Officer shall annually certify to the Secretary that the minimum State Review Board requirements are met.

* * * * *

(g) * * *

(1) Reviewing and providing professional decisions on each National Register nomination prior to submission to the National Register.

(2) Participating in and reviewing appeals of nominations and providing written opinions on the significance of the properties as measured against the National Register Criteria for Evaluation when requested (see Part 1202).

(3) Reviewing completed State annual HPF applications, work programs and progress reports prior to submission.

(4) Providing general advice, guidance and professional recommendations to the State Historic Preservation Officer in implementing a system for comprehensive statewide historic preservation planning, and carrying out other duties and responsibilities of the State historic preservation office.

5. Section 1201.5(e) is revised as follows:

**§ 1201.5 Professional qualifications.**

* * * * *

(e) *Historic Architecture.* The minimum professional qualifications in historic architecture are a professional degree in architecture or State license to practice architecture, plus one of the following: (1) At least one year of graduate study in architectural preservation, American architectural history, preservation planning, or closely related field; or (2) At least one year of full-time professional experience on historic preservation projects. Such graduate study or experience shall include detailed investigations of historic structures, preparation of historic structures research reports, and preparation of plans and specifications for preservation projects.

6. Section 1201.6(g) is revised as follows:

**§ 1201.6 Comprehensive statewide survey process.**

* * * * *

(g) An end result of the overall survey process is nomination of properties significant in American history, architecture, archeology, and culture at the national, state or local level to the National Register.

With the advice of the State Review Board, the State Historic Preservation Officer shall establish general priorities, and a rationale behind the priorities for submission of National Register nominations to HCRS and procedures for review of National Register nominations by the State Review Board. Nominated historic properties that are approved by HCRS are entered in the National Register by the Keeper of the National Register, HCRS.

[FR Doc. 80-14401 Filed 5-8-80; 8:45 am]
BILLING CODE 4310-03-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[FRL 1483-1]**

### California Plan Revision: South Coast Air Quality Management District

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rulemaking.

**SUMMARY:** The Environmental Protection Agency (EPA) takes final action to approve revisions to the rules of the South Coast Air Quality Management District (SCAQMD) and incorporate them into the California State Implementation Plan (SIP). The intended effect of this action is to update the SCAQMD rules and regulations and to correct certain deficiencies in the SIP.

**EFFECTIVE DATE:** June 11, 1980.

**FOR FURTHER INFORMATION CONTACT:** Louise P. Giersch, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105. Attn: Douglas Grano, (415) 556-2938.

**SUPPLEMENTARY INFORMATION:** On December 26, 1979 (44 FR 76307) EPA published a Notice of Proposed Rulemaking for revisions to the SCAQMD rules submitted on January 2, 1979 by the California Air Resources Board for inclusion in the California SIP. These revisions consist of amendments to permit fee, hearing board fee, and emergency episode rules and the addition of rules concerning hearing board procedures.

A listing of these rules is contained in the December 26, 1979 notice. No comments were received on EPA's proposed approval during the 60-day public comment period.

It is the purpose of this notice to approve all the revisions in the January 2, 1979 submittal and incorporate them into the California SIP, except as follows: Rules 1207, 1208, 1212, 1213, 1215, 1216, 1218, 1219, 1222 and 1225-1230 were superseded by revisions submitted on July 25, 1979. The July 25 revisions will be addressed in a separate Federal Register notice in the future.

The Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

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". EPA has reviewed the revision being acted upon in this notice and has determined that it is a specialized revision not subject to the procedural requirements of Excutive Order 12044.

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

Dated: May 2, 1980.

Douglas M. Costle,

*Administrator.*

Subpart F of Part 52 of Chapter I, Title 40, of the Code of Federal Regulations is amended as follows:

### Subpart F—California

1. Section 52.220, paragraph (c)(47) is added as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(47) Revised regulations for the following APCD's submitted on January 2, 1979 by the Governor's designee.

(i) South Coast AQMD.

(A) New or amended Rules 301, 303, 708.3, 1201-1206, 1209-1211, 1214, 1217, 1220-1221, 1223-1224 and 1231.

* * * * *

[FR Doc. 80-14398 Filed 5-8-80; 8:45 am]
BILLING CODE 6560-01-M

### 40 CFR Part 52

**[FRL 1487-6]**

### Missouri Revision to Air Quality Implementation Plan

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rulemaking.

**SUMMARY:** The Clean Air Act, as amended in 1977, requires states to revise their State Implementation Plans (SIPs) for all areas that have not attained the National Ambient Air Quality Standards (NAAQS). On April 9, 1980, EPA published final rulemaking in the Federal Register (45 FR 24140) acting on various portions of the Missouri SIP revision submitted to EPA on July 2, 1979. The SIP revision did not contain regulations to satisfy requirements for the review and permitting of new or modified sources of air pollutant emissions in nonattainment areas. EPA deferred action on this requirement.

On March 7, 1980, the Missouri Air Conservation Commission (MACC) adopted regulations to comply with this requirement. In this notice, EPA conditionally approves these regulations as meeting the requirements of section 172(b)(6), section 172(b)(11)(A) and section 173 of the Act.

**DATES:** This rulemaking is effective May 9, 1980.

**ADDRESSES:** Copies of the state submission and the EPA prepared plan evaluation document are available at the following locations:

Environmental Protection Agency, Region VII, 324 East 11th Street, Kansas City, Missouri 64106.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Missouri Department of Natural Resources, 2010 Missouri Boulevard, Jefferson City, Missouri 65102.

**FOR FURTHER INFORMATION CONTACT:** Wayne G. Leidwanger at (816) 374–3791 (FTS 758–3791).

**SUPPLEMENTARY INFORMATION:** Part D of the Clean Air Act Amendments of 1977 requires states to revise their SIPs for all areas that have not attained the NAAQS. The requirements for an approvable SIP are described in a General Preamble published in the Federal Register on April 4, 1979 (44 FR 20372), supplemented on July 2, 1979 (44 FR 38583), August 28, 1979, (44 FR 50371), September 17, 1979 (44 FR 53761) and November 23, 1979 (44 FR 67182). The discussion of requirements will not be repeated in this notice.

On April 9, 1980, EPA published final rulemaking in the Federal Register (45 FR 24140) giving approval with conditions to various portions of the SIP revision which the state had submitted to the EPA on July 2, 1979. EPA deferred action on that portion of the plan concerning the requirements of sections 172(b)(6), 172(b)(11)(A), and 173. The reason for deferring action was that the State of Missouri was in the process of adopting regulations to comply with the new source review requirements.

On March 7, 1980, the MACC adopted these regulations and on March 21, EPA proposed conditional approval in the Federal Register (45 FR 18407). A discussion of conditional approval and its practical effect appears in supplements to the General Preamble mentioned above.

Certain deadlines for satisfying conditions being promulgated today are different from those in the PRM. In general, these revised deadlines are the result of comments received. EPA finds that notice and comment on these revised deadlines is unnecessary since the public has had opportunity to comment on the conditional approvals and on what deadlines should apply for these conditions. In addition, the state is the party responsible for meeting the deadlines and has agreed to them.

The adopted regulations require the alternate site analysis prescribed in section 172(b)(11)(A) of the Act for stationary volatile organic compounds (VOC) and/or carbon monoxide (CO) sources seeking to locate in CO or ozone nonattainment areas for which an attainment date extension to not later than December 31, 1987, has been approved. The permit program contained in the new regulations generally tracks the requirements found in section 173 of the Act, including requirements for offset or accommodation of new emissions, application of the lowest achievable emission rate, and a demonstration that all other sources owned, operated, or controlled by the applicant within the state comply with the SIP.

The state has also agreed to submit, as necessary, certain offsets as SIP revisions. The reason for this procedure is that external emission offsets would not be Federally enforceable unless the source providing the emission reduction is subject to a new SIP requirement by means of a SIP revision. Federal enforceability will aid in insuring that the source's emissions will be reduced by a specified amount in a specified time.

In the March 21 notice, EPA noted two deficiencies relating to the definition of potential emissions and the review of modifications of "Class C" sources. EPA solicited comments on whether the deficiencies are minor which can be conditionally approved, whether other items should be conditionally approved, and on what deadlines should apply for meeting the conditions. Three parties commented on the proposed rulemaking. One urged EPA approval of the regulations and the others suggested modifications of the proposed action as discussed below.

EPA has found that the Missouri regulations are deficient in two areas. The first concerns the term "potential emissions". On September 5, 1979, EPA published proposed changes to its regulations affecting new source review provisions in SIPs, including plans for nonattainment areas (44 FR 51924). The proposal included a definition of "potential to emit" [44 FR 51958 (proposed amendment to 40 CFR 51.18)]. The proposal included a definition of annual potential emissions of a source in response to a court decision interpreting relevant portions of the Clean Air Act (Alabama Power vs. Costle). A full discussion of the proposed regulations is given in the September 5 Federal Register notice and will not be repeated here.

In the adopted Missouri regulations [Section 10–6.020(2)(P)10], the term potential emissions is defined generally in accordance with the definitions included in the EPA's proposed rulemaking of September 5, except that the state definition allows sources to calculate enforceable permit conditions on operating rates and hours of operation in determining annual emissions. The state regulation also allows the inclusion of air pollution controls in making such calculations. Existing EPA regulations allow the inclusion of permit conditions but do not allow the consideration of air pollution controls in determining potential annual emissions. Therefore, the state definition is less stringent than either existing federal requirements or proposed new requirements.

The EPA has received numerous comments on its proposed regulations and has not yet issued final rules. Until such action, it is EPA's policy that state regulations must be consistent with either existing EPA regulations or the proposal of September 5. The state definition of potential emissions does not comply with this policy and therefore, the EPA considers the Missouri regulations to be deficient.

The EPA believes the deficiency is a minor one. The air quality impact of those sources which would escape the Missouri new source review requirements would be minimal because the actual emissions from such sources would be below the thresholds for defining major sources established in the September 5 proposal. One commentor on the March 21 SIP proposal questioned the above rationale. The commentor indicated that EPA determined that Missouri's inclusion of permitted conditions in calculating potential emissions will only affect sources with emissions below the de minimus levels specified in the regulations. EPA did not intend that interpretation. As stated above, actual emissions from sources which would escape the review requirement will be below the thresholds for determining whether a source is major, thereby requiring new source review. The air quality impact will be minor and therefore, EPA finds the regulations can be conditionally approved.

EPA proposed that the state submit the necessary change by March 1, 1981. The above commentor has suggested that the deadline be shortened to July 31, 1980. EPA finds that the March 1, 1981 deadline is reasonable because it is established for a deficiency with a minor air quality impact and because it should allow sufficient time for the state to adopt appropriate regulatory changes after EPA adopts final regulations governing the term "potential to emit" for nonattainment SIPs. The state has agreed to change its regulations so that they are consistent with either proposed or final EPA regulations by the deadline specified above. If the state adopts EPA's proposed definition of September 5 and the EPA changes the regulations in final promulgation, the state will have nine months from promulgation in which to make any necessary SIP revisions to make state regulations consistent with EPA's final regulations.

Another commentor objected to the proposed requirement that the state change the definition to be consistent with EPA's September 5 proposal. The commentor believes the state definition

which allows permitted conditions and control equipment in calculating potential emissions is acceptable and has noted that criticism was expressed in comments on EPA's proposal when it was published on September 5. Until EPA promulgates a final definition, the state regulation does not meet EPA's criteria for approval. However, conditional approval is appropriate because the deficiency is minor. By allowing the state until March 1, 1981 to correct the deficiency, EPA believes the state will have sufficient time to adopt a regulation consistent with EPA's final definition when it is promulgated. The commentor's objection to the definition proposed on September 5, will be addressed in EPA's final promulgation of requirements for new source review in nonattainment areas.

Regarding the second deficiency, noted in the proposed rulemaking, related to the scope of review of modifications to major stationary sources in nonattainment areas (Class C sources), Missouri's new regulation does not require a permit for the modification of two or more source operations within a Class C source if each modification results in an increase in potential emissions less than the de minimus levels but the cumulative increase is greater than such levels. The regulation must apply to both a modification to a single source operation and to two or more source operations which result in an increase in potential emissions greater than the de minimus levels specified in the regulations. EPA believes this deficiency is minor because the resulting adverse air quality impact will be small. Few modifications would escape the permitting requirements and the increase in emissions will be small. The state has agreed to change its regulation to correct this deficiency.

One commentor objected to EPA's proposal to allow the state until March 1, 1981 to correct this deficiency, and suggested a deadline of July 31, 1980. After the publication of the proposed rulemaking, the state agreed to a new deadline of January 1, 1981. EPA finds that the latter deadline is reasonable in light of the minor air quality impact of the inconsistency between the existing state regulation and the proposed EPA requirement.

This commentor also questions whether the applicability of the Missouri regulations to modifications of sources in nonattainment areas is consistent with EPA requirements. The commentor states that only "major" modifications are covered by the regulations and is concerned that sources could avoid applying the Lowest Achievable Emission Rate (LAER) control technology to minor modifications through the use of internal offsets.

The regulation is applicable to all source operations, which include all emitting points within a plant. This is stated in Section 1(A) of 10 CSR 10–6.060 of the Missouri regulation. Section 3(A) establishes additional review requirements for all source operations in nonattainment areas, including the requirement for LAER. To insure that minor modifications do not escape the review requirement, the regulation does not allow the application of the "bubble policy" to modifications of sources in nonattainment areas. The commentor states that the term "bubble policy" is ambiguous and confusing. In the specific context of the state regulation, the intent is to prevent the use of internal offsets as a means of avoiding review. The term "bubble policy" is well defined in air pollution control literature and EPA believes its use in the context of the Missouri regulation is clear.

The other commentor has questioned whether the Missouri regulations are more stringent than those required by EPA under the Clean Air Act. A provision of Missouri law requires that standards and guidelines established by the MACC cannot be "stricter" than, nor be enforced prior to, that required by the Clean Air Act. The commentor has objected to three provisions of the state regulations as being more stringent than required by Federal law.

The commentor notes that the state regulation requires a permit for "Class B" and "Class E" sources. As applied to nonattainment areas, the provisions require a permit for all sources emitting greater than specified de minimus levels but less than 100 tons per year (TPY), and certain sources with potential emissions between 100 and 250 TPY. (Class "C" sources have the potential to emit greater than 100 TPY in nonattainment areas.) The commentor objects generally to the inclusion, in the above categories, of sources not required to be permitted under the Clean Air Act, and specifically to the inclusion of sources not required to be permitted under Section 165 of the Act, relating to permits under the prevention of significant deterioration (PSD) program. As stated in the proposed rulemaking, EPA is taking no action on the portion of the state regulations which do not address the requirements of Part D of the Act. In addition, the Act requires the state to have a plan for attainment of the NAAQS as expeditiously as practicable and to demonstrate reasonable further progress in attainment. The state must include in its SIP all measures necessary to meet this requirement of the Act. Such measures must include a permit program for major (100 TPY) sources and such other sources as the state deems necessary for attainment of the applicable standards. Furthermore, 40 CFR 51.18 requires a state to have a permit program for new or modified stationary sources in all areas of the state, without regard to minimum source size, to assure attainment and maintenance of the standards. EPA finds that the state regulation is not more stringent than Federal requirements.

The commentor also objects to the provision that "Class A" sources obtain a "De Minimus Permit" under the Missouri regulations. Section 172(b)(4) of the Clean Air Act requires the state to maintain a comprehensive, accurate and current emission inventory as necessary to show reasonable further progress in meeting the standards. The de minimus permit requirement, as it applies to sources in nonattainment areas, provides a mechanism to track progress in attaining the standards. Furthermore, this permit does not prevent an owner or operator from commencing construction prior to the issuance of the permit. EPA finds that the state requirement for a de minimus permit is not more stringent than required by the Clean Air Act.

This commentor has made the same objection to the state's inclusion of the de minimus levels in its regulation. The commentor notes that the de minimus levels were taken from the preamble of EPA's proposal of September 5, 1979, and argues that the levels are guidelines and not Federal requirements. In the September 5 proposal (44 FR 5198), EPA noted the urgent need for the states to adopt a permit program to satisfy the requirements of Part D of the Act. Until EPA promulgates a final regulation, it intends that the states have some flexibility in adopting a permit program. In order to be approved, EPA requires that the state include provisions consistent with applicable existing or proposed EPA regulations. The de minimus levels specified in the Missouri regulation are identical to those proposed by EPA in the September 5 Federal Register. The Missouri de minimus levels are consistent with these approval criteria and EPA finds that the state regulation is not more stringent than required by the Clean Air Act. When EPA adopts a final regulation, the state may consider whether its regulation is still consistent with EPA's.

This same commentor has also objected to the specific de minimus levels. The commentor reiterates

comments which EPA received in response to the September 5 proposal. Those comments will be addressed when EPA promulgates a final regulation.

By conditionally approving the state's new source review procedures required by Part D of the Act, the restrictions on new construction in the Missouri nonattainment areas imposed by section 110(a)(2)(I) of the Act are lifted. This conditional approval requires the state to submit additional materials by the deadlines in today's notice. There will be no extensions of conditional approval deadlines which are being promulgated today. The procedures which EPA will follow when determining whether the state has satisfied the conditions are given in the April 9 Federal Register notice (45 FR 24141) which conditionally approved other portions of the Missouri Part D SIP revisions. The procedures stated in that notice are expressly made applicable to the conditions stated in this rulemaking.

The Missouri regulations also contain provisions not directly related to Part D of the Act, but rather generally relating to prevention of significant deterioration (PSD) of air quality in areas where the NAAQS are not being violated. These latter regulations were not required as part of the Part D plan revision. EPA proposed to take no action on these other provisions. One party submitted comments on the portion of the regulations relating to PSD. These comments are not addressed in this notice because EPA is not acting on the PSD provisions at this time.

**ACTION:** EPA conditionally approves Missouri regulations 10 CSR 10–6.020 Definitions, and 10 CSR 10–6.060 Permits Required, that establish new permit requirements for new or modified sources to be located in nonattainment areas as meeting the requirements of Sections 172(b)(6), 172(b)(11)(A), and 173 of the Act with the following two conditions:

1. By March 1, 1981 the state changes the definition of potential emissions to be consistent with the EPA's proposed regulations of September 5, 1979. If in the interim prior to March 1, 1981, the EPA adopts a final definition, the state may fulfill this condition by adopting a definition consistent with EPA's final regulation; and

2. By January 1, 1981, the state changes the requirements for permitting modifications to Class C sources to be applicable to both a modification to a single source operation and to two or more source operations which results in an increase in potential emissions greater than the de minimus levels specified in the regulation.

The measures approved today are in addition to and not in lieu of existing SIP regulations. The present emission control regulations for any source will remain applicable and enforceable to prevent a source from operating without control, or under less stringent controls, while it is moving toward compliance with the new regulations. Failure of a source to meet applicable preexisting regulations will result in appropriate enforcement action, including assessment of noncompliance penalties. Further, if there is any instance of delay or lapse in the applicability or enforceability of the new regulations because of a court order or for any other reason, the preexisting regulations will be applicable and enforceable.

The only exceptions to this rule are cases where there are conflicts between the requirements of the new regulations and the requirements of the existing regulations such that it is impossible for sources to comply with the regulations. In these situations, the state may exempt sources from compliance with the preexisting regulations. Any exemption granted will be reviewed and acted on by the EPA either as part of these regulations or as a future SIP revision.

In the April 9, 1980 Federal Register notice (45 FR 24141) which conditionally approved other portions of the Missouri SIP revision, the title of § 52.1331 was changed from Requests for two-year extensions to Extensions. This action was taken to provide for extensions requested under the 1977 Clean Air Act and other future extensions as may be required.

The 1978 edition of 40 CFR Part 52 lists in the subpart for Missouri the applicable deadlines for attaining ambient standards (attainment dates) required by section 110(a)(2)(A) of the Act. For each nonattainment area where a revised plan provides for attainment by the deadlines required by Section 172(a) of the Act, the new deadlines were substituted on Missouri's attainment date chart in 40 CFR Part 52. The earlier attainment dates under Section 110(a)(2)(A) are referenced in a footnote to the chart. Sources subject to plan requirements and deadlines established under Section 110(a)(2)(A) prior to the 1977 Amendments remain obligated to comply with those requirements, as well as the new Section 172 plan requirements.

Congress established new attainment dates under Section 172(a) to provide additional time for previously regulated sources to comply with new, more stringent requirements and to permit previously uncontrolled sources to comply with newly applicable emission limitations. These new deadlines were not intended to give sources that failed to comply with pre-1977 plan requirements by the earlier deadlines more time to comply with those requirements. As stated by Congressman Paul Rogers in discussing the 1977 Amendments:

> Section 110(a)(2) of the Act made clear that each source had to meet its emission limits "as expeditiously as practicable" but not later than three years after the approval of a plan. This provision was not changed by the 1977 Amendments. It would be a perversion of clear Congressional intent to construe Part D to authorize relaxation or delay of emission limits for particular sources. The added time for attainment of the national ambient air quality standards was provided, if necessary, because of the need to tighten emission limits or bring previously uncontrolled sources under control. Delays or relaxation of emission limits were not generally authorized or intended under Part D. (123 Cong. Rec. H11958, daily ed. November 1, 1977).

To implement Congress' intention that sources remain subject to pre-existing plan requirements, sources cannot be granted variances extending compliance dates beyond attainment dates established prior to the 1977 Amendments. EPA cannot approve such compliance date extensions even though a Section 172 plan has been approved. However, a compliance date extension beyond a pre-existing attainment date may be granted if it will not contribute to a violation of an ambient standard or a PSD increment.[1]

In addition, sources subject to pre-existing plan requirements may be relieved of complying with such requirements if a section 172 plan imposes new, more stringent control requirements that are incompatible with controls required to meet the pre-existing regulations. Decisions on the incompatibility of requirements will be made on a case-by-case basis.

EPA finds that good cause exists for making these amendments effective immediately because the growth restrictions in nonattainment areas in Missouri required by section 110(a)(2)(I) of the Act which have been in effect since July 1, 1979, will be lifted.

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". I have reviewed this regulation and determined that it is a specialized

[1] See General Preamble for Proposed Rulemaking 44 FR 20373–74 (April 4, 1979).

regulation not subject to the procedural requirements of Executive Order 12044.

This rulemaking is issued under the authority of Sections 110, 172, and 173 of the Clean Air Act.

Dated: April 30, 1980.

Douglas M. Costle,

*Administrator.*

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. 40 CFR Part 52 is amended by adding § 52.1320(c)(18) to read as follows:

### Subpart AA—Missouri

**§ 52.1320 Identification of plan.**

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(18) On April 7, 1980 the State of Missouri submitted plan revisions for the review and permitting of sources of air pollutant emissions in nonattainment areas. Included in the plan are Missouri regulations 10 CSR 10–6.020 Definitions, and 10 CSR 10–6.060 Permits Required, which are conditionally approved as meeting the requirements of Sections 172(b)(6), 172(b)(11)(A), and 173.

2. In 40 CFR 52.1323 the last sentence reading, "No action was taken with respect to the new source review requirements found in Sections 172 (b)(6), 172(b)(11)(A) and 173 of the Act." is revoked. The following language is added at the end of § 52.1323 to read as follows:

**§ 52.1323 Approval status.**

* * * * *

* * * New source review permits issued pursuant to Section 173 of the Clean Air Act will not be deemed valid by EPA unless the provisions of Section V of the emission offset interpretive rule published on January 16, 1979 (44 FR 3274) are met.

3. In § 52.1324(c)(1) published at 45 FR 24153 (April 9, 1980), the subparagraphs designated as (c)(1)(A), (B), (C), (C)(*1*), (C)(*2*), (C)(*3*), (D), and (E), are redesignated as (c)(1)(i), (ii), (iii), (iii)(A), (iii)(B), (iii)(C), (iv), and (v), respectively. A new paragraph (c)(1)(vi) is added to § 52.1324 to read as follows:

**§ 52.1324 General requirements.**

* * * * *

(c) * * *

(1) * * *

(vi) Approval of the Missouri SIP with regard to the requirements of Sections 172(b)(6), 172(b)(11)(A) and 173 of the Act is subject to the conditions that:

(A) By March 1, 1981, the state changes the definition of potential emissions to be consistent with the EPA's proposed regulations of September 5, 1979. If in the interim prior to March 1, 1981, the EPA adopts a final definition, the state may fulfill this condition by adopting a definition consistent with EPA's final regulation; and

(B) By January 1, 1981 the state changes the requirements for permitting modifications to Class C sources to be applicable to both a modification to a single source operation and to two or more source operations which results in an increase in potential emissions greater than the de minimus levels specified in the regulation.

[FR Doc. 80-14237 Filed 5-8-80; 8:45 am]

BILLING CODE 6560-01-M

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## 40 CFR Part 205

**[FRL 1483-2]**

## Transportation Equipment Noise Emission Controls; Truck-Mounted Solid Waste Compactors; Technical Amendments

**AGENCY:** Environmental Protection Agency.

**ACTION:** Technical Amendments to final rules.

**SUMMARY:** On December 10, 1979, General Motors Corporation ("GM") submitted to the Administrator of the U.S. Environmental Protection Agency ("EPA") a Petition for Reconsideration of Noise Emission Standards for Truck-Mounted Solid Waste Compactors, 40 CFR § 205.200 *et seq.*, (44 FR 56524, Oct. 1, 1979) ("the regulation"). In its petition, GM specifically requested reconsideration and deletion of all provisions related to the Acoustical Assurance Period ("AAP") and the Noise Level Degradation Factor ("NLDF").

The Administrator of EPA responded to General Motors on March 10, 1980. That response detailed the Agency's decision to retain the AAP. However, after careful reconsideration, the Agency decided to revoke from the regulation all provisions related to the NLDF. This Federal Register notice implements that decision.

**EFFECTIVE DATE:** June 11, 1980.

**FOR FURTHER INFORMATION CONTACT:** Ms. Martha G. Prothro, Director, Noise Enforcement Division (EN–387), U.S. Environmental Protection Agency, Washington, D.C. 20460 (703) 557–7470.

**SUPPLEMENTARY INFORMATION:**

### I. Discussion

On October 1, 1979, EPA promulgated 40 CFR Part 205, Subpart F, Truck-Mounted Solid Waste Compactors: Noise Emission Standards (44 FR 56524). This regulation requires that, beginning October 1, 1980, each newly manufactured truck-mounted solid waste compactor must not produce a logarithmic (energy) average noise level in excess of 79 decibels. The maximum allowable noise level is reduced to 76 decibels for products manufactured after July 1, 1982.

To ensure continuing benefits from this regulation, manufacturers are required to design and build each compactor so that, when properly maintained and used, its noise level will not degrade (i.e., increase) above the level of the applicable standard for a period of 2 years or 5,000 operating hours, whichever occurs first. This period of in-use compliance is called the Acoustical Assurance Period ("AAP").

Under the regulation as promulgated, manufacturers were required to establish the anticipated noise level degradation (increase in noise level) for their products during the AAP. The anticipated degradation would be taken into account when measuring the noise levels of their products to show compliance with the regulation. This anticipated noise level increase is termed the Noise Level Degradation Factor ("NLDF").

GM alleged that in promulgating the AAP and the NLDF the Administrator of EPA exceeded the authority granted to him by Congress under the Noise Control Act. GM also alleged that the Administrator had established a regulatory scheme which had no technical basis and which was not supported by cost analysis, thereby acting arbitrarily and capriciously. EPA disagrees with GM's allegations. As detailed in the Agency's response to GM, EPA believes the AAP is consistent with both the language and purposes of the Noise Control Act, and is substantiated by sufficient information.

With respect to the Noise Level Degradation Factor (NLDF), EPA has reconsidered the burdens placed upon manufacturers by the NLDF and the way in which the NLDF would apply to the trash compactor regulation. The Agency has concluded that the NLDF is not necessary in this regulation. The NLDF and related provisions are therefore being withdrawn from the regulation.

### II. Supporting Documentation

Copies of GM's petition for reconsideration, and EPA's response can be obtained for review and copying

from: Mr. Charles Mooney, U.S. Environmental Protection Agency, EPA Public Information Center (PM–215) Room 2194 D, 401 M Street, SW., Washington, D.C. 20460 Phone: (202) 755–0717.

The amendments made today are critical to the compliance activities of manufacturers of truck-mounted solid waste compactors, including activities which must be completed prior to the October 1, 1980, effective date of the regulation. Moreover, the amendments only relieve certain restrictions in the regulation, and do not change the manufacturer's substantive responsibility to design, build, and equip the product so that it will comply with the applicable noise standard throughout the AAP, if properly used and maintained. If the manufacturer expects the noise level of the product to increase during the AAP, he will have to account for that degradation in the product's design. The amendments only relieve the manufacturer's duty to document to the Agency the amount of degradation that is expected to occur during the AAP. For these reasons, the Agency finds that notice and opportunity to comment on the amendments prior to final rulemaking would be impracticable and unnecessary.

EPA has determined that this action is not a "significant" regulation, and therefore does not require a Regulatory Analysis in accordance with Executive Order 12044.

These amendments complete EPA's action on GM's petition for reconsideration of the regulation, and are promulgated under the authority of 42 U.S.C. 4905.

Dated: May 2, 1980.

Douglas M. Costle,

*Administrator.*

40 CFR Part 205, Subpart F is amended as follows:

1. The table of sections is amended by deleting "205.208–4 Noise Level Degradation Factor [NLDF] and retention of durability data."

**§ 205.201 [Amended]**

2. Section 205.201 is amended by deleting paragraph (a)(10) and by renumbering paragraphs (a)(11)–(17) as (a)(10)–(16), respectively.

**§ 205.202 [Amended]**

3. Section 205.202(b) is amended by deleting from the last sentence the words "minus the noise level degradation factor (NLDF) developed in accordance with § 205.208–4."

4. Section 205.205–2 is amended by revising paragraphs (b)(2) and (c)(1)(i), (ii) and (iv) to read as follows:

**§ 205.205–2 Production verification: compliance with standards.**

* * * * *

(b) * * *

(2) Compliance of the test compactor with a noise level which does not exceed the applicable standards, when tested in accordance with § 205.204; and

* * * * *

(c) * * *

(1) * * *

(ii) Identifying the configuration within each category which emits the highest noise level (in dB) based on best technical judgment, emission test data or both;

* * * * *

(iv) Demonstrating compliance by showing that the measured noise level does not exceed the applicable standard;

* * * * *

5. Section 205.205–4 is amended by revising the introductory text of paragraph (b)(3) and the second sentence of the text that follows paragraph (b)(3)(iv) to read as follows:

**§ 205.205–4 Production verification report: required data.**

* * * * *

(b) * * *

(3) A description of all compactor configurations, as determined in accordance with § 205.205–3, to be distributed in commerce by the manufacturer, including for each configuration a list of the following: * * *

* * * * *

* * * If a manufacturer elects to production-verify pursuant to § 205.205–2(c), the configuration within each category which is estimated to have the highest A-weighted noise level must be identified. * * *

* * * * *

6. Section 205.207–6 is amended by revising paragraph (a) to read as follows:

**§ 205.207–6 Passing or failing under SEA.**

(a) A failing compactor is one whose measured noise level is in excess of the noise level equal to the applicable noise emission standard set forth in § 205.202 for the category or configuration being tested.

* * * * *

**§ 205.208–4 [Revoked]**

7. Section 205.208–4, Noise Level Degradation Factor (NLDF) and retention of durability data, is revoked in full.

8. In the appendix to Part 205, Table I is amended by deleting from *IV. Noise Level Data* the columns entitled "NLDF" and "Calculated Resultant Noise Level." The revised Table I is set forth below.

(Secs. 6 and 13, Pub. L. 92–574, 86 Stat. 1237, 1244 (42 U.S.C. 4906, 4912))

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APPENDIX I -- SAMPLE TABLES

TABLE I

NOISE EMISSION TEST DATA SHEET
FOR TRUCK-MOUNTED SOLID WASTE COMPACTORS

Test No._____

I. Machine Characteristics

Body Manufacturer:_____ Model No._____ Serial No._____
Truck Manufacturer:_____ Model No._____ Serial No._____
Rate H.P._____ at:_____ RPM; Maximum Engine Speed During Compaction_____RPM

II. Test Conditions

Manufacturer's Test Site Identification and Location:_____
Measurement Surface Composition:_____
Ambient Sound Levels (a) Beginning of Test;_____dBA
(b) End of Test;_____dBA

III. Instrumentation

Microphone Manufacturer:_____ Model No._____ Serial No._____
Sound Level Meter Manufacturer_____ Model No._____ Serial No._____
Acoustical Calibrator Manufacturer ____ Model No._____ Serial No._____
Other:_____ Model No._____ Serial No._____

IV. Noise Level Data

Noise Levels (dBA)

| Machine Reference Surface | | | | Calculated Average Level |
|---|---|---|---|---|
| Front | L.H. Side | Rear | R.H. Side | |
| | | | | |
| | | | | |
| | | | | |

V. Atmospheric Data

Temperature _____ $^{o}$C _____ ($^{o}$F)
Wind Speed _____ km/hr.
Barometric pressure _____ mm Hg

VI. Test Personnel and Witnesses

Tested by:_____ Date:_____
Reported by:_____ Date:_____
Checked by:_____ Date:_____

[FR Doc. 80-14563 Filed 5-8-80; 8:45 am]

BILLING CODE 6560-01-C

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 1

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

41 CFR Ch. 18

## Subcontracting Under Federal Contracts; Subcontracting With Women's Business Enterprises Under Federal Contracts; Contract Disputes Regulatory Coverage and Contract Disputes Clause

Cross Reference: For three documents issued by the Office of Federal Procurement Policy that relate to regulations contained in the Federal Procurement Regulations (41 CFR Chapter 1) and in the National Aeronautics and Space Administration Procurement Regulations (41 CFR Chapter 18), *see* Part VIII of this issue. Refer to the table of contents at the front of this issue under "Federal Procurement Policy Office" for the appropriate page number.

BILLING CODE 3110-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 5A

[APD 2800.3 Chge 6]

## Federal Supply Schedules—Preparation and Issuance of Solicitations

**AGENCY:** General Services Administration.

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration Procurement Regulations (GSPR 5A) are amended by revising the Catalogs and/or Pricelists clause to require contractors to furnish additional information in their catalogs/pricelists, and to use current mailing lists for catalog/pricelist distribution. These actions resulted from the need for additional information by ordering activities and the use of outdated mailing lists by contractors. The intended effect is to improve the Federal Supply Schedule program.

**EFFECTIVE DATE:** April 17, 1980.

**FOR FURTHER INFORMATION CONTACT:** Mr. Philip G. Read, Director, Federal Procurement Regulations Directorate, Office of Acquisition Policy (703-557-8947).

### PART 5A-73—FEDERAL SUPPLY SCHEDULE PROGRAM

### Subpart 5A-73.2—Preparation and Issuance of Solicitations

Section 5A-73.217-4 is amended in paragraph (a) by revising clause paragraph (c)(2), and clause paragraphs (d) and (e) in their entirety, and paragraph (b) is revised in its entirety to read as follows:

**§ 5A-73.217-4 Catalogs and pricelist clauses.**

(a) The following clause shall be included in each multiple-award schedule solicitation, except those identified in pars. (b) and (c), below.

Catalogs and/or Pricelists

* * * * *

(c) *Printing of catalogs or pricelists:*

(1) * * *

(2) The format and content of each Federal Supply Schedule catalog and/or pricelist shall be as follows:

The following information shall be set forth on the catalog or pricelist cover sheet:

General Services Administration

*Federal Supply Service*

Authorized Federal Supply Schedule Pricelist (Catalog)

Schedule title and FSC group, part, and section.

FSC class(es).

Contract number.

Contract period.

Contractor's name, address, and phone number (include toll-free WATS number, if applicable).

Contract administration source (if different from preceding entry).

Business size.

*Information for ordering activities.* Under this heading there shall be consecutively numbered paragraphs in the sequence set forth below. If this information is placed in another part of the catalog or pricelist because of lack of space or for other reasons, or the sequence is not maintained, a table of contents shall be shown on the cover page or an insert which refers to the exact location of the information.

1. Table of awarded special item number(s) with appropriate cross-reference to page number(s).
2. Maximum order limitation.
3. Minimum order.
4. Geographic coverage (delivery area).
5. Point(s) of production (city, county and State or foreign country).
6. Discount from list prices or statement of net price.
7. Quantity discounts.
8. Prompt payment terms.
9. Foreign items (List items by country of origin).
10. Time of delivery.
11. F.O.B. point(s).
12. Ordering address(es).
13. Payment address(es).
14. Warranty provision.
15. Export packing charges.
16. Terms and conditions of rental, maintenance, and repair (if applicable).
17. Terms and conditions of installation (if applicable).
18. Terms and conditions of repair parts indicating date of parts pricelists and any discounts from list prices (if applicable).
19. List of service and distribution points (if applicable).
20. List of participating dealers (if applicable).
21. Preventive maintenance (if applicable).

* * * * *

(d) *Certification by Contractor.*

(1) The contractor shall furnish the contracting officer———copies of the published catalogs or pricelists within 15 calendar days prior to the beginning of the contract period or within 30 calendar days after receipt of award or notice of award, whichever is later.

(2) The catalogs or pricelists furnished the Contracting Officer shall be accompanied by a certification signed by the Contractor essentially as follows:

I hereby certify that the items, discounts, prices, terms, and conditions in the catalogs or pricelists furnished to the contracting officer and distributed to ordering offices are identical to those accepted by the government and that only those products accepted by the government are included in those catalogs or pricelists.

(3) Failure to furnish the certification statement, or the willful furnishing of an erroneous certification, may constitute sufficient cause for applying the provisions of Article 11, "Default," of Standard Form 32, General Provisions (Supply Contract).

(e) *Distribution to ordering offices.*

(1) The Contractor shall distribute printed catalogs or pricelists by following the instructions set forth in either (i) or (ii) below:

(i) Distribute printed catalogs or pricelists to all ordering offices on the list of addresses furnished by the Contracting Officer. Distribution of catalogs or pricelists to ordering offices shall be accomplished within 15 calendar days prior to the beginning of the contract period, or within 30 calendar days after receipt of the notice of award, whichever is later.

(ii) Notify all ordering offices on the mailing list of the contract award and

request the ordering offices, by use of self-addressed, postpaid return envelope or post card, to indicate whether they want a copy of the catalog or pricelist. Mailing of postpaid envelope or card shall be made within 10 calendar days after notification of award, and distribution of catalogs/pricelists made within 30 calendar days after receipt of return request for catalogs and/or pricelists.

(2) The Contractor shall notify the Contracting Officer in writing when distribution has been completed. In addition, the Contractor shall supply catalogs or pricelists as they may be requested by individual ordering offices or the Contracting Officer. The use of the mailing list for any other purpose is not authorized.

(3) Contractor shall use the mailing list supplied by GSA at the time of contract award. However, the Contractor may also send catalogs/pricelists to agencies not on the GSA listing when there is reasonable expectation that sales to these agencies will be made.

(4) The mailing lists (identified by code) applicable to commodities that are included in this solicitation and the approximate number of catalogs or pricelists needed for distribution to ordering offices are listed below for the offeror's information.

| Mailing list code | Commodity group | Approx. number of copies |
|---|---|---|

(End of Clause)

(b) *New Item Introductory Schedule Solicitations.* Include the clause prescribed in (a), above, except that the following paragraph (e) shall be substituted for paragraph (e) of the clause:

(e) *Distribution to ordering offices.* Distribution of printed catalogs or pricelists to ordering offices should be accomplished within 15 calendar days prior to the beginning of the contract period, or within 30 calendar days after receipt of the notice of award, whichever is later. It is not mandatory that distribution be made to all ordering offices on the list of addressees furnished. However, the Contractor is required to supply such documents when requested by individual ordering offices or the Contracting Officer. The use of the mailing list for any other purpose is not authorized. The Contractor shall notify the Contracting Officer in writing when distribution has been completed. The mailing list (identified by code) applicable to commodities that are included in this solicitation and the approximate number of catalogs or pricelists needed for distribution to ordering offices are listed below for the offeror's information.

| Mailing list code | Commodity group | Approx. number of copies |
|---|---|---|

(End of Revised Paragraph (e))

* * * * *

[Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c)]

Dated: April 17, 1980.

Gerald McBride,

*Assistant Administrator for Acquisition Policy.*

[FR Doc. 80-13989 Filed 5-8-80; 8:45 am]

BILLING CODE 6820-61-M

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Health Care Financing Administration

### 42 CFR Part 420

### Medicare and Medicaid Programs, Medicare and Medicaid Disclosure of Provider Information and Access to Provider Records; Correction Notice

**AGENCY:** Health Care Financing Administration (HCFA), HEW.

**ACTION:** Correction of final regulation.

**SUMMARY:** This document corrects a technical error in final regulations published in the Federal Register on July 17, 1979 (44 FR 41636) on requirements for disclosure of information by institutions and organizations providing services under Medicare and Medicaid (titles XVIII and XIX of the Social Security Act.)

**EFFECTIVE DATES:** July 17, 1979.

**FOR FURTHER INFORMATION CONTACT:** Martha Moser, 301-594-9633.

**SUPPLEMENTARY INFORMATION:** Regulations in 42 CFR 420.204 (a) and (b), published July 17, 1979, contained a technical error in language. In the discussion of ownership interest in providers of Medicare and Medicaid services, the word "controlling" was inadvertently used instead of the correct word, "control". The word "control" is correct since the term of which it is a part, control interest, is defined in section 1124(a)(3) of the Social Security Act, and is further defined in 42 CFR 420.201 as having a specific meaning. The definitions in § 420.201 apply to § 420.204 (a) and (b).

42 CFR 420.204 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 420.204 Principals convicted of a program related crime.**

(a) *Information required.*—Prior to the Secretary's acceptance of a provider agreement, or at any time upon written request by the Secretary, the provider must furnish the Secretary with the identity of any person who has an ownership or control interest in the provider, or who is an agent or managing employee of the provider, and has been convicted of a criminal offense relating to involvement in Medicare, Medicaid, or the title XX services program since the inception of those programs.

(b) *Refusal to enter into or renew agreement.*—The Secretary may refuse to enter into or renew an agreement with a provider of services if any person who has an ownership or control interest in the provider, or who is an agent or managing employee, has been convicted of a criminal offense related to the involvement of that person in Medicare, Medicaid, or the title XX services program. In making this decision, the Secretary will consider the facts and circumstances of the specific case, including the nature and severity of the crime and the extent to which it adversely affected beneficiaries and the programs involved. The Secretary will also consider whether he has been given reasonable assurance that the person will not commit any further criminal offense against the programs.

(Sections 1102, 1124, 1126, 1861(j)(11), 1866(a), 1866(b)(2), 1902(a)(38), 1903(i)(2), and 1903(n) of the Social Security Act; 42 U.S.C. 1302, 1320a-3, 1320a-5, 1395x(j)(11), 1395cc(q), 1395cc(b)(2), 1396a(a)(38), 1396b(i)(2), and 1396b(n))

(Catalog of Federal Domestic Assistance Program Nos. 13.714, Medical Assistance Programs, 13.773, Medicare-Hospital Insurance and 13.774, Medicare-Supplementary Medical Insurance)

Dated: May 1, 1980.

Robert F. Sermier,

*Acting Deputy Assistant Secretary for Management Analysis and Systems.*

[FR Doc. 80-14344 Filed 5-8-80; 8:45 am]

BILLING CODE 4110-35-M

### 42 CFR Parts 447 and 462

### Medicaid Provider Records and Grants to Professional Standards Review Organizations: Technical Amendments

**AGENCY:** Health Care Financing Administration, HEW.

**ACTION:** Final regulations.

**SUMMARY:** These technical amendments reflect minor editorial changes in regulations relating to Medicaid agency recordkeeping and grants to

Professional Standards Review Organizations. The amendments also delete various provisions which reiterate requirements now contained in 45 CFR Part 74, "Administration of Grants." These amendments are part of an HEW project to conform individual grant program regulations to the HEW-wide Grant regulations found in 45 CFR Part 74.

**EFFECTIVE DATE:** These technical amendments are effective May 9, 1980.

**FOR FURTHER INFORMATION CONTACT:** Lenore Katz, Program Analyst, Health Care Financing Administration, Dogwood East Building, 1849 Gwynn Oak Avenue, Baltimore, Maryland 21207.

**SUPPLEMENTARY INFORMATION:** These technical amendments change regulations governing 42 CFR Part 447 (Medicaid Provider Records) and Part 462 (Grants to Professional Standards Review Organizations) by conforming certain provisions to 45 CFR Part 74, "Administration of Grants." Title 45 CFR Part 74 was recently revised and now provides basic administrative provisions for virtually all HEW grants. Therefore, the purpose of these technical amendments is to delete those provisions from 42 CFR Parts 447 and 462 which unjustifiably duplicate or conflict with 45 CFR Part 74, and also to clarify and standardize certain other provisions.

HEW has determined that good cause exists to waive the provisions of the Administrative Procedure Act (U.S.C. 553) requiring notice of proposed rulemaking and opportunity for public participation because those are unnecessary. This determination is based upon the fact that these amendments neither impose new requirements upon grant recipients nor relieve them from existing requirements. They merely delete those requirements that duplicate the requirements found in Title 45 CFR Part 74, and express existing requirements in clear, uniform language. For these same reasons, HEW has determined that good cause exists for not delaying the effective date of these regulations.

42 CFR Part 447 and 462 are amended to read as follows:

42 CFR Chapter IV is amended as follows:

## PART 447—PAYMENTS FOR SERVICES

### § 447.277 [Amended]

A. In Part 447, § 447.277 is amended by deleting paragraph (d).

* * * * *

## PART 462—PROFESSIONAL STANDARDS REVIEW

B. Part 462 is amended as follows:

1. Section 462.6 is amended by revising paragraph (c)(2) to read as follows:

### § 462.6 Application requirements for conditional designation.

* * * * *

(c) * * *

(2) A detailed annual budget which identifies the expenses to be incurred by the organization in carrying out its duties and functions as a PSRO for the next budget period. The budget shall include the applicant's best estimate of expenditures by cost category and be submitted in the form prescribed by HCFA; and

2. Section 462.11 is revised to read as follows:

### § 462.11 Duration, renewal, and termination of grants.

(a) *Grant period.* (1) The initial grant to a conditionally designated PSRO will usually be for a 12-month period.

(2) The initial grant to a fully designated PSRO will be for a 12-month period.

(b) *Renewal.* (1) Before the end of each budget period, HCFA will consider the PSRO's renewal application and any other pertinent information and decide whether to renew the grant.

(2) If HCFA determines that a conditionally designated PSRO has made satisfactory progress in carrying out its formal plan and remains qualified for conditional designation, or that a fully designated PSRO has performed in a satisfactory manner and remains qualified for full designation, it will renew the grant for an additional budget period provided it is in the best interest of the Federal government.

3. Section 462.12 is revised to read as follows:

### § 462.12 Use of grant funds.

Any funds awarded under this part shall be expended solely for carrying out the provisions of the grant in accordance with part B, title XI of the act, the regulations of this subchapter, the terms and conditions of the award, and the applicable cost principles prescribed by 45 CFR Part 74, Subpart Q.

### § 462.13 [Amended]

4. Section 462.13 is amended by deleting paragraph (b).

* * * * *

5. Section 462.14 is revised to read as follows:

### § 462.14 Applicability of 45 CFR Part 74.

Except as otherwise provided by the regulations of this subchapter or the specific terms of a grant, the relevant provisions of 45 CFR Part 74 shall apply to all grants under this part.

(Sections 1102, 1155(f)(3) of the Social Security Act; 42 U.S.C. 1302, 49 Stat. 647, 91 Stat. 1184; 1320c-4(f)(3)).

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance).

Dated: March 13, 1980.

Leonard D. Schaeffer,

*Administrator, Health Care Financing Administration.*

Approved: May 1, 1980.

Patricia Roberts Harris,

*Secretary.*

[FR Doc. 80-14343 Filed 5-8-80; 8:45 am]

BILLING CODE 4110-35-M

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## Education Division

## 45 CFR Part 104

## Vocational Education

**AGENCY:** National Center for Education Statistics and the Office of Education/HEW.

**ACTION:** Final regulations.

**SUMMARY:** The Administrator of the National Center for Education Statistics (NCES) and the Commissioner of Education issue final regulations governing the procedures for determining the compliance status of the submissions of vocational education information by the States under the provisions of Section 161(a) of the Vocational Education Act. The regulations establish criteria the Administrator and the Commissioner use to determine if States are in compliance with the Act.

**EFFECTIVE DATE:** These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are transmitted to Congress three to four days before they are published in the Federal Register. However, this date is changed by statute if Congress disapproves the regulations or takes certain types of adjournments. Those wishing to know the exact effective date of these regulations should call or write to the NCES contact person named below.

**ADDRESS:** Comments should be addressed to Dr. Robert L. Morgan, VEDS Section Chief, National Center for Education Statistics, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert L. Morgan, at the address above. Telephone: (301) 436-6348.

**SUPPLEMENTARY INFORMATION:** 1. *Background.* Section 161(a) of Pub. L. 94-482, amending the Vocational Education Act of 1963, requires the Commissioner of Education and the Administrator of NCES to develop a "Vocational Education Data and Accouting System" (VEDS) utilizing uniform definitions and standard data elements. The Act charges the Administrator with the implementation and operation of this system, to be in place on or before October, 1978. These conditions were met and the reporting requirement for the first data collection year, 1978-79, was announced in proposed form in the Federal Register, Vol. 43, No. 159 at 36326, dated August 16, 1978. Numerous data supplier and user representatives and groups were involved in the development of the system, and extensive coordination with other Federal agencies took place, before the final specifications of the reporting requirements were announced. The focus of these activities was the development of a system and a reporting requirement which would be minimally burdensome and maximally useful. During February 1979, NCES mailed to the Sole State Board for Vocational Education in each State the uniform definitions and information elements they needed to know in order to comply with the Act.

Because of the complexity of the requirements and because of the relatively late formal communication of the exact requirements in the reporting year, many States were unable to meet them fully.

Data reporting requirements of 1978-79 were changed for 1979-80. This change is expected to extend the start-up difficulties experienced by the States. Therefore, the NCES took two steps: one, the reporting date for the first year, 1978-79, was extended to June 15, 1980 (this date was announced in the Federal Register on April 22, 1980, Vol. 45, No. 79 at 27018); two, a policy memorandum was developed, defining the criteria that might be used to determine compliance.

2. *Provisions of Regulations.* The current regulations, 45 CFR Part 104, specify that any State wishing to be eligible for funding under the Vocational Education Act must comply with the reporting requirements established for VEDS. The intent and effect of the policy memorandum, dated January 11, 1980, was to explain the conditions under which a State might be found in compliance, consistent with the law. It is the purpose of these final regulations to issue these conditions in accordance with the requirements of Sec. 431 of GEPA.

A State that is unable to submit all data which is required, but that wishes to be found in compliance must supply a significant proportion of the data within each of five mandated categories. In addition, it must supply an item by item justification for its failure to comply fully with the requirements, and furnish a detailed remediation plan specifying how the State expects to supply all data in future submissions. The following topics must be treated in this remediation plan: (1) A description of the overall procedures to be implemented to supply the required data; (2) Any specific changes to be made in data collection methods; (3) Detailed descriptions of deficiencies in existing procedures and how these are to be remedied; and (4) A detailed timetable for the proposed changes that will be completed as soon as practicable.

Failure to provide this documentation where State data submissions have not supplied all required data will result in a finding of non-compliance. Compliance status will be reviewed annually by NCES. Failure to implement the provisions of an NCES approved remediation plan may result in a finding of non-compliance. States unable to submit their data in accordance with published reporting dates must submit the documentation required under the compliance procedures in § 104.119 in order to avoid a finding of non-compliance.

3. *Need for regulations.* The January 11, 1980, policy memorandum includes standards that are rules of general applicability. These provisions of the policy memorandum must be published as regulations.

4. *Waiver of proposed rulemaking.* Findings on the compliance status of the States must be availble to the Commissioner of Education prior to July 1, 1980, in order that the Department can take appropriate actions regarding the approval of Fiscal Year 1981 State Plans. If proposed rulemaking procedures were not waived, it would not be possible to rule on State Plans in a timely fashion and at least some portion of some States' funding would be impaired for the period of time until such findings were determined. Therefore this document is being issued as final rules based upon findings in accordance with 5 U.S.C. 553(b)(3)(B) that opportunity for advance public comment on these provisions at this time would be impracticable and contrary to the public interest.

5. *Invitation to comment.* Interested persons are invited to submit written comments on these regulations. The comments will be considered for purposes of possible future changes in the regulations. Such comments may be sent to the mailing address for comments given at the beginning of this document. All comments received will be available for public inspection at the offices of the National Center for Education Statistics, currently located at the Presidential Building, Prince Georges Plaza, Hyattsville, Maryland 20782, between the hours of 8:30 a.m. 4:00 p.m., Monday through Friday of each week, except on Federal holidays.

Dated: May 2, 1980.

Marie S. Eldridge

*Administrator, National Center for Education Statistics.*

William L. Smith,

*U.S. Commissioner of Education.*

## PART 104—STATE VOCATIONAL EDUCATIONAL PROGRAM

45 CFR Part 104 is amended by adding new § 104.117, § 104.118, and § 104.119 as follows:

Sec.

104.117 Conditions for compliance.
104.118 Fully meets requirements
104.119 Substantially meets requirements.

### § 104.117 Conditions for compliance.

(a) The Administrator and the Commissioner review data submissions by the States to verify that they comply with data requirements.

(b) The Administrator recommends and the Commissioner determines that the State has met the minimum conditions for compliance with the vocational education data reporting requirements if it meets the standards in either § 104.118 or § 104.119 of this section.

(Implements 161(a); U.S.C. 2391)

### § 104.118 Fully meets requirements.

A State fully meets its data submission requirements if it—

(a) Utilizes standard definitions as developed by the NCES Administrator and the Commissioner of Education in reporting the data;

(b) Provides all the requested data by the date specified by NCES; and

(c) Provides data that is certified to be accurate and of audit quality by the sole State Board for Vocational Education.

(Implements 161(a); U.S.C. 2391)

### § 104.119 Substantially meets requirements.

(a) A State substantially meets its data submission requirements if it—

(1) Includes a significant proportion of the data required in each of the following major areas:

(i) Students (including information on their race and sex),

(ii) Programs,
(iii) Program completers and leavers,
(iv) Staff,
(v) Expenditures; and

(2)(i) Identifies the items of required information that the State has not provided, and provides an acceptable item by item justification for the omission of these data items from its report; and

(ii) Provides an acceptable remediation plan that details how the State will proceed to supply NCES with the required information.

(b)(1) Where State law prohibits the collection or submission of omitted data, the State shall detail in its remediation plan how it will proceed to supply NCES with the required information.

(2) Acceptable justifications for the omitted data, for purposes of paragraph (a)(2)(i) of this section (where substantiation is provided), include but are not limited to:

(i) A State's inability to collect a mandatory data element due to the lack of adequate lead time for the inclusion of the particular element in the State's data collection plan;

(ii) A State's inability to provide data by the exact definitions in the instructions provided by NCES, if the State provides similiar data;

(iii) A State's inability to provide data that is auditable to the original source (e.g., students), if the State provides reasonable statistical estimates;

(iv) A State's utilization of a proxy variable as a replacement for an actual measurement (e.g., economic disadvantage measured by participation in the free or reduced lunch program);

(v) A State's inability, for technical reasons, to provide specific data at the required time, if the State provides that data at a later date (e.g., data on leavers).

(3) Adequate justification for failing to submit data for the purpose of a finding of compliance shall not be based on costs or burden, or a State's position that the data is not useful.

(c) For purposes of paragraph (a)(2)(ii) of this section an acceptable remediation plan shall include the following:

(1) A description of the overall procedures to be implemented to supply the requested data;

(2) Any specific changes to be made in data collection methods;

(3) Detailed descriptions of deficiencies in existing procedures and how these are to be remedied; and

(4) A detailed timetable for the proposed changes that will be completed as soon as feasible.

(Implements 161(a); 20 U.S.C. 2391)

[FR Doc. 80-14390 Filed 5-8-80; 8:45 am]
BILLING CODE 4110-02-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

[PR Docket No. 79-167; RM-3235]

### Providing for Geographic Sharing of Certain Frequencies in the Petroleum, Forest Products, Special Industrial and Manufacturers Radio Services; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final Rule, Correction.

**SUMMARY:** The Commission adopted rules permitting the Forest Products Radio Service, the Special Industrial Radio Service, and the Petroleum Radio Service to share certain frequencies in areas of the United States where there would be little likelihood of conflict or interference. This document makes necessary corrections because of the inclusion of two frequencies which were not involved in the sharing arrangement.

**EFFECTIVE DATE:** May 30, 1980.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Arthur C. King, Private Radio Bureau, (202) 632-6497.

**SUPPLEMENTARY INFORMATION:**

In the matter of: amendment of Subpart O of Part 90 of the Commission's rules and regulations to provide for geographic sharing of certain frequencies in the Petroleum, Forest Products, Special Industrial, and Manufacturers Radio Services, PR Docket No. 79-167, RM-3235. See 45 FR 29299, May 2, 1980.

Released: April 30, 1980.

In the Appendix to the Report and Order in PR Docket No. 79-167, 45 FR 29298, May 2, 1980, FCC 80-194, two 37 MHz frequencies were inadvertently included in the list of frequencies available in the Forest Products Radio Service bearing limitation 30. The frequency list is corrected to read in part as follows:

§ 90.67 Forest Products Radio Service.

* * * * *

(b) Frequencies available. * * *

| Frequency or band (MHz) | Class of station(s) | Limitations |
|---|---|---|
| * * * * * | | |
| 30.72 | Base or Mobile | |
| 31.48 | do | 30 |
| 31.52 | do | 30 |
| 31.64 | do | 30 |
| 31.72 | do | 30 |
| 31.76 | do | 30 |
| 43.02 | do | 30 |
| 43.28 | do | 30 |
| 43.36 | do | 30 |
| 43.40 | do | 30 |
| 43.52 | do | 30 |
| 48.56 | do | 2 |

Federal Communications Commission
William J. Tricarico,
*Secretary.*

[FR Doc. 80-14403 Filed 5-8-80; 8:45 am]
BILLING CODE 6712-01-M

# Proposed Rules

Federal Register
Vol. 45, No. 92
Friday, May 9, 1980

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 Part 913

### Grapefruit Grown in the Interior District in Florida; Proposed Amendment of Rules and Regulations

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

**ACTION:** Proposed rule.

**SUMMARY:** The proposed action would establish eligibility requirements and procedure for nominating the public member on the interior Grapefruit Marketing Committee established under Marketing Order No. 913.

**DATES:** Comments must be received not later than May 27, 1980.

**ADDRESS:** Comments should be filed in duplicate with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Malvin E. McGaha, (202) 447–5975.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the Department is considering proposed amendment, as hereinafter set forth, of the rules and regulations (Subpart—Rules and Regulations; 7 CFR 913.101 *et seq.*) currently in effect pursuant to the applicable provisions of the amended marketing agreement and Order No. 913, as amended (7 CFR Part 913; 44 FR 8863). The order regulates the handling of grapefruit grown in the Interior District in Florida. This is a regulatory program effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The proposal to amend said rules and regulations was recommended by the Interior Grapefruit Marketing Committee established under the order as the agency to administer the terms and provisions thereof.

Section 913.15 of the amended order specifies that the Interior Grapefruit Marketing Committee may be increased by one public member and alternate nominated by the committee and selected by the Secretary. This section further provides that the committee, with the approval of the Secretary, shall prescribe qualifications, term of office, and the procedure for nominating the public member and alternate.

The proposal specifies that the public member shall be neither a producer nor a handler of grapefruit grown in the regulation area and shall not be financially interested in the production or marketing of grapefruit. It also provides that the public member should attend committee activities regularly and become familiar with the background and economics of the grapefruit industry. The proposal specifies that the public member serve a one-year term of office which coincides with the term of industry members of the committee.

This proposal has been reviewed under USDA criteria for implementing Executive Order 12044. It is being published with less than a 60-day comment period because of insufficient time between the date when information became available upon which this proposal is based and the effective date necessary to effectuate the declared policy of the act. A determination has been made that this action should not be classified "significant." A Draft Impact Analysis is available from Malvin E. McGaha, Chief, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

## PART 913—GRAPEFRUIT GROWN IN THE INTERIOR DISTRICT IN FLORIDA

The proposal is to add new § 913.160 as follows:

**§ 913.160 Public member eligibility requirements and nomination procedure.**

(a) The public member shall be neither a producer nor a handler of grapefruit produced in the regulation area and shall have no financial interest in the production or marketing of grapefruit.

(b) The public member should be able to devote sufficient time and express a willingness to attend committee activities regularly and become familiar with the background and economics of the industry.

(c) The public member must be a resident of the regulation area.

(d) The public member should be nominated by the Interior Grapefruit Marketing Committee and should serve a one-year term which coincides with the term of office of producer and handler members of the committee.

Dated: May 5, 1980.

D. S. Kuryloski,

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

[FR Doc. 80-14393 Filed 5-8-80; 8:45 am]
BILLING CODE 3410-02-M

### 7 CFR Part 1036

**[Docket No. AO-179-A44]**

### Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Decision on Proposed Amendments to Marketing Agreement and Order

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

**ACTION:** Proposed rule.

**SUMMARY:** This decision adopts changes in the present order provisions based on industry proposals which were considered at a public hearing held August 14–16, 1979. The amendments provide for changing the funding rate for the advertising and promotion program from a fixed 5 cents per hundredweight to 0.75 percent of the producers' pay price in the market. Producers who do not want to participate in the program would submit one refund request per year instead of one for each calendar quarter. Refunds would be made on a monthly basis rather than quarterly. Another amendment would eliminate the channeling of a handler's payments to individual producers through the market administrator's office if the handler is not delinquent with respect to any payment obligation under the order. Also, the late payment charge on any overdue payment obligation of a handler would be due to the administrative expense fund. The amendments are necessary to reflect current marketing conditions and to insure orderly marketing in the area.

**FOR FURTHER INFORMATION CONTACT:** Clayton H. Plumb, Marketing Specialist, Dairy Division, Agricultural Marketing

Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6273.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of hearing: issued July 20, 1979; published July 26, 1979 (44 FR 43735). Recommended Decision: issued March 14, 1980; published March 20, 1980 (45 FR 18013). Extension of Time for Filing Exceptions: issued April 4, 1980; published April 9, 1980 (45 FR 24167).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Coraopolis, Pennsylvania, on August 14-16, 1980 (44 FR 43735).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Program Operations, on March 14, 1980, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

Index of changes:

1. Issue No. 1—*Funding rate for the advertising and promotion program*—a new paragraph is added between paragraphs 8 and 9.

2. Issue No. 2—*Revision of the administrative provisions of the advertising and promotion program*—three paragraphs are added at the end.

3. Issue No. 3—*Payments to producers and cooperative associations*—a new paragraph is added before the next to last paragraph; and a new paragraph is added at the end.

4. Issue No. 4—*Charges on overdue accounts*—a paragraph is added between paragraphs 14 and 15; and a paragraph is added at the end.

The material issues on the record of the hearing relate to:

1. Funding rate for the advertising and promotion program.

2. Revision of administrative provisions of the advertising and promotion program.

3. Payments to producers and cooperative associations.

4. Charges on overdue accounts.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Funding rate for the advertising and promotion program.* The funding rate for the advertising and promotion program should be modified by changing the present 5-cent rate to a rate determined yearly by multiplying the simple average of the monthly uniform prices for the 12-month period ending April 30 by three-quarters of one percent. The resulting figure would be the funding rate for the 12-month period beginning in July of that year.

Under the revised funding formula, a simple average of the uniform prices for the 12-month period ending April 30 would be computed by the market administrator as soon as possible after April 30. The average price would be multiplied by .0075 and rounded to the nearest whole cent to determine the actual rate of assessement for the 12-month period beginning in July. As soon as possible after the rate of withholding is computed, the market administrator would notify in writing all producers currently on the market and any new producer that subsequently enters the market of the new withholding rate. This notification would be repeated annually thereafter only if there was any change in the rate from the previous period.

The advertising and promotion program was established under the Eastern Ohio-Western Pennsylvania order effective July 1, 1973. The program has been funded since its inception through a monthly 5-cent per hundredweight assessement on milk delivered during the month by participating producers. The money is deducted by the market administrator in the computation of the uniform price and is turned over to an agency composed of producer's representatives who are chosen each year. Certain reserves are withheld by the market administrator to cover refunds to producers and administrative costs.

The advertising and promotion program agency is responsible for the development and implementation of programs and projects approved by the Secretary and designed to carry out the purposes of the Act. The scope of the agency's activities may include the establishment of research and development projects, advertising on a non-brand basis, sales promotion, education and other programs designed to improve or promote the domestic marketing and consumption of milk and its products. The advertising and promotion program is a voluntary program. Accordingly, each producer, on a quarterly basis, has the option of requesting a refund of the assessement on his marketings of milk.

An increase in the funding rate was requested by three cooperative associations. All three associations want a rate that is determined yearly by multiplying the average of the monthly uniform prices for a 12-month period by three-quarters of one percent and rounding to the nearest whole cent. The cooperatives differ, however, as to which period should be used and over what period it should apply. Two of the cooperatives, whose members supply most of the milk regulated under Order 36, want the rate based on the uniform prices for the 12-month period ending April 30. This rate would then apply for a 12-month period beginning in July of that year. In their testimony a member of the Order 36 advertising and promotion agency and a representative of the United Dairy Industry Association (UDIA) both endorsed the position of these two cooperatives. The third cooperative wanted a rate based on the uniform prices for the 12-month period ending September 30. This rate would apply for the following calendar year.

Supporters of an increase in the funding rate testified that since the advertising and promotion program was initiated advertising costs have increased substantially and revenue to support the program has not kept pace. The cooperatives proposed that the revenue for funding the program be fixed as a percentage of the producers' uniform prices in order to keep pace with the rising cost of advertising.

In 1973, the year the advertising and promotion program began in this market, the uniform price averaged $7.19 and the 5-cent withholding rate represented 0.7 percent of the uniform price. For 1978, the 5-cent withholding rate represented less than 0.5 percent of the uniform price while a withholding rate based on 0.75 percent of the uniform price would have amounted to 7 cents per hundredweight. For the 12-month period ending April 30, 1979, the uniform price averaged $11.03 and a 0.75 percent withholding rate would have amounted to 8 cents. It can be expected that for the 12-month period ending April 30, 1980 the uniform price will average about $12.00. A 0.75 percent withholding rate on a $12.00 uniform price would amount to 9 cents per hundredweight.

A representative of UDIA presented data in support of the cooperatives' position that additional funds are needed by the agency. These data indicated that from 1972 to 1979 inflation has been rapid, with the Consumer Price Index increasing 72 percent. The cost of

advertising by various media has increased markedly since the 1972 hearing on which the present 5-cent rate of advertising and promotion program deduction was based. On a national basis selected media cost increases from 1972 to 1979 were as follows: nighttime network TV, 78 percent; daytime network TV, 119 percent; network radio, 58 percent; and daily newspapers, 57 percent. In the Cleveland, Pittsburgh, and Youngstown areas the cost of television advertising has increased much more than the national average while radio advertising costs have increased less than the national average. In terms of a dollar's worth of advertising in 1974, television advertising costs were $2.35 in 1979. One dollar's worth of radio time in 1974 cost $1.35 in 1979. By comparison, media costs in general have increased faster than milk prices to producers. The expected $12.00 average uniform price for the 12-month period ending April 30, 1980, is 66 percent more than the $7.19 average uniform price for 1973 when the advertising and promotion program began under the order. Therefore, it would take a higher percentage of the milk price to have the same advertising program, particularly if it included a significant amount of television advertising. An increase in the funding rate is warranted considering the increased costs for advertising that have occurred since the program was established under the Eastern Ohio-Western Pennsylvania order.

In his exception to the recommended decision, a dairy farmer opposed any increase in the funding rate provided under the order. Exceptor contended that many farmers cannot afford to contribute additional money to the advertising and promotion program. Any producer who wants to participate at a lower average funding level than provided in the order may do so by electing to participate only intermittently. For example, a producer could participate in the program for July through December and request that his money be refunded for January through June. By such means a producer could fund the program at whatever level he believes to be appropriate.

The funding rate for the advertising and promotion program should be based on the uniform prices for the 12-month May through April period and should apply for the following July through June period as proposed by representatives of most of the Order 36 producers. Although one cooperative did propose that different time periods be utilized no persuasive reason was given to support this minority position. A spokesman for this cooperative stated that basing the funding rate on the uniform prices for the 12-month period ending September 30 and applying this rate for the following calendar year, as proposed by his cooperative, would permit the market administrator to provide dairy farmers with two months' advance notice of any change in the assessment rate. This witness noted that the herein adopted dates would only permit one month's advance notice. He did not, however, demonstrate that one month's advance notice was insufficient. He also contended that a calendar year would be easier to understand than the herein adopted July through June funding period. No evidence was presented, however, to demonstrate that producers would have difficulty understanding a July through June funding period. The witness also stated that the dates proposed in his cooperative's funding formula would provide a somewhat slower escalation of assessment rates during inflationary times. As previously noted, this witness as well as many others supported an increase in the assessment rate for the advertising and promotion program. He did not provide any persuasive reason as to why a rate of escalation of assessment rates somewhat slower than the herein adopted one is more desirable. In view of the substantial producer support in the market for the herein adopted funding formula, and in light of the voluntary nature of the program, it is reasonable that the formula adopted herein be incorporated into Order 36.

Conforming changes have been made in the order to recognize that the current references in some sections to "uniform price plus 5 cents" will no longer be appropriate. In implementing the revised funding rate for the advertising and promotion program, the order has been modified so that the uniform price would be computed without deducting the amount of money to be withheld for such program. Thus, the current references to "uniform price plus 5 cents" are changed to read "uniform price".

2. *Revision of adminstrative provisions of the advertising and promotion program.* A dairy farmer who does not want to participate in the Order 36 advertising and promotion program should have to submit to the market administrator one request within the first 15 days of June to obtain a refund for the twelve-month period beginning with the following July. A refund request submitted within the first 15 days of September, December or March would apply from the beginning of the next calendar quarter until June 30. Also, the producer's deductions for advertising and promotion should be refunded by the market administrator on a monthly basis.

Under the current provisions of the order, the advertising and promotion agency conducts its operations on a quarterly basis. Producers who participate in the program fund it for a calendar quarter. Those producers who do not want to participate in the program during a calendar quarter must submit a refund request to the market administrator during the first 15 days of the month preceding such quarter. The nonparticipating producers receive their refunds from the market administrator shortly after the quarter during which such deductions are made.

An Order 36 cooperative association proposed amendments that would allow a producer not wishing to participate in the advertising and promotion program to obtain a refund by filing a request with the market administrator during the first 15 days of any month. Unless rescinded by the producer, the refund request would apply from the first day of the month in which filed to the end of that calendar year. However, if a dairy farmer acquired producer status for the first time under Order 36 after the 15th day of the month, he would not be subject to the 15-day filing limit during the month. The cooperative also proposed that refunds be made by the market administrator on or before the 20th day of the second month after the milk is delivered. At the hearing and in its brief, another Order 36 cooperative association endorsed these procedures.

The proponent cooperative's witness stated that it was Congress' intention that producers not wishing to participate in the promotion program could get their money refunded without unnecessary impediments. He contended that the order's quarterly ask-out system was unnecessarily rigid and burdensome. The witness also stated that presently producers must wait up to three months beyond the order's specified payment dates for producer milk to receive their refund of advertising and promotion deductions. It was the proponent cooperative's position that the refund procedures should be made more prompt.

Two Order 36 cooperative associations and an independent producer opposed any change in the order's procedure for requesting refunds. A spokesman for one of these cooperatives contended that the experience over the last six years with the order's ask-out and refund procedures does not indicate that these procedures have placed any undue hardship on producers who want a

refund. He favored the present quarterly ask-out system because it requires producers to make a value decision at least once every three months on whether they should support a program that a large majority of the producers in the market are supporting and funding. The witness noted that the order's provisions require the advertising and promotion agency to prepare and submit to the Secretary for approval, prior to each quarterly period, a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the agency. The witness contended that the proposed amendments would make it more difficult for the agency to predict the level of funding and thus make budgeting harder.

Proponent, on the other hand, maintained that its amendments would not significantly increase budgeting problems. In fact, the cooperative claimed that over time these amendments would make participation in the program more stable and would therefore make it easier to estimate funding and plan a budget. It also contended that monthly refunds would not generate any undue administrative costs because producers who do not want to participate in the program should not have their funds withheld any longer than necessary.

The order should be amended to allow a producer to request a refund during the first 15 days of June for the twelve-month period beginning with the following July. A refund request submitted within the first 15 days of September, December or March would apply from the beginning of the next calendar quarter until June 30. This order modification would simplify the procedure for requesting refunds and decrease administrative costs. Producers would only have to submit and the market administrator would only have to process approximately one-fourth as many refund requests as is presently the case.

Producers should not, as proposed by an Order 36 cooperative association, be allowed to obtain a refund for the remainder of the calendar year by filing a request with the market administrator during the first 15 days of any month. A refund request should apply for a July through June 12-month period rather than a calendar year so that it will be coordinated with the herein adopted assessment rate formula. In this way a producer could be assured that the assessment rate would not change during the period for which he was deciding whether or not to participate in the program.

The refund request periods also should be limited to the first 15 days of the month preceding each calendar quarter, as is presently the case. Allowing producers to request refunds during any month for the rest of the calendar year would make it harder for the advertising and promotion agency to forecast its funding and plan its budgets, because producer participation could fluctuate after the budget had to be submitted to the Secretary for approval.

A minor change should be made in the refund procedure with respect to new Order 36 producers. Presently, a dairy farmer who first acquires producer status under Order 36 after the 15th of December, March, June, or September and prior to the start of the next refund notification period may, upon application filed with the market administrator, be eligible for a refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This should be changed to allow a new producer who submits a request by the end of the month after producer status is first acquired to be eligible for a refund on all marketings against which an assessment is withheld until the following June 30. If producer status is first acquired in June such producer should be eligible for a refund on all marketing during June and the following 12-month period. These changes will coordinate the procedure through which new Order 36 producers may request refunds with the refund procedure adopted herein for producers already on the Eastern Ohio-Western Pennsylvania market.

Compared to the present quarterly refunds, monthly refunds would increase administrative mailing costs. When the Order 36 advertising and promotion program was initiated, the cost of monthly refunds was high relative to its value to nonparticipating producers. Since then, however, monthly production per producer [1] and interest rates have increased significantly. Changing the rate of deduction to three-quarters of one percent of the producer pay price, as herein adopted, will substantially increase the amount of money to be refunded. For these reasons, monthly refunds are more valuable to non-participating producers than ever before and should be provided.

In their exceptions to the recommended decision, two cooperatives, an officer of the advertising and promotion agency, and one independent producer reiterated their opposition to any changes in the refund procedures. Those exceptors oppose mainly the modification to the quarterly ask-out system whereby a producer needs only to submit one refund request per year (during June 1–15) to not participate in the program. One cooperative contended that it is quite possible that a producer would be more likely to ask-out if he only had to make a request annually instead of quarterly.

However, in another exception to the recommended decision, a dairy farmer stated that, because of the change to an increased funding rate, he wants hereafter to receive a refund of the advertising and promotion assessment on all his marketings of milk. Moreover, he stated that a lot more dairy farmers feel the same way.

The increase in the funding rate might well cause more producers to elect to not participate in the advertising and promotion program. The simplified procedure for requesting refunds will better accommodate such producers, and comports with the legislative intent that the program be voluntary. Thus, the modification of the ask-out procedure should be adopted.

3. *Payments to producers and cooperative associations.* The order should be amended to discontinue the channeling of handlers' payments to individual producers through the market administrator in the case of those handlers who pay on time. Handlers who are delinquent with respect to any payment obligation under the order should continue to be required to channel payments to individual producers through the market administrator. Handlers' payments for milk received from a cooperative association in its capacity as a handler, or for milk received from producers for whom a cooperative association is collecting payment, should continue to be channeled through the market administrator. Also, the order should provide that payments due the market administrator from a cooperative association as a handler may be offset by payments determined by the market administrator to be due the cooperative association.

Under the present payment plan, handlers are subject to paying all order obligations for milk to the market administrator who, in turn, distributes such money, in terms of the uniform price, to producers, cooperative associations and handlers who are eligible to pay producers individually.

[1] Official notice is taken of Federal Order Market Statistics, Annual Summary for 1974, issued June 1975, by the Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture.

The Greater Pittsburgh Dairy Industry Association and an Erie, Pennsylvania, handler proposed to eliminate the channeling of handler payments to producers and cooperatives through the market administrator unless the handler has been delinquent in making payments three times within a calendar year. A handler would be considered delinquent when he has not made in full any of the payments due to a producer, a cooperative association or the producer settlement fund by the dates specified in the order, except when the delinquency occurs inadvertently or unintentionally. A delinquent handler would channel his payments through the market administrator until the handler has met all prescribed payment obligations for three consecutive months or for a shorter period if the market administrator is satisfied that the handler is in compliance.

The proposal would also set back the payment dates for both the partial and final payments to producers. For milk delivered to a handler by a producer during the first 15 days of the month, a partial payment would be made by the first day of the following month instead of on or before the last day of each month as presently provided in the order. The final payment for milk would be due by the 20th day after the end of each month instead of the present due date of the 18th day after the and of the month.

In support of their proposed changes in the channeling of payments and the payment dates, proponent witnesses stated that the present payment plan, which has been in effect since October 1, 1978, has resulted in cash flow problems for handlers because they are required to make payments for milk to the market administrator by earlier dates than the dates they were paying producers under the terms of the order prior to October 1978. The October 1, 1978, amendments provided that handlers channel their payments to producers through the market administrator two days in advance of the time producers were to be paid.

Proponents contend that handlers who pay for milk by the dates specified in the order should not be burdened with the adverse impact on their cash flow that results from channeling their payments through the market administrator. Moreover, they state that their cash flow situation has been adversely affected since inflation and sharply higher interest rates have increased their costs of carrying accounts receivable. They state that their accounts receivable have tended to be outstanding for a longer average timespan than their accounts payable for milk. Thus, they contend that the payment dates for milk received from producers should be set back two days in addition to the elimination of channeling payment through the market administrator, to improve their cash flow situation.

A handler who operates a regulated distributing plant located in Youngstown, Ohio, also proposed to eliminate the channeling of handler payments to producers and cooperatives through the market administrator, except that a handler who does not meet the payment dates specified in the order within six days would be required to channel his payments through the market administrator.

The witness for this handler stated that the present order has built into it two to three days' delay in the time from payment by handlers until payment is made to producers or cooperative associations. He contended the order should be changed to eliminate this delay by providing direct payments from handlers to producers and cooperative associations. The handler also proposed that in the case of a handler who was more than six days late in making a required payment or up to six days late three times in a year, the handler would be considered delinquent and be required to channel his payments through the market administrator one day in advance of the date producers and cooperatives are to be paid for a three-month period.

In support of its proposals this handler, like the other proponent handlers, pointed out that the amendments adopted October 1, 1978, have an adverse impact on handlers' cash flow situation by imposing earlier dates by which handlers have had to make payment for milk receipts. The handler pointed out that such earlier payment dates were in part due to changing from a mail date basis to a receipt date basis with respect to payments to the market administrator.

A handler who operates a regulated distributing plant located in Uniontown, Pennsylvania, filed a brief in support of the proposals by the Youngstown, Ohio, handler. This handler contends that the amendments made effective October 1, 1978, are more burdensome to handlers than necessary to insure prompt payment for milk receipts.

A number of interested parties in the market opposed the proposed changes in the channeling of payments for milk. At the hearing, a witness for the State of Ohio contended that the October 1, 1978, amendments to the order were effective in correcting a serious late-payment problem in the market and urged that the amendments be retained in the order. A handler who operates a regulated distributing plant located in Canton, Ohio, filed a brief in opposition to the adoption of any change in the method of channeling payments to producers and cooperative associations. This handler contends that the proposed changes in the order would not be compatible with the neighboring Ohio Valley order, which has a payment arrangement that is similar to the present payment plan under the Eastern Ohio-Western Pennsylvania order.

Cooperative associations in the market opposed the proposed amendment of the present payment plan, except that they support a provision that would provide that payments due the market administrator from a cooperative association in its capacity as a handler be offset by payments that are due to be paid the cooperative from the market administrator.

Witnesses for two cooperative associations contended that the October 1, 1978, amendments corrected widespread delinquencies in payments by handlers to cooperatives in the market. They pointed out also that it would be much more difficult and burdensome on the cooperatives and the market administrator to provide verification of the date of payment if handlers were to revert back to paying cooperatives directly compared to channeling the payments through the market administrator. The cooperatives' spokesmen stated that the cooperatives prefer that they be paid by the market administrator.

The cooperative association witnesses were also opposed to setting payment dates back as proposed by handler proponents. They pointed out that producers have cash flow problems as well as handlers and argued that handlers' cash flow problems should not be shifted to producers. A cooperative witness stated that for the most part milk is sold to consumers on a cash-and-carry basis within about a week from the time milk is delivered to handlers from producers. Thus, he maintained that there is no valid reason for producers to have to wait any longer than they now do to get paid for their milk.

Two cooperative associations proposed, however, that the payment plan be modified to eliminate the channeling of certain cooperative association funds through the market administrator. The cooperative association witnesses stated that some cooperatives in the market are handlers with respect to milk diverted to nonpool plants. The cooperatives have a pool

obligation at class prices for such milk and a pool credit due on such milk at the uniform price. They contended that in such situations, it serves no useful purpose to channel funds to the market administrator to the extent of the amount of funds due the cooperative associations from the market administrator. Thus, they propose that payments due the market administrator from a cooperative association handler be offset by payments determined by the market administrator to be due the cooperative association.

There was no opposition as such to this proposal. One handler representative, however, urged at the hearing and in his brief that any such treatment of cooperative associations as handlers should also be given to proprietary handlers.

The record evidence indicates that the incidence of late payments by pool handlers to cooperative associations was a serious problem in this market prior to the October 1, 1978, amendments to the order. Since the amendments became effective, the incidence of late payments has virtually disappeared. Data submitted into evidence by the market administrator's office demonstrate the change. For the 33 months prior to October 1978, an average of only 23.8 percent of the amounts handlers owed to cooperatives were paid on time; and an average of 35.5 percent of the amounts due were received more than five days late. For the nine months of October 1978 through June 1979, an average of 98.9 percent of the amount of handlers' payments for milk received from cooperatives were paid to the market administrator on time, and an average of only 0.5 percent of the amounts due were over five days late.

The record evidence indicates that nonmember producers are generally being paid on time. Data submitted into evidence by the market administrator's office indicates that for the nine months, October 1978 through June 1979, an average of 28 handlers per month received milk from nonmember producers and an average of 26 handlers per month paid for their receipts of producer milk on time. During the nine month period, however, certain of the handlers who were delinquent in their payments went out of business. As of June 1979, there were only 26 handlers who received milk from nonmember producers and all but one paid for its producer milk on time.

The present order provisions permit a nondelinquent handler who wishes to pay his nonmember producers directly to elect to have the market administrator return such money to the handler prior to the date producers are to be paid. To accommodate this, it was necessary to require that handlers make their payments to the market administrator two days ahead of the producer payment date. Very few handlers in the market have availed themselves of this payment practice.

Under the terms of the order, handlers are permitted to advance money to nonmember producers on or before the date when payments for milk are to be channeled through the market administrator. Most of the handlers who receive milk from nonmember producers have made it a practice to pay the full amount of the payment due their individual producer suppliers directly to such producers on or before such payments would otherwise be due to be paid to the market administrator. For example, in June 1979, 23 of the 26 handlers that received milk from nonmember producers paid such producers directly for the full value of their milk at the uniform price payable to producers.

This payment practice has been followed by all of the handlers in the Pennsylvania segment of the market who are proponents of the proposal to eliminate the channeling of payments to individual producers through the market administrator, except for those handlers who are delinquent in making payments for milk. Such proponent handlers, by following this practice, have been paying their producers two days earlier than they were prior to the October 1, 1978, amendments. Although such amendments did not change the dates that producers were to be paid, if the payments were channeled through the market administrator, they did require that handlers make such payments (except for any advance payments to producers) to the market administrator two days before the date producers were to be paid.

In view of the above considerations, the proposals to eliminate the channeling of payments to nonmember producers through the market administrator, except for delinquent handlers, has merit, particularly if the date by which producers receive payment is not delayed. The record demonstrates that handlers prefer to pay their nonmember producers directly and have been making such payments on time. Adoption of the proposal without a change in the producer payment dates would eliminate the adverse impact on handlers' cash flow that the handler attributed to the October 1978 change in the method of making payments to nonmember producers, because it would no longer require payments in advance of the producer payment dates through the market administrator or directly to producers.

The final payments directly to individual producers would be made on the 18th day after the end of the month. Partial payments for milk delivered the first fifteen days of the month would be made on the last day of the month. These are the same dates that were applicable prior to October 1, 1978 and are also the payment dates under the present payment plan with respect to those payments channeled through the market administrator.

The proposals with respect to delinquent handlers would provide essentially the same payment procedure that is required under the present terms of the order. Presently, a handler who the market administrator determines is or was delinquent in making any payment obligation under the order is required to channel his payments for producer milk through the market administrator and the market administrator is to pay such producers directly. One proposed modification would not require the channeling of payments through the market administrator until the handler was more than six days late in making a payment or up to six days late in making payments on three occasions in a calendar year. Another modification would permit three delinquencies in making payments per calendar year exclusive of any inadvertent or unintentional late payments. Proponents of such modifications contend that the present provision may be too burdensome on some handlers.

The record does not demonstrate, however, that there has been any problem with the application of the present payment procedure for delinquent handlers. Both proponent witnesses testified, for example, that they had not paid late on any occasion during the nine-month period beginning with the adoption of the present provision in the order. Several witnesses, moreover, opposed any change in this provision of the order. Such witnesses pointed out that there would be no practical way of determining whether a late payment was inadvertent or unintentional and contended that such terminology in the order could possibly result in arbitrary application of the late-payment provision of the order. In these circumstances, it is concluded that the provision should not be modified.

The channeling of handlers' payments through the market administrator for milk received from cooperative associations should not be changed under the order. The record

demonstrates that the primary reason for adopting the present payment plan was because of a chronic problem of late payment for milk received from cooperative associations. The potential for such problem to recur still exists and would be more likely to happen if the channeling of payments to cooperatives through the market administrator were to be eliminated. Further, the record clearly demonstrates the effectiveness of the payment provisions in achieving on-time payments to cooperatives.

Cooperative associations are handlers with respect to much of their member producer milk. As handlers, the cooperatives must meet the pooling standards provided in the order with respect to such milk. To meet the pooling standards, the cooperatives must obtain pool distributing plant outlets for certain proportions of the milk supplies of their member producers. Proprietary handlers operate most of the distributing plants in the market. In these circumstances, cooperatives are placed in a position of having to deliver milk to proprietary handlers as a condition of sharing in the market's higher-valued Class I milk proceeds. In turn, distributing plant operators are placed in a position of having an incentive to bargain with cooperatives for concessions with respect to the receipt of milk from the cooperatives. Without adequate safeguards in the order, experience in the market has demonstrated that handlers can gain concessions in the form of paying late for milk received from cooperatives. The October 1978 amendments corrected this situation.

It would be administratively difficult and burdensome on both cooperatives and the market administrator to verify that payments to cooperatives were made on time if handlers were to pay cooperatives directly rather than through the market administrator. Proponents recognized this problem and, accordingly, proposed that additional reporting burdens be placed on cooperatives in the event their proposals to pay cooperatives directly were adopted. By having payments channeled through the market administrator, it eliminates any problem for the market administrator or cooperatives with respect to verification of the date and amount of payments to cooperatives, including any problem with respect to the timely deposit of payments by cooperative associations.

The payment procedure adopted October 1, 1978, with respect to milk receipts from cooperatives did not have an adverse impact on the cash flow situation for handlers as was the case for milk received from nonmember producers. Prior to October 1978, handlers were required to pay cooperatives for producer milk of members of a cooperative two days in advance of the date for making payments to nonmember producers. With respect to milk purchased from a cooperative that operated a pool plant, handlers were required to pay the cooperative the class use value of the milk on the 15th day after the end of the month, or one day in advance of the final payment for milk under the present terms of the order.

Cooperative association witnesses stated that their associations prefer that they continue to receive payments through the market administrator. The witness for the Pittsburgh area proponents stated at the hearing that he would not object to channeling payments to cooperatives through the market administrator if the cooperatives preferred to be paid in such fashion. The Youngstown, Ohio, proponent indicated at the hearing that his primary concern was the improvement on the cash flow situation for his company that could result from paying cooperatives directly rather than through the market administrator.

The schedule of payment dates can be modified to help alleviate handlers' cash flow problems without setting later payment dates to producers, including producers who are members of cooperative associations. Under the present payment plan, the market administrator has been following the practice of making payments to cooperatives and handlers by electronic transfer of funds from the market administrator's bank account to the cooperative's or handler's bank account. Such transfer of funds takes only a few minutes, since only a telephone call is required. In practice, however, the bank holding the market administrator's account requires that checks deposited to the account not be electronically transferred until the following day.

In this circumstance, it is feasible to set a schedule of payment dates under the order whereby payments to the market administrator are to be made the day before payments from the market administrator are to be made. The date for payments to the market administrator can be the 17th day after the end of the month, rather than the 16th day as now, with respect to final payments for milk. This would enable the market administrator to make equalization payments to handlers, payments to cooperatives, and payments to producers (in the case of delinquent handlers) on the 18th, which is the present date for final payments to producers. With respect to partial payments for milk delivered during the first 15 days of the month, payments directly to producers are due on or before the last day of the month. Thus, partial payments made through the market administrator could be on the day before the last day of the month.

If such a payment schedule were adopted in conjunction with the elimination of channeling payments to nonmember producers through the market administrator, the order's impact on the cash flow situation for handlers would revert back to what it was prior to the October 1978 amendment to the payment plan. Payments to nonmember producers would be made on the same dates and any equalization payments due the market administrator would be a day later than was the case prior to the amendments adopting the present payment plan. With respect to payments for milk received from cooperatives, handler payments at the class use value of such milk would be made to the market administrator on the 17th day after the end of the month as compared to being paid to the cooperative before the 1978 amendments, on the 15th day after the end of the month. This two-day difference should adequately make up for the difference in use of the receipt date in the case of the payment to the market administrator compared to a mailing date of the 15th for payment to the cooperative before the present payment plan was adopted. Partial payments for producer milk received from members of cooperative associations would be due to be made by handlers one day later (on a receipt basis to the market administrator) than prior to the present plan (to the cooperative on a mail date basis).

In light of the above considerations, it is concluded that the payment schedule, as outlined, should be adopted. It will adequately relieve handlers of any adverse impact on their cash flow situation that may be attributable to the adoption of the present payment plan.

In this regard, the proposal to set back the payment dates to producers, either by changing the due date or by changing to the mail date in the case of payments to the market administrator, should not be adopted. With respect to proponents' contention that later payment dates to producers and cooperatives should be made because of recent inflation and increased borrowing costs, this is not warranted. Producers and cooperatives are faced with cash flow problems as well as handlers. The record does not reveal any comparison between handler and producer cash flow situations. Thus,

there is no basis on this record to make a finding that it would be appropriate to shift more of a cash flow burden on to producers as compared to handlers.

In its exceptions to the recommended decision one handler urged adoption of the proposals to eliminate the channeling of handler payments through the market administrator for milk received from cooperatives. The handler contended that adequate verification of the timeliness of payments by handlers to cooperatives can be made by use of postmarked dates. This may be true, but it would involve additional administrative costs being incurred by the market administrator as well as an additional reporting burden on cooperatives. More importantly, as previously stated cooperatives would be placed in a position whereby problems could arise with respect to the timely deposit of payments by cooperatives. In these circumstances there is much greater assurance of effective timeliness of payments to cooperatives by continuing to channel such payments through the market administrator. Thus, the practice should be continued under the order.

The proposal to permit offsetting of payments from a cooperative to the market administrator with payments due the cooperative from the market administrator should be adopted. When the present payment plan was adopted, the cooperatives proposing this plan urged that cooperative association handlers be treated the same as proprietary handlers with respect to the channeling of payments through the market administrator. The order provisions now require that a cooperative association handler pay the market administrator the class use value of milk for which the cooperative is the handler (except for milk transferred to another pool handler). The market administrator, in turn, pays the cooperative an amount equal to the value of such milk at the uniform price payable to producers.

Cooperative associations in the market are handlers with respect to member producer milk processed in their own pool plants or diverted to nonpool plants. The record reflects, for example, that one cooperative association operates a pool distributing plant, while another cooperative association diverts a large proportion of its member producer milk supplies to nonpool manufacturing plants. Such cooperative associations are entitled to receive the uniform price value of milk so handled and are obligated to the pool at the class use value of such milk. In this circumstance, it serves no useful purpose in the context of assuring timely payments for milk for the cooperative to pay the market administrator money that it is entitled to receive from the market administrator for payment to its member producers.

In its exceptions to the recommended decision, one handler contended that the order should specify that payments may be made through a third party. The handler stated it would accommodate making payments by delivery to banking institutions, by delivery to other offices of the market administrators, by delivery of checks to individual producers by milk truck drivers, etc. The record demonstrates that such payment practices are now in use in the market. Moreover, the record does not indicate need to formalize such practices in the terms of the order. The permissible use of such payment practices can appropriately be handled within the administrative discretion of the market administrator.

4. *Charges on overdue accounts.* The order should provide that the late-payment charge on handler obligations that are overdue be extended in applicability to cover payments to individual producers and payments for marketing services that arise under the new payment procedure. Also, the order should provide that all late-payment charges shall be due to the administrative expense fund maintained by the market adminstrator.

The order now provides that any overdue obligation of a handler to the market administrator be increased 1 percent beginning on the first day after the due date of such obligation and on the same day of each succeeding month until such obligation is paid. Under the present payment plan in the order handler obligations for milk are channeled through the market adminstrator. Thus, in effect, there is a late-payment charge with respect to all handler obligations under the order.

In conjunction with their proposals to eliminate the channeling of payments to producers and cooperative associations through the market administrator, proponent handlers proposed modification of the late-payment charge provisions of the order. Such proposals pertain to the method of calculating the late-payment charge, the accounts to be covered, and the accounts to which the charge is to accrue.

The Greater Pittsburgh Dairy Industry Association and an Erie, Pennsylvania, handler proposed that a late-payment charge be made applicable to handler obligations directly to producers and cooperative associations in addition to obligations payable to the market administrator. Such proponents proposed that late-payment charges should accrue to the producers and cooperatives who were not paid on time. Additionally, at the hearing they proposed that the late-payment charge be prorated on a daily basis according to the number of days in the month that the payment was late. Such proponents also proposed that payment delinquencies that occur inadvertently or unintentionally should not be assessed a late-payment charge.

A Youngstown, Ohio, handler proposed that any unpaid obligation of a handler be assessed a charge of .033 percent per day during the first six days the obligation is overdue but not less than $100 nor more than $500 for the first day. On the 7th day after the due date a charge of 1.5 percent of the unpaid balance would be applicable and each month thereafter the charge would be 1.5 percent per month. This handler proposed also that the late-payment charge should accrue to the administrative expense fund maintained by the market administrator.

Additional modifications of the present computation of the late-payment charge were suggested by two proprietary handlers in their written briefs on the record. Such handlers suggest a two-day grace period before a late-payment charge is applied. One handler urged that the charge be at the rate of .05 percent per day until 1 percent is reached if the handler is not delinquent more than 3 times in a year, otherwise no grace period would apply. The other handler favored a minimum charge of $100 or the prime interest rate, whichever is greater.

In support of their proposed changes in the computation of the charge on overdue accounts, proponents contended that the present provision is too severe and that recognition should be given to the relative lateness of an unpaid obligation. Proponents argued that under the present provision a handler who is one day overdue in meeting a payment obligation would have an incentive to wait 29 more days. before paying such obligations, since no additional charge would be assessed in the interim.

At the hearing cooperative associations generally opposed any changes in the payment provisions as proposed by handlers. One cooperative in its brief opposed changing the present provision on the basis that it has worked and no great amounts of late-payment charges have been applicable. The cooperative also expressed concern that any fixed amount of late-payment charge, such as $100 or $500, would discriminate against small-volume handlers.

As previously indicated, evidence placed in the record by the market administrator's office shows that the incidence of late payments by handlers in the market has essentially disappeared under the present payment plan. It should be recognized that under such plan handlers are obligated to the market administrator for the full value of their milk receipts from producers and cooperatives and are subject to the late-payment charge on such obligations.

Under the amendments adopted herein, a handler that receives milk from nonmember producers will no longer be obligated to channel payments to producers through the market administrator, unless he is delinquent in meeting a payment obligation. Thus, it is appropriate to consider whether the application of the late-payment charge should be extended to payments made directly to producers. Similarly, the present payment plan provides that the market administrator withhold marketing service payments before returning to handlers any payments to be made to nonmember producers. Under the payment plan adopted herein, handlers will be required to deduct marketing service charges in paying producers and remit such funds to the market administrator. Thus, it is also appropriate to consider the application of the late-payment charge to marketing service payment obligations of handlers.

Application of late-payment charges on payments directly to producers and marketing service deductions owed to the market administrator will better effect uniform application of the order between those handlers receiving milk from individual producers and those receiving milk from cooperative associations. A handler who receives milk from a cooperative will continue to be subject to a late-payment charge on the full value of such milk. Thus, it will better effect uniform prices or "costs" of milk among handlers if the late-payment charge is made applicable to payments directly to producers and to the value of the marketing service deductions from producers.

The present order terms with respect to delinquent handlers do not provide for any grace period nor any terminology as to whether a delinquency was unintentional or inadvertent. The record, moreover, does not demonstrate any problem in this regard. If a grace period or other type of relaxation of the present terms of the order in this regard were adopted, it would obviously tend to detract from the effectivenss of the order in encouraging handlers to meet payment obligations by the dates specified in the order. Proponents' witnesses indicated on the record that they have been able to meet their payment obligations on time for many consecutive months. Terminology such as unintentional and inadvertent in the order would be very difficult to administer since it would require the market administrator to determine handlers' intentions. Several witnesses opposed the adoption of such terminology on the basis that it would not be administerable. Under these circumstances such proposed modifications should not be adopted.

The proposals to apply the late-payment charge on a daily rate basis should not be adopted. If late-payment charges were treated on a money market basis, the order would merely represent a banking service for handlers who desire to use order obligations as a source of borrowed funds.

This is not the intended purpose of the late-payment charge. Rather, it is a charge on the overdue account which is sufficiently large that it will induce handlers to pay their obligations under the order on time. Experience under the order has not demonstrated that a handler who is late in meeting a payment would tend to wait nearly until the next monthly charge is to be assessed. On the contrary, handlers who have missed payment obligations have tended to pay within 5 days. Moreover, proponent witnesses contended that producers and cooperatives should, and probably would, discontinue delivering milk to a handler who was more than a few days delinquent in making payments for milk.

If late-payment charges were to include fixed minimum amounts, such as $100, or fixed maximum amounts, such as $500, for the first day as proposed by certain handlers, it would tend to discriminate against small-volume handlers. Accordingly, such type of provisions should not be adopted.

In its exceptions to the recommended decision, one handler reiterated its position that the late payment charge should be at a lesser rate for an unintentional late payment of one to three days on a non-recurring basis; however, no new contentions were advanced by the handler in support of its position. For the reasons stated previously no special accommodation should be provided in the order for a different late payment charge with respect to payment obligations of handlers that are made only a few days late on an intermittent basis.

The proposal to provide that the late-payment charges accure to the administrative expense fund maintained by the market administrator should be adopted. Proponent supported this proposal on the basis that handlers that are prompt in meeting payment obligations are, in effect, being assessed for expenses incurred by the market administrator in getting compliance on the part of delinquent handlers. In addition, proponent contended that in the case of late-payments to a producer there would be an incentive on the part of the producer to continue delivery of milk to the delinquent handlers because of a belief that he would be reimbursed for the delay.

In the case of delinquent handlers, money is spent by the market administrator in determining the amount of the late-payment charges and in collecting such payments or inducing noncomplying handlers to pay on time. The money for expenditures of this type, of course, comes from the administrative assessment fund. Thus, the competitors of the noncomplying handlers who pay assessments to this fund are bearing the administrative costs of dealing with the delinquent handlers. Therefore, it is reasonable that the late-payment charges assessed on noncomplying handlers be used to help defray these administrative costs.

As an inducement to make payments to producers on time, it is appropriate that the charge on overdue accounts payable to producers accrue to the administrative assessment fund. As stated by proponent, if the late-payment charge were to be added to the amount owned by handlers to producers, it would likely result in such producers being less concerned whether they are paid on time. Thus, it could be counterproductive to the purpose sought to be achieved by the late-payment charge. Moreover, if a charge of 1 percent were made with respect to a payment that was only a few days late, it would represent a significantly higher value than the cost of money borrowed from commerical sources for such short time span. Thus, producers would be placed in a position where they would prefer to be paid several days late and get the late-payment charge. Further, the late-payment charge is to be an inducement to meet the payment date in the order. As such the charge should accrue to the market administrator who is charged with the responsibility of administering the payment transaction.

In its exceptions to the recommended decision, a handler stated that the recommended decision failed to respond to a proposal he made at the hearing that the order provide that the market administrator, through appropriate channels, advise the Justice Department on a timely basis of all delinquent

payments. The objective of the proposal was to effect prompt enforcement action on handlers who are delinquent. The Administrative Law Judge stated that no provision could be put in the order to modify the procedures of the Department of Justice or the Department of Agriculture in any way in enforcement proceedings. For the reason stated by the Administrative Law Judge, the proposal is not an appropriate matter for consideration in terms of any modification of the order.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a MARKETING AGREEMENT regulating the handling of milk, and an ORDER amending the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

*It is hereby ordered,* That this entire decision, except the attached marketing agreement, be published in the Federal Register. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

Referendum Order to Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*), to determine whether the issuance of the attached order as amended and as hereby proposed to be amended (except for the proposed Advertising and Promotion Program), regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during the representative period were engaged in the production of milk for sale within the aforesaid marketing area.

It is hereby further directed that a separate referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*), to determine whether the proposed order provisions constituting the Advertising and Promotion Program in the order, and as hereby proposed to be amended, regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area are separately approved or favored by the producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during the representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referenda is hereby determined to be February 1980.

The agent of the Secretary to conduct such referenda is hereby designated to be Myron R. McKinley.

Note.—This final decision has been reviewed under USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this decision should not be classified "significant" under those criteria. This decision constitutes the Department's Final Impact Analysis Statement for this proceeding.

Signed at Washington, D.C., on May 5, 1980.

P. R. "Bobby" Smith,

*Assistant Secretary for Marketing and Transportation Services.*

## *Order [1] Amending the Order, Regulating the Handling of Milk in the Eastern Ohio-Western Pennsylvania Marketing Area*

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

*Order relative to handling.* It is therefore ordered that on and after the effective date hereof the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Marketing Program Operations, on March 14, 1980, and published in the Federal Register on March 20, 1980 (45 FR 18013) shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

Changes 1, 2, 4, 5, 6, 7, 9, 10, and 11 set forth below relate to amendments to the order other than those relating to the Advertising and Promotion Program. Changes 3, 8, 12, and 13 relate to amendments to provisions of the Advertising and Promotion Program.

1. In § 1036.31 the introductory text of paragraph (a) is revised to read as follows:

**§ 1036.31 Payroll reports.**

(a) On or before the 18th day after the end of each month, each handler who pays producers pursuant to § 1036.73(a) shall report to the market administrator the following information with respect to the handler's partial and final payments for producer milk received during such month:

* * * * *

2. In § 1036.32 the introductory text of paragraph (a) and the introductory text of paragraph (c) are revised to read as follows:

**§ 1036.32 Other reports.**

(a) On or before the 22nd day of each month each delinquent handler pursuant to § 1036.73(c) shall report to the market administrator the following information with respect to its receipts of milk during the first 15 days of the month:

* * * * *

(c) On or before the 8th day after the end of each month, each delinquent handler (pursuant to § 1036.73(c)), shall report to the market administrator the following information with respect to receipts of milk during such month.

* * * * *

3. Section 1036.61 is revised to read as follows:

**§ 1036.61 Computation of uniform price (including weighted average price).**

For each month the market administrator shall compute a uniform price per hundredweight of milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1036.60 for all handlers who filed the reports prescribed by § 1036.30 for the month and who were not in default of payments to the market administrator pursuant to § 1036.71 for the preceding month;

(b) Deduct the amount of the plus location adjustments and add the amount of the minus location adjustments which are applicable pursuant to § 1036.75;

(c) Add an amount equal to one-half of the unobligated balance in the producer settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1036.60(e);

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price".

(f) For the months of January through March and August, subtract from the weighted average price computed in paragraph (e) of this section the withholding rate for the Advertising and Promotion program as computed in § 1036.121(e). The result shall be the "uniform price" for the applicable month.

(g) For the months specified in paragraphs (h) and (i) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (c) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (d)(2) of this section by the weighted average price;

(h) From the remaining amount in paragraph (g) of this section subtract for each of the months of April through July the amount obtained by multiplying the hundredweight of producer milk specified in paragraph (d)(1) of this section by a rate that is equal to 6 percent of the average basic formula price (computed to the nearest cent) for the preceding calendar year but not to exceed 25 cents;

(i) To the remaining amount in paragraph (g) of this section add for each of the months of September, October and November one-fourth of the total amount subtracted pursuant to paragraph (h) of this section and add for the month of December the remainder of such total amount plus any interest earned on such total amount;

(j) Divide the resulting sum by the hundredweight of producer milk included in these computations;

(k) Subtract the withholding rate for the Advertising and Promotion program as computed in § 1036.121(e); and

(l) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers for the applicable month.

4. In § 1036.70 paragraph (a) is revised to read as follows:

**§ 1036.70 Producer-settlement fund.**

(a) The market administrator shall establish and maintain a separate fund known as the "Producer-settlement fund", into which he shall deposit the payments made by handlers pursuant to §§ 1036.71, 1036.76 and 1036.77 and from which he shall make all payments pursuant to §§ 1036.72, 1036.73 and 1036.77.

* * * * *

5. In § 1036.71 paragraphs (a), (b), (c) and (d) are revised to read as follows:

**§ 1036.71 Payments to the market administrator.**

(a) Subject to paragraph (d) of this section, each handler operating a pool plant shall pay to the market administrator on or before the day prior to the last day of each month an amount determined by multiplying the Class III price for the preceding month (adjusted by the butterfat differential, if the

handler so elects) by the following receipts during the first 15 days of such month:

(1) Producer milk from producers whose payments are authorized to be collected by a cooperative association;

(2) Bulk fluid milk products by transfer or diversion from a pool plant operated by a cooperative association, and

(3) Milk from a cooperative association in its capacity as a handler pursuant to § 1036.9(c) that also operates a pool plant.

(b) Subject to paragraph (d) of this section, each handler shall pay to the market administrator on or before the 17th day after the end of each month an amount equal to such handler's value of milk for such month determined pursuant to § 1036.60(a) as adjusted by the butterfat differential specified in § 1036.74 and pursuant to § 1036.60(b) through (e), less:

(1) Payments made by the handler pursuant to paragraph (a) of this section for such month;

(2) Payments to be made pursuant to § 1036.73(a) and (c) for producer milk received during such month; and

(3) The value at the weighted average price applicable at the location of the plants from which received with respect to other source milk for which a value is computed pursuant to § 1036.60(e).

(c) Subject to paragraph (d) of this section, each handler operating a pool plant who receives bulk fluid milk products by transfer or diversion from a pool plant operated by a cooperative association, or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1036.9(c) that also operates a pool plant, shall pay to the market administrator, on or before the 17th day after the end of each month, an amount determined by multiplying the quantity of such receipts during the month that was classified in each class pursuant to § 1036.42 by the applicable class price, as adjusted by the butterfat differential specified in § 1036.74, less any payment made by the handler pursuant to paragraph (a)(2) and (3) of this section for such month. For the purpose of such computation, the applicable Class I price shall be the Class I price applicable at the transferee-plant.

(d) The following conditions shall apply with respect to the payments prescribed in paragraphs (a), (b) and (c) of this section:

(1) Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator;

(2) If the date by which payments must be received by the market administrator falls on a Saturday or Sunday or any day that is a national holiday, payments shall not be due until the next day on which the market administrator's office is open for public business; and

(3) Payments due the market administrator from a cooperative association handler may be offset by payments determined by the market administrator to be due the cooperative association pursuant to § 1036.73(b).

* * * * *

6. Add a new § 1036.72 to read as follows:

**§ 1036.72 Payments from the producer-settlement fund.**

Subject to § 1036.73(c), on or before the 18th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the net pool obligation pursuant to § 1036.60 for such handler is less than the value at the uniform price, as adjusted pursuant to § 1036.75 of such handler's receipts of producer milk.

7. In § 1036.73 paragraphs (a) through (d) are revised to read as follows:

**§ 1036.73 Payments to producers and to cooperative associations.**

(a) Subject to paragraphs (c) through (f) of this section, each handler shall make payment to each producer (whose payments are not authorized to be collected by a cooperative association) as follows:

(1) On or before the last day of the month, to each producer who has not discontinued delivery of milk to such handler, not less than the amount determined by multiplying the pounds of producer milk received from such producer during the first 15 days of the month by the Class III price for the preceding month, less proper deductions authorized by the producer; and

(2) On or before the 18th day after the end of the month, to each producer not less than the amount determined by multiplying the pounds of producer milk received from such producer during the month by the uniform price as adjusted pursuant to §§ 1036.74 and 1036.75, less the following amounts:

(i) The payment made pursuant to paragraph (a)(1) of this section for such month;

(ii) Proper deductions authorized by the producer;

(iii) Any marketing service deduction pursuant to § 1036.86; and

(iv) If before such date the handler has not received full payment from the market administrator pursuant to § 1036.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this section following the date on which the remaining payment is received from the market administrator.

(b) Subject to paragraphs (e) and (f) of this section, the market administrator shall pay to each cooperative association:

(1) On or before the last day of each month for milk for which payment pursuant to § 1036.71(a) has been received by the market administrator; and

(2) On or before the 18th day after the end of each month for milk for which payment is received by the market administrator pursuant to § 1036.71. Such payment shall be at the applicable uniform price for the month, subject to the following adjustments:

(i) Any applicable adjustments pursuant to §§ 1036.74 and 1036.75; and

(ii) Less the payments made pursuant to paragraph (b)(1) of this section.

(c) Any handler who the market administrator determines is or was delinquent with respect to any payment obligation under this order shall not be eligible to make payments directly to producers for its receipts of producer milk pursuant to paragraph (a) of this section. Any such payments due producers (except any amount due pursuant to § 1036.72) shall be made to the market administrator on or before the day prior to the dates specified in paragraph (a) of this section. The market administrator shall, in turn, pay such producers the amounts so received from the handler plus any amounts due such producers pursuant to § 1036.72. This payment arrangement shall be followed until the handler has met all prescribed payment obligations for three consecutive months.

(d) In making payments to producers pursuant to paragraphs (a) and (c) of this section each producer shall be furnished the following information.

(1) The identity of the handler and the producer and the month to which the payment applies.

(2) The total pounds and, with respect to final payments, the average butterfat content of the milk for which payment is being made;

(3) The minimum rate of payment required by the order and the rate of payment used if such rate is other than the applicable minimum rate;

(4) The amount and nature of any deductions from the amount otherwise due the producer; and

(5) The net amount of payment to the producer.

* * * * *

§ 1036.76 [Amended]

8. In § 1036.76(b)(4) the words "plus 5 cents" are deleted.

9. Section § 1036.78 is revised to read as follows:

**§ 1036.78 Charges on overdue accounts.**

Any unpaid obligation of a handler pursuant to §§ 1036.71, 1036.73, 1036.76, 1036.77, 1036.85, and 1036.86 shall be increased 1 percent beginning on the first day after the due date of such obligation and on the same day of each succeeding month until such obligation is paid. All such charges on overdue accounts shall be paid to the administrative assessment fund maintained by the market administrator.

§ 1036.85 [Amended]

10. In the introductory text of § 1036.85 the term "16th" is changed to "17th".

11. Section 1036.86 is revised to read as follows:

**§ 1036.86 Deductions for marketing services.**

(a) Except as set forth in paragraphs (b) and (c) of this section, each handler or the market administrator in making payments to producers pursuant to § 1036.73(a) and (c) shall deduct 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to milk of such producer (except a handler's own-farm production) and shall pay such deductions to the market administrator not later than the 17th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. The services shall be performed by the market administrator or an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section and for whom the cooperative is not authorized to collect payment for milk, each handler shall make in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers, and, on or before the 18th day after the end of each month, pay over such deductions to the association rendering such services.

(c) In the case of producers for whom a cooperative association is not performing the services set forth in paragraph (a) but for whom the cooperative association is collecting payment for milk pursuant to § 1036.73(b) the market administrator shall make the deduction and perform the services specified in paragraph (a) of this section.

§ 1036.120 [Amended]

12. In § 1036.120 paragraphs (b), (c) and (d) are revised to read as follows:

* * * * *

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of June, September, December, or March for milk to be marketed from the first of the immediately following month through the following June 30th.

(c) A dairy farmer who first acquires producer status under this part may, upon application filed with the market administrator pursuant to paragraph (a) of this section by the end of the month immediately following the month in which producer status is aquired, be eligible for refund on all marketings against which an assessment is withheld for the period through the following June 30th and if producer status is first acquired in June such producer shall be eligible for a refund on all marketings during June and the following 12-month period. Eligibility for refund under this paragraph shall not apply to a person who was a producer under a Federal order under which the same refund notification period applied and such person did not appropriately submit a refund application during such period.

(d) A producer who has appropriately filed request for refund of advertising and promotion program assessments on his marketings of milk under another Federal order shall be eligible (on the basis of his request filed under the other order) for refund with respect to his producer milk under this order against which an assessment is withheld until the opportunity exists for such producer to request a refund pursuant to paragraph (b) of this section.

13. In § 1036.121 the introductory text of paragraph (b) and paragraph (b) (2) and (3) are revised and new paragraphs (e) and (f) are added to read as follows:

**§ 1036.121 Duties of the market administrator.**

* * * * *

(b) Set aside into an advertising and promotion fund, separately accounted for, an amount equal to the withholding rate for the month as set forth in paragraph (e) of this section times the amount of producer milk included in the uniform price computation for such month. The amount set aside shall be disbursed as follows:

* * * * *

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producer for which deductions were made pursuant to this paragraph.

(3) After the end of each month, make a refund to each producer who made application for such refund pursuant to § 1036.120. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section times the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such month, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

* * * * *

(e) As soon as possible after April of each year, compute the rate of withholding by multiplying the simple average of the uniform prices for the 12-month period ending April 30 by 0.0075 and rounding to the nearest whole cent. This rate shall apply during the 12-month period beginning with July of the current year.

(f) As soon as possible after the rate of withholding is computed, notify in writing each producer currently on the market and any new producer that subsequently enters the market of the withholding rate. This notification shall be repeated annually thereafter only if there is any change in the rate from the previous period.

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BILLING CODE 3410-02-M

## FEDERAL TRADE COMMISSION

## 16 CFR Part 13

**[File No. 7910010]**

## Genstar Ltd.; Consent Agreement With Analysis To Aid Public Comment

*Correction*

In FR Doc. 80-12869, appearing on page 28158, in the issue of Monday, April 28, 1980, make the following correction:

On page 28161, third column, the first word in the sixth line reading "arrangements" should have read "agreements".

BILLING CODE 1505-01-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 716

### Surface Coal Mining and Reclamation; Anthracite Coal Mines

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, (OSM), Department of the Interior.

**ACTION:** Proposed rules.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement is revising one portion of its regulations which are concerned with environmental protection. This revision clarifies that anthracite operations in the Commonwealth of Pennsylvania must comply with the anthracite environmental protection provisions of Pennsylvania as they existed on August 3, 1977. This regulation would fully implement section 529(a) of the Surface Mining Control and Reclamation Act of 1977. A public hearing will be held if warranted.

**DATES:** Comments on the proposed rule must be submitted by close of business at the address listed below by June 9, 1980.

**ADDRESS:** Written comments and requests for public hearing must be mailed or hand-delivered to: Administrative Record Office, Room 152, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240; telephone: (202) 343-4728.

All comments will be available for inspection in the Administrative Record Office, Room 152, South Interior Building.

**FOR FURTHER INFORMATION CONTACT:**

(1) Lewis M. McNay, Chief, Branch of Applied Research, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Phone: (202) 343-8032.

(2) C. Y. Chen, Mining Engineer, Division of Technical Services, Office of Surface Mining Reclamation and Enforcement, South Building, 1951 Constitution Avenue, N.W., Room 119, Washington, D.C. 20240, Phone: (202) 343-5244.

**SUPPLEMENTARY INFORMATION:** On December 13, 1977, the Secretary promulgated initial program regulations as required by Section 501(a) of the Act, 30 U.S.C. 1251 (42 FR 62675 *et seq.*) to be codified in Title 30, Code of Federal Regulations, Chapter VII. Section 716.5 of those regulations implemented the special provisions for anthracite coal mines authorized by Congress in Section 529(a) of the Act. That section of the Act provides that the permittee of anthracite coal mines in States which regulate such activities shall be subject to the State environmental protection standards in effect on the date of the Act (August 3, 1977) rather than Sections 515 and 516 of the Act. The latter section of the Act sets forth environmental performance standards applicable to the surface effects of underground coal mining operations.

In promulgating 30 CFR 716.5 on December 13, 1977, the Secretary exempted anthracite mines in the States which regulate such activities from the general environmental performance standards in 30 CFR Part 715 but failed to exempt such mines from the underground mining general performance standards in 30 CFR Part 717. See 42 FR 62693. The proposed amendment to 30 CFR 716.5 (a) and (b) would add a reference to 30 CFR Part 717 to clarify that anthracite operations in the Commonwealth of Pennsylvania (the only State to which 30 CFR Part 716.5 now applies) must comply with the anthracite environmental protection provisions of Pennsylvania as they existed on August 3, 1977, instead of 30 CFR Parts 715 and 717. Those provisions of the Pennsylvania program currently apply to both underground and surface anthracite mines.

Upon initial reading of Section 529(a) of the Act, it would appear that Congress intended that the Secretary's anthracite regulations apply only to "anthracite coal *surface* mines" and not to underground anthracite mines. However, the reference to Section 516 which appears in the second sentence of Section 529(a) of the Act indicates a contrary intent.

The legislative history of the Act confirms that Congress intended that the Secretary adopt the State environmental protection provisions applicable to anthracite surface coal mines and the surface effects of anthracite underground mines. See H.R. Rep. No. 94-1445, 94th Cong., 2nd Sess. 125-126 (1976); H.R. Rept. No. 94-896, 94th Cong., 1st Sess. 207 (1975).

Accordingly, OSM proposes to amend 30 CFR 716.5(a), (b) and (c) to change "anthracite coal surface mines" to "anthracite surface coal mining and reclamation operations" in order to clarify that the Secretary adopts Pennsylvania's provisions both as to surface mines and the surface effects of underground mines. The term "surface coal mining and reclamation operations" is defined in 30 CFR 700.5 44 FR 15315, March 13, 1979.

Public Comment Period: The comment period on this proposed amendment will extend until June 9, 1980. All written comments must be received at OSM Headquarters, U.S. Department of the Interior, South Building, Room 152, 1951 Constitution Avenue, N.W., Washington, D.C. 20240 by 5 p.m., on that date. Comments received after that hour will not be considered or included in the administrative record for the final rulemaking. OSM cannot be sure that written comments received or delivered during the comment period to locations other than that specified above will be considered and included in the administrative record for the final rulemaking.

Public Meetings: Representatives of OSM will be available between May 9, 1980 and June 9, 1980 at the request of members of the public, State representatives and industry organizations to receive their advice and recommendations concerning this proposed amendment. Persons wishing to meet with representatives of OSM during this time period may request a meeting at the Washington Office. The person to contact to schedule or attend such a meeting is Lewis M. McNay (202) 343-8032.

OSM representatives will be available for these meetings between 9 a.m. and noon; and 1 and 4 p.m., local time, Monday through Friday excluding holidays at the OSM Washington Office. All such meetings will be open to the public. Notices of the time and location of meetings will be publicly posted in OSM's Administrative Record Room in advance. A written summary of the meetings will be a part of the adminstrative record and will be available to the public.

Statements of Significance and Environmental Impact: The Department of the Interior had determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. A copy of the Department's determination is available upon request to the Director of OSM. Section 501(a) of the Act exempts this action from the environmental impact statement requirement of the National Environmental Policy Act.

Dated: May 5, 1980.

Joan M. Davenport,

*Assistant Secretary, Energy and Minerals.*

## PART 716—SPECIAL PERFORMANCE STANDARDS

It is proposed that 30 CFR 716.5 be amended as follows:

**§ 716.5 Anthracite coal mines.**

(a) Permittees of anthracite surface coal mining and reclamation operations

in those States where the mines are regulated by State environmental protection standards shall be subject to the environmental protection standards of the State regulatory program in existence on August 3, 1977, instead of Part 715 and Part 717 of this chapter.

(b) The environmental protection provisions of Title 25, Rules and Regulations, Part 1, Department of Environmental Resources, Commonwealth of Pennsylvania, shall apply to reclamation of anthracite surface coal mining and reclamation operations in the Commonwealth of Pennsylvania instead of Part 715 and Part 717 of this chapter. In addition, the regulations of the Commonwealth of Pennsylvania pertaining to standards for air and water quality shall apply instead of the regulations of Part 715 and Part 717 of this chapter.

(c) If a State's regulatory program or regulations for anthracite suface coal mining and reclamation operations in force at the time of this Act are amended, the Secretary, upon receipt of a notice of amendment, shall issue additional regulations as necessary to meet the purposes of this Act.

[FR Doc. 80-14504 Filed 5-8-80; 8:45 am]
BILLING CODE 4310-05-M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### 36 CFR Part 223

### National Forest Timber Sales; Timber Export and Substitution Restrictions

**AGENCY:** Forest Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** Members of the Forest Industry urged that regulations on timber export and substitution restrictions be revised to preclude indirect substitution, i.e., the resale of National Forest timber to firms not eligible to bid directly for timber because of their export activities.

This proposal revises and clarifies restrictions on the export of timber from National Forest System lands and the use of such timber in substitution for private timber which is exported by the purchaser. New reporting requirements for purchasers who sell unprocessed timber are proposed.

This proposal would define substitution as an increase in export of timber from private land by more than 10 percent above historic levels in any year that a firm has National Forest timber under contract.

This proposal would revise the reporting requirements so that reports on the disposition of unprocessed timber will be required at 6-month intervals. This proposal also redefines unprocessed western red cedar to include lumber with wane.

**DATES:** Comments must be received no later than July 8, 1980.

**ADDRESSES:** Submit comments to: Chief R. Max Peterson (2400), Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013.

All written submissions made pursuant to this notice will be available for public inspection in the offices of the Timber Management Staff, South Agriculture Building, Room 3207, Washington, D.C., during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** George M. Leonard, Timber Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013, 202-447-4051.

**SUPPLEMENTARY:** On June 4, 1979, an Advance Notice of Proposed Rulemaking was published in the Federal Register announcing that revision of 36 CFR 223.10, Timber Export and Substitution Restrictions, was contemplated. On July 30, 1979, a Notice of Public Hearings announced hearings relating to the issue of indirect substitution in Portland, Oregon, and Seattle, Washington, in August. Responses to these Notices and at the public hearings were used to frame the revisions of the Secretary's Regulations set forth below.

Many respondents urged that the regulations be revised to preclude indirect substitution, i.e., the resale of National Forest timber to firms which were not eligible to bid directly for the timber because of their export activities. Reasons cited included adverse impacts of indirect substitution on domestic timber supplies and prices and upon local employment in the timber industry. Other respondents urged that indirect substitution be permitted to continue, citing benefits to foreign trade, forest resource values, and the balance of payments.

Based on a review of the statutory language, it was concluded that the phrase "substitution for private timber exported by the purchaser" in annual Appropriations Acts for Interior and Related Agencies applies to the purchaser of the National Forest timber and does not authorize limitations on subsequent buyers. Further, based on the available data, it was determined that the volume of National Forest timber acquired by firms which are not eligible to purchase timber directly is relatively small. The record also indicates that if forced to make a choice, private landowners would discontinue domestic production rather than forego export markets. In view of these conclusions, and the difficulty of enforcing a restriction on indirect substitution, the proposal addresses only direct substitution by the purchaser of National Forest timber.

The proposal makes an important change in the definition of substitution. The present regulation defines substitution as an increase in the level of exports from private land by more than 10 percent above historic levels in any year that the purchase of National Forest timber continues. The proposal would define substitution as an increase in export from private land by more than 10 percent above historic levels in any year that a firm has National Forest timber under contract.

Currently, purchasers of National Forest timber who sell unprocessed timber are required to report on the disposition of such timber at the time the sale is terminated. It is proposed to revise the reporting requirements to that reports on the disposition of unprocessed timber will be required at 6-month intervals. This will permit a periodic compilation of reports which will provide data on both the magnitude and trends in sales of unprocessed logs on a current basis.

The log export regulations set forth below are shown in three sections of 36 CFR 223 to follow the organization of this part adopted in 1977—§ 223.3—Contract Conditions, § 223.5—Advertisement and Bids, and § 223.10—Export and Substitution Restrictions.

This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, "Improving Government Regulations," and has been classified as "significant." A Draft Impact Analysis has been prepared and is available from the Forest Service, Timber Management Staff, Room 3207, South Agriculture Building, Washington, D.C.

M. Rupert Cutler,

*Assistant Secretary for Natural Resources & Environment.*

May 5, 1980.

## PART 223—SALE AND DISPOSAL OF TIMBER

In light of the foregoing, it is proposed to amend 36 CFR 223 as shown below:

1. It is proposed to add the following paragraph to 36 CFR 223.3:

**§ 223.3 Contract conditions.**

* * * * *

(p) Contracts for the sale of unprocessed timber from National Forest System lands located west of the 100th Meridian in the contiguous 48 States and Alaska shall include

provisions implementing 36 CFR 223.10 et seq. Such contracts shall also require purchasers to (1) submit a certified report, at 6-month intervals, on the disposition of any unprocessed timber from the sale which is sold, exchanged, or otherwise disposed of to another party, (2) submit a certified report, at 6-month intervals, on the sale of any timber from private lands owned or controlled by the purchaser which is exported or sold for export, and (3) maintain records of all such transactions involving unprocessed timber and to make such records available for inspection and verification by the Forest Service for up to 3 years after the sale is terminated.

(Sec. 14, Pub. L. 94–588, 90 Stat. 2958, as amended; 16 U.S.C. 472a)

2. It is proposed to add the following paragraph to 36 CFR 223.5— Advertisement and bids.

**§ 223.5 Advertisement and bids.**

* * * * *

(i) In order to have a bid considered for a sale of timber from National Forest System lands west of the 100th Meridian in the 48 contiguous States, a bidder must:

(1) Certify that purchase of the timber does not constitute substitution as defined in 36 CFR 223.10.

(2) Agree to furnish to the Forest Service, prior to beginning operations under the contract: The names and addresses of processing plants or other locations to which the timber is expected to be delivered; the names and advertised volumes of timber sales purchased by the purchaser for delivery to each such location in calendar years 1971, 1972, and 1973; and the volumes of unprocessed timber from private lands tributary to each location listed exported by the purchaser in calendar years 1971, 1972, and 1973 and;

(3) Agree to furnish the information required by item (2) above prior to hauling to any location not previously identified.

(Sec. 14, Pub. L. 94–588, 90 Stat. 2958, as amended, 16 U.S.C. 472a)

3. It is proposed to revise 36 CFR 223.10 to read as follows:

**§ 223.10 Timber export and substitution restrictions.**

(a) The following definitions apply to the provisions of this section:

(1) Export means either direct or indirect export to a foreign country and is deemed to occur on the date that a party enters into a contract or other binding transaction for the export of unprocessed timber or when unprocessed timber is no longer under the control of the original owner or purchaser and is found in an export yard or pond bundled or otherwise prepared for shipment or is found aboard an ocean-going vessel. An export yard or pond is an area under the control of an exporter where sorting and/or bundling of logs for shipment outside the United States is accomplished. Unprocessed timber whether from National Forest System lands or from private lands is exported directly when exported by the National Forest timber purchaser, his subsidiary, subcontractor, parent company or any other affiliate. Business entities are considered affiliates when one controls or has the power to control the other or when both are controlled directly or indirectly by a third entity. Timber is exported indirectly when export occurs as a result of a sale to another person or as a consequence of any subsequent transaction.

(2) Historic level means the average annual volume of unprocessed timber purchased or exported in calendar years 1971, 1972, and 1973.

(3) Private lands mean lands held or owned by a private person (individual, partnership, corporation, association, or other legal entity). Nonprivate lands include, but are not limited to, lands held or owned by the United States, a State or political subdivision thereof, or any other public agency, or lands held in trust by the United States for Indians.

(4) Substitution means the purchase of unprocessed timber from National Forest System lands to be used as replacement for unprocessed timber from private lands exported by the purchaser. Substitution is deemed to occur when (i) a firm or individual increases its purchase of National Forest timber in any calendar year more than 10 percent above its historic level and in the same calendar year exports unprocessed timber from private land in the tributary area; or (ii) a firm or individual increases exports of unprocessed timber from private land in any tributary area more than 10 percent above its historic level in any calendar year while it has National Forest timber under contract.

(5) Tributary area means the area from which unprocessed timber from National Forest land is delivered to a specific processing facility or complex. A tributary area is expanded when National Forest timber outside an established area is hauled to the processing facility.

(6) Unprocessed timber, except western red cedar in the contiguous 48 States, means trees or portions of trees having a net scale content not less than 33⅓ percent of the gross volume, or the minimum product specification set forth in the timber sale contract, in material meeting the peeler and sawmill log grade requirements published in the January 1, 1978—Official Log Scaling and Grading Rules used by Log Scaling and Grading Bureaus on the West Coast; cants to be subsequently remanufactured exceeding 8¾ inches in thickness; cants of any thickness reassembled into logs; and split or round bolts, except for Aspen, or other roundwood not processed to standards and specifications suitable for end-product use. Unprocessed timber shall not mean pulp (utility) grade logs and Douglas-fir special cull logs or timber processed into the following:

(i) Lumber and construction timbers, regardless of size, sawn on four sides;

(ii) Chips, pulp and pulp products;

(iii) Green veneer and plywood;

(iv) Poles and piling cut or treated for use as such;

(v) Cants cut for remanufacture, 8¾ inches in thickness or less;

(vi) Aspen bolts, not exceeding 4 feet in length.

(7) Unprocessed western red cedar timber in the contiguous 48 States means trees or portions of trees of that species which have not been processed into (i) lumber without wane; (ii) chips, pulp and pulp products; (iii) veneer and plywood; (iv) poles, posts, or piling cut or treated with preservatives for use as such and not intended to be further processed; or (v) shakes and shingles.

(b) Unless restricted as provided in this section or unless it is determined by the Secretary of Agriculture that the supply of timber necessary for consumption by local users is endangered, timber lawfully cut on any National Forest may be exported from the state where grown to any other state for processing. (44 Stat. 241, 16 U.S.C. 616.)

(c) Unprocessed timber from National Forest lands west of the 100th Meridian in the contiguous 48 States may not (1) be exported from the United States; (2) be used in substitution for timber from private lands which is exported by the purchaser, or (3) be sold, traded, exchanged, or otherwise given to any firm or individual who does not agree to manufacture it to meet the processing requirements of this section and/or require such a processing agreement in any subsequent resale or other transaction. This limitation on export or substitution does not apply to species of timber previously found to be surplus to domestic needs or to any additional species, grades, or quantities of timber which may be found by the Secretary to be surplus to domestic needs.

(d) Unprocessed timber from National Forest System lands in Alaska may not

be exported from the United States or shipped to other states without prior approval of the Regional Forester. This requirement is determined to be necessary in order to ensure the development and continued existence of adequate wood processing capacity in that state for the sustained utilization of timber from the National Forests which are geographically isolated from other processing facilities. In determining whether consent will be given to the export of timber, consideration will be given to, among other things, whether such export will (1) permit more complete utilization of material on areas being logged primarily for products for local manufacture, (2) prevent loss or serious deterioration of logs unsaleable locally because of an unforeseen loss of market, (3) permit the salvage of timber damaged by wind, insects, fire or other catastrophe, (4) bring into use a minor species of little importance to local industrial development, or (5) provide material regained to meet urgent and unusual needs of the Nation.

(e) Prior to a determination by the Secretary of Agriculture that a species, grade, or quantity of unprocessed timber is surplus to domestic needs, a public hearing shall be held to seek advice and counsel as to the needs of domestic users and processers. Notice of any such determination shall be published in the Federal Register. Any determination of surplus timber may be withdrawn by the Secretary following a public notice to that effect which permits interested parties to comment. Public hearings will be conducted in accordance with the following procedures:

(1) Notice will be published in the Federal Register and in a newspaper of general circulation within the area affected by the proposed determination at least 15 days prior to the hearing and parties known to be interested will be notified directly.

(2) The time, place, and conduct of the hearing will be coordinated with the Department of the Interior and shall be at a convenient location within the area affected.

(3) The hearing record shall remain open for at least 10 calendar days following the hearing for receipt of additional written statements.

(f) For false certification of documents relating to export or substitution and/or other violations of export and substitution requirements by the purchaser of timber from National Forest System lands or by any subsequent buyer or recipient, the Forest Service may cancel the subject contract, debar the involved party or parties from bidding on National Forest timber or initiate other action as may be provided by law or regulation.

(Sec. 14, Pub. L. 94-588, 90 Stat. 2958, as amended, 16 U.S.C. 472a; Sec. 301, Pub. L. 96-126, 93 Stat. 979; Sec. 1, 30 Stat. 35, as amended, 16 U.S.C. 551)

[FR Doc. 80-14391 Filed 5-8-80; 8:45 am]
BILLING CODE 3410-11-M

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

[FRL 1489-6]

## Approval and Promulgation of Implementation Plans; Ohio

**AGENCY:** U.S. Environmental Protection Agency

**ACTION:** Proposed rule.

**SUMMARY:** USEPA proposes to approve a revision to the Federally promulgated Ohio State Implementation Plan for sulfur dioxide as it applies to the Coulton Chemical Corporation sulfuric acid plant in Lucas County, Ohio. The proposed approval is based upon the results of a study that utilized the USEPA RAM and CDM reference models. This study demonstrates that the revised emission limitation will not jeopardize the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS).

**DATE:** Comments must be received on or before June 11, 1980. Requests for a public hearing on this revision must be received no later than May 27, 1980.

**ADDRESSES:** Comments and requests for a hearing should be submitted to Gary Gulezian, Chief, Regulatory Analysis Section, USEPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. The docket (#5A-80-6) for the revision is available for inspection and copying during normal business hours at the above address and at the Central Docket Section, Room 2903B, USEPA, 401 M Street, SW, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Debra Marcantonio, Air Programs Branch, USEPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604; 312-886-6039.

**SUPPLEMENTARY INFORMATION:** On May 31, 1977 (42 FR 27588) the USEPA promulgated final regulations establishing a State Implementation Plan (SIP) for the control of sulfur dioxide (SO2) in Ohio for the Coulton Chemical Corporation in Lucas County, Ohio. This proposed rule is an amendment to the SO2 SIP.

On October 8, 1979, the Coulton Chemical Corporation requested a revision to the Ohio SIP for SO2 for their sulfuric acid plant in Lucas County, Ohio. This SIP revision proposes an emission limitation of 6.50 pounds of sulfur dioxide per ton of sulfuric acid produced for the sulfuric acid production units and a limit of 0.00 pounds of sulfur dioxide per million BTU actual heat input for the two reheaters.

Coulton Chemical Corporation conducted a dispersion modeling analysis to determine the impact of this revised emission limitation. This study utilized the USEPA RAM reference model with 1964 hourly sequential meteorological data from Toledo/Flint to address short term impacts and the USEPA CDM reference model with 1970-1974 STAR meteorological data from Toledo to address annual average impacts. In the short term analysis, the critical days used in previous USEPA modeling for the Coulton plant plus additional critical days specific for this revision. It should be noted that maximum short term ground levels concentrations had to be considered in evaluating the revised limits because only one year of meteorological data was modeled.

The maximum total annual average SO2 concentration was 25 ug/m3 (at .14km southeast of the Coulton plant), of which Coulton contributed 17 ug/m3. The maximum total 24 hour SO2 concentration was 320.3 ug/m3 (at .8km south of Coulton) of which Coulton contributed 8.3 ug/m3. The maximum 24 hour contribution of the Coulton plant an any receptor was 13.4 ug/m3. The maximum 3 hour SO2 concentration was 948 ug/m3 to which the Coulton plant had an insignificant contribution.

These results demonstrate that the proposed SO2 emission limitation of 6.50 pounds SO2 per ton of sulfuric acid produced will not cause or contribute to a violation of the SO2 National Ambient Air Quality Standards.

Final promulgation of this revision will follow an analysis of all comments submitted and will depend on its consistency with Section 110 of the Clean Air Act.

Note.—The USEPA has determined that this document is not a significant regulation and does not require preparation of a regulatory analysis under Executive Order 12044.

(Sec. 110, Clean Air Act, as amended (42 U.S.C. 7410))

Dated: April 30, 1980.

John McGuire,

*Regional Administrator.*

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended

by revising § 52.1881(b)(39)(vi) (A) and (B):

### Subpart KK—Ohio

1. Section 52.1881 is amended by revising § 52.1881(b)(40)(iv) as follows:

**§ 52.1881 Control strategy: sulfur oxides (sulfur dioxide)**

* * * * *

(b) Regulations for the control of sulfur dioxide in the State of Ohio

* * * * *

(39) In Lucas County * * *

* * * * *

(vi) The Coulton Chemical Corporation * * *

(A) 0.00 pounds of sulfur dioxide per million BTU actual heat input for fossil fuel fired steam generating units or process heaters.

(B) 6.50 pounds of sulfur dioxide per ton of 100 percent sulfuric acid produced for sulfuric acid production units.

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[FR Doc. 80-14399 Filed 5-8-80; 8:45 am]
BILLING CODE 6560-01-M

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### 40 CFR Part 52

[FRL 1489-3]

## Implemental Plan Revisions for Nonattainment Areas in the State of California; Receipt/Availability

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

**ACTION:** Notice of receipt and availability.

**SUMMARY:** The purpose of this notice is to announce receipt of revisions to the California State Implementation Plan (SIP) and to invite public comment. The Nonattainment Area Plans for the Southeast Desert Air Basin portion of Los Angeles, Riverside and San Bernardino Counties have been submitted to EPA by the California Air Resources Board in accordance with the requirements of Part D of the Clean Air Act, as amended in 1977, "Plan Requirements for Nonattainment Areas," and are available for public inspection at the addresses below. A notice of proposed rulemaking discussing the revisions will be published in the Federal Register at a later date. The period for submittal of public comments will end not less than 60 days from this date and not less than 30 days from the published date of EPA's notice of proposed rulemaking.

**ADDRESSES:** Copies of the SIP revisions are available for inspection during normal business hours at the following locations:

Air and Hazardous Materials Division (A-4-2), Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105.

Public Information Reference Unit, Environmental Protection Agency, 401 "M" Street, S.E., Room 2404, Washington, D.C. 20460.

California Air Resources Board, 1102 "Q" Street, P.O. Box 2815, Sacramento, CA 95814.

In addition, copies of the applicable SIP revision are available for public inspection during normal business hours at each of the following locations:

South Coast Air Quality Management District, 9420 Telstar Ave., El Monte, CA 91731.

Eastern (Riverside and San Bernardino County) Zone, 22850 Cooley Drive, Colton, CA 92324.

**INQUIRIES AND COMMENTS SHOULD BE ADDRESSED TO:** Douglas Grano, Chief, Regulatory Section, Air Technical Branch, Air and Hazardous Materials Division, Environmental Protection Agency, Region IX, San Francisco, CA 94105, (415) 556-2938.

**SUPPLEMENTARY INFORMATION:** New provisions of the Clean Air Act, amended in August 1977, Pub. L. 95-95, require states to revise their SIP's for all areas that do not attain the National Ambient Air Quality Standards (NAAQS). The amendments required each state to submit to the Administrator a list of the NAAQS attainment status for all areas within the state. The Administrator promulgated these lists, with certain modifications, on March 3, 1978 (43 FR 8962). State and local governments were required by January 1, 1979 to develop, adopt, and submit to EPA revisions to their SIP's which provide for attainment of the NAAQS as expeditiously as practicable.

A portion of the Southeast Desert Air Basin (SEDAB) is designated as a nonattainment area for ozone and total suspended particulates. The nonattainment designation includes all of the Southeast Desert Air Basin portion of Los Angeles County and the Southeast Desert Air Quality Maintenance Area (see 40 CFR 52.267(a)(9) for a detailed description) portions of both San Bernardino and Riverside Counties lying in the SEDAB. In addition, Imperial County is designated as a nonattainment area for ozone.

The Governor's designee submitted to EPA the nonattainment area plans for ozone for the Southeast Desert Air Basin portions of Los Angeles, Riverside and San Bernardino Counties on February 22, 1980.

The Imperial County portion of the NAP for ozone was submitted separately on October 11, 1979, and the associated Notice of Receipt and Availability appears in the December 4, 1979 Federal Register.

EPA is reviewing the February 22 revisions for conformance with the requirements of Part D of the Clean Air Act, as amended. Following EPA's review of the revisions, a notice of proposed rulemaking will be published in the Federal Register and will provide a description of the proposed SIP revisions, summarize the Part D requirements, identify the major issues in the proposed revisions, and suggest corrections. An additional 30 days will be provided for public comments at that time.

The intent of this notice is to notify the public that the revisions have been formally submitted to EPA for approval, that they are available for public inspection, and that interested persons are encouraged to submit written comments.

(Secs. 110, 129, 171 to 178 and 301(a), Clean Air Act, as amended (42 U.S.C. 7410, 7429, 7501 to 7508, and 7601(a)))

Dated: May 1, 1980.

Sheila M. Prindiville,

*Acting Regional Administrator.*

[FR Doc. 80-14387 Filed 5-8-80; 8:45 am]
BILLING CODE 6560-01-M

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## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Health Care Financing Administration

### 42 CFR Part 405

## Assistance Agreements to End Stage Renal Disease (ESRD) Network Coordinating Councils; Decision To Develop Regulations

**AGENCY:** Health Care Financing Administration (HCFA), DHEW.

**ACTION:** Notice of decision to develop regulations.

**SUMMARY:** The proposed regulation will:

(1) Establish procedures for the Secretary or a designee to enter into assistance agreements (grants or cooperative agreements) with the ESRD Network Coordinating Councils for periods of 9 to 12 months;

(2) Establish procedures for Councils to apply for funds; and

(3) Establish procedures for reviewing assistance agreements.

The proposed regulation will improve program administration, oversight, and direction by improving the accountability of the ESRD Network

Coordinating Councils and standardizing the reimbursement, performance and evaluation procedures.

The Department has classified these regulations as policy significant. A regulatory analysis is not planned.

**FOR FURTHER INFORMATION CONTACT:** Mr. Spencer Schron, (301) 594-0918, Health Care Financing Administration, Office of Special Programs, Dogwood West Building, 1848 Gwynn Oak Avenue, Baltimore, Maryland 21207.

Dated: April 25, 1980.

Leonard D. Schaeffer,

*Administrator, Health Care Financing Administration.*

[FR Doc. 80-14353 Filed 5-8-80; 8:45 am]

BILLING CODE 4110-35-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[BC Docket No. 80-195; RM-3185 and RM-3441]**

## FM Broadcast Stations in Santa Fe, N. Mex.; Proposed Changes in Table of Assignments

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Action taken herein proposes the assignment of two Class C FM channels to Santa Fe, New Mexico, as its third and fourth FM assignments, in response to petitions filed by Robert C. and Signe M. Burris, and by Federick Daniel Marcy.

**DATES:** Comments must be filed on or before June 24, 1980, and reply comments must be filed on or before July 14, 1980.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Myra G. Kovey, Broadcast Bureau, (202) 632-9660.

**SUPPLEMENTARY INFORMATION:** In the matter of amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations. (Santa Fe, New Mexico), BC Docket No. 80-195, RM-3185, RM-3441.

Adopted: April 25, 1980.

Released: May 1, 1980.

1. *Petitioners, Proposals, Comments.* (a) Two petitions for rule making have been filed by Robert C. Burris and Signe M. Burris ("Burris") and by Federick Daniel Marcy ("Marcy"), proposing the assignment of FM Channels 281 and 286,[1] respectively, to Santa Fe, New Mexico.[2]

(b) Both channel assignments can be made in conformity with the minimum distance separation requirements.

(c) Both petitioners state they will apply for their requested channel, if assigned.

2. *Community Data*—(a) *Location.* Santa Fe, capital of the State of New Mexico and seat of Santa Fe County, is located 96 kilometers (60 miles) northeast of Albuquerque.

(b) *Population.* Santa Fe—46,200 (1970 U.S. Census); Santa Fe County—54,774.

(c) Local Aural Broadcast Service: Three AM stations—two fulltime and one daytime-only—and two FM stations.

3. *Economic Considerations.* It appears from petitioners' submissions that Santa Fe is a major cultural and tourist center as well as the seat of the State and County government.

4. *Other Considerations.* (a) With respect to preclusion, twenty-five communities of greater than 1,000 population would sustain preclusion as a result of a Channel 281 assignment. Of these, nine have neither AM stations nor FM assignments and five of the nine—Questa, Springer and Fort Sumner, New Mexico, and Antonito and Del Norte, Colorado—have not been shown to have other channels available. As for the proposed Channel 286 assignment, Marcy's engineering statement shows only one precluded community with a population of 2,500 or more which is without local service, White Rock, New Mexico. The availability of alternative channels for assignment to these affected communities should be discussed in comments. Turning to the question of service to unserved or underserved areas, neither petitioner has established such service in its initial filing.

(b) Under current guidelines, cities like Santa Fe with populations under 50,000 are entitled to two FM channels. Whether circumstances here justify assignment of one or both of the proposed additional channels—giving the city a total of three or four FM assignments—is a question which should be addressed in petitioners' comments. In particular, the availability of other channels to precluded communities is an important consideration in this regard.

5. In view of the foregoing, we find it in the public interest to explore the possible assignment of Channels 281 and 286 to Santa Fe, New Mexico, in a rule making proceeding. Accordingly, we propose the following revisions in our FM Table of Assignments (§ 73.202(b) of the rules) with respect to Santa Fe, New Mexico:

| City | Channel number | |
|---|---|---|
| | Present | Proposed |
| Santa Fe, New Mexico | 238, 247 | 238, 247, 281, 286 |

6. Authority to institute rulemaking proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before June 24, 1980, and reply comments on or before July 14, 1980.

8. For further information concerning this proceeding, contact Myra G. Kovey, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until it is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

*Chief, Policy and Rules Division, Broadcast Bureau.*

### Appendix

[BC Docket No. 80-195; RM-3185 and RM-3441]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.2020(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a

[1] A counterproposal to assign Channel 286 to Pecos, New Mexico (RM-3445) has been modified to a request for Channel 290 to avoid any conflict.

[2] Public Notice of the Burris petition was given on August 29, 1978, Report No. 1137; Public Notice of the Marcy filing was given on August 17, 1979, Report No. 1188.

proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* To which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 80-14408 Filed 5-8-80; 8:45 am]
BILLING CODE 6712-01-M

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## 47 CFR Part 73

[BC Docket No. 80-196; Rm-3445]

## FM Broadcast Station in Pecos, N. Mex.; Proposed Changes in Table of Assignments

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rule making.

**SUMMARY:** Action taken herein proposes the assignment of a Class C FM channel to Pecos, New Mexico, as its first local aural service, in response to a petition filed by Siesta Communications Corporation.

**DATES:** Comments must be filed on or before June 24, 1980, and reply comments must be filed on or before July 14, 1980.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Myra G. Kovey, Broadcast Bureau, (202) 632-9660.

**SUPPLEMENTARY INFORMATION:** In the matter of amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations, (Pecos, New Mexico), BC Docket No. 80-196, RM-3445.

Adopted: April 25, 1980.

Released: May 1, 1980.

1. *Petitioner, Proposal, Comments.* (a) A petition has been filed by Siesta Communications Corporation ("Siesta") seeking assignment of Channel 290 [1] to Pecos, New Mexico.[2] An opposition to this petition was filed by Frederick Daniel Marcy ("Marcy"), petitioner for an FM channel assignment to Santa Fe, New Mexico, and Siesta has responded thereto.[3]

(b) The channel assignment can be made in conformity with the minimum distance separation requirements.

(c) Petitioner states it will apply for the channel, if assigned.

2. *Community Data*—(a) *Location.* Pecos is located in San Miguel County, approximately 26 kilometers (16 miles) southeast of Santa Fe.

(b) *Population.* Pecos—598 (1970 U.S. Census); San Miguel County—21,951.

(c) *Local Aural Broadcast Service.* None.

3. *Other Considerations.* (a) Staff study indicates that the assignment of Channel 290 to Pecos would cause preclusion to thirty-four communities of over 1,000 population, eleven of which have no FM assignments. These eleven are as follows: *Colorado:* Antonito, Del Norte and Pagosa Springs; *New Mexico:* Santo Domingo Pueblo, Jemez Pueblo, San Felipe Pueblo, Mountainair, Questa, Bloomfield, Fort Sumner, and Springer. Siesta should indicate whether alternative channels are available for assignment to these communities.

(b) In his opposition to petition for rule making, Marcy maintains that Pecos is too small a community to support a Class C assignment and that such an assignment would become, in reality, a Santa Fe station. We find much merit in this argument, particularly in light of Siesta's admission that Pecos—without Santa Fe—cannot supply sufficient revenue to support its own facility.[4] Rather than dismiss the Siesta request at this early stage, though, we will afford petitioner a further opportunity to address the question of the need for a wide coverage area channel for Pecos in its comments to this *Notice.*

4. In view of the foregoing, we find it in the public interest to explore the possible assignment of Channel 290 to Pecos, New Mexico. Accordingly, we propose the following revision in our FM Table of Assignments (§ 73.202(b) of the rules) with respect to Pecos as follows:

| City | Channel No. | |
|---|---|---|
| | Present | Proposed |
| Pecos, New Mexico | ——— | 290 |

5. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before June 24, 1980, and reply comments on or before July 14, 1980.

7. For further information concerning this proceeding, contact Myra G. Kovey, Broadcast Bureau, (202) 632-9660. However, members of the public should note that from the time a notice of

[1] Channel 290 has been substituted for Siesta's requested Channel 286 to avoid conflict with a pending request to assign Channel 286 to Santa Fe, New Mexico (RM-3441).

[2] Public Notice of the petition was given on August 17, 1979, Report No. 1188.

[3] While Siesta's response to the opposition was untimely, we see no prejudice to anyone concerned in its acceptance.

[4] As Siesta has on this basis specifically disclaimed any interest in a Class A assignment, we will not propose one as an alternative to a Class C station.

proposed rule making is issued until it is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

*Chief, Policy and Rules Division, Broadcast Bureau.*

Appendix

[BC Docket No. 80-196 RM-3445]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, and original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 80-14404 Filed 5-8-80; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 80-91; RM-3296 and RM-3415]

## FM Broadcast Stations in Carson City, Gardnerville-Minden, and Sparks, Nev.; Order Extending Time for Filing Comments

**AGENCY:** Federal Communications Commission.

**ACTION:** Order.

**SUMMARY:** Action taken herein extends the time for filing comments in a proceeding concerning the proposed assignment of FM channels in Carson City, Gardnerville-Minden and Sparks, Nevada. Petitioner, Emerald Broadcasting, Inc., states that the additional time is needed to file comments.

**DATE:** Comments must be filed on or before May 2, 1980.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

**SUPPLEMENTARY INFORMATION:** In the matter of amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations. (Carson City, Gardnerville-Minden and Sparks, Nevada), BC Docket No. 80-91, RM-3296, RM-3415,

Adopted: April 25, 1980.

Released: May 1, 1980.

1. On February 26, 1980, the Commission adopted a *Notice of Proposed Rule Making,* 45 FR 16217, concerning the above-entitled proceeding. The dates for filing comments and reply comments are April 28, and May 19, 1980, respectively.

2. On April 24, 1980, counsel for Emerald Broadcasting, Inc., filed a request seeking an extension of time for filing comments to and including May 2, 1980. Counsel states that an engineering study in support of Emerald's comments has been completed in a timely manner but substantial delays in the mail between the West Coast and Washington have made it necessary to request the additional 4-day extension. Counsel states that three of the four other parties in the proceeding have indicated no objection to the additional time, and the fourth party has already filed its comments in this proceeding.

3. Section 1.46 of the Commission's Rules states that extension requests must be filed seven days in advance of the deadline date. Although this request was not received within the required time period, we believe good cause has been shown in this instance for the late filing, so we are granting the request.

4. Accordingly, it is ordered, that the date for filing comments in BC Docket No. 80-91 is extended to and including May 2, 1980.

5. This action is taken pursuant to authority found in Sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

Federal Communications Commission.

Henry L. Baumann,

*Chief, Policy and Rules Division, Broadcast Bureau.*

[FR Doc. 80-14407 Filed 5-8-80; 8:45 am]

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## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1262

[No. 37383]

### Revision of CFR Part 1262 To Eliminate Filing of BV Form 588 by Railroad Companies

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is proposing to eliminate the requirement that railroads file BV Form 588. BV Form 588 reports, by valuation section, additions and retirements of railroad property used in transportation service. We believe that the information which we use from the form can be obtained from other sources, thus making the filing of the form unnecessary.

**DATE:** Comments should be filed on or before June 23, 1980.

**ADDRESS:** Send comments with 10 copies, if possible to:

Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

**FOR FURTHER INFORMATION CONTACT:** Bryan Brown, Jr., Chief, Section of Accounting and Reporting, (202) 275–7448.

**SUPPLEMENTARY INFORMATION:** Section 10784 of the Interstate Commerce Act (49 U.S.C. § 10784) requires the Commission to keep informed of current changes in costs and valuations of railroad property. This responsibility has been carried out by having railroads file an annual report, BV Form 588, with the Commission. BV Form 588 reports, by valuation section, additions and retirements of railroad property used in transportation service.

As part of our continuing effort to reduce the reporting burden on carriers subject to our regulation, we have reviewed BV Form 588 and have concluded that the information contained in the form can be obtained from other sources. We believe that the property information summarized in Annual Report Forms R–1, R–2, and R–3 provides the Commission with sufficient information to meet its statutory responsibilities. Furthermore, we do not propose to change the requirement that carriers maintain their property records by primary account and valuation section, and the Commission will be able to inspect these records when needed.

Therefore, we propose to eliminate the requirement in 49 CFR 1262 that carriers file BV Form 588, and we ask the public to comment on this proposal.

This decision does not significantly affect the quality of the human environment or the conservation of energy resources.

This action is proposed under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: April 29, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum and Alexis.

Agatha L. Mergenovich,

*Secretary.*

Part 1262, as revised, would read as set forth below:

## PART 1262—UNIFORM SYSTEM OF RECORDS OF PROPERTY CHANGES FOR RAILROAD COMPANIES

### Regulations and Instructions

1262.1 Uniform system for recording changes in physical property.
1262.2 General.
1262.3 Records to be established.
1262.4 Classification of property changes.
1262.5 Recording of quantities.
1262.6 Recording changes participated in by other carriers.
1262.7 Data required for newly built roads, branch lines constructed, or extensions of existing lines.
1262.8 Aids, gifts, grants and donations.
1262.9 Property acquired through purchase, merger or consolidation.
1262.10 Recording cost of property sold and cost of property acquired.
1262.11 Units, quantities and descriptions.
1262.12 Reports to be attested.
1262.13 Authorities for expenditures.
1262.14 Detailed estimate sheet.
1262.15 Register of authorities for expenditures.
1262.16 Completion reports.
1262.17 Record of property changes.
1262.18 Statement of property units added and retired and their costs.

### Forms of Records

1262.51 Form of records.
1262.52 Property added.
1262.53 Property retired.
1262.54 Retirement quantities.
1262.55 Land for transportation purposes.
1262.56 Property transferred from carrier use to noncarrier classification and vice versa.
1262.57 Jointly owned or jointly constructed property.
1262.58 Changes made in or to property of other common carriers.
1262.59 Changes in use of property.
1262.60 Roads acquired through purchase, merger, consolidation, or reorganization.
1262.61 Reconstruction of road acquired through purchase, merger, consolidation, or reorganization.
1262.62 Miscellaneous physical property.
1262.63 Division of road accounts.
1262.64 Mass property.
1262.65 Structural property.
1262.66 Manner of recording changes in structural property.
1262.67 Structural property additions and betterments.
1262.68 Structural property; major renewals.
1262.69 Valuation sections.
1262.70 Mileage changes
1262.71 Modifications of items and units.
1262.72 Inventory groups.
1262.73 Equipment acquired.

Authority: Subtitle IV of Title 49 U.S.C. Section 10784.

### Regulations and Instructions

#### § 1261.1 Uniform system for recording changes in physical property.

(a) This part contains the regulations and instructions governing the recording of changes in physical property of every railroad. Each carrier and each receiver or operating trustee of any such carrier is required to keep its records and furnish the Commission reports about changes in physical property upon request.

(b) Each carrier whose property has been inventoried as of June 30, 1918, or as of June 30 of any previous year, shall make up a record of property changes occurring between the date of inventory and December 31, 1918; the record to be made separately for each year ending June 30, up to and including the year ending June 30, 1917. The period from June 30, 1917, to December 31, 1917, should be shown separately. The period from December 31, 1917, to December 31, 1918, should be for the year for all carriers affected, except carriers whose property has been inventoried as of June 30, 1918. The last-named carriers shall prepare the record for the 6 months ending December 31, 1918. Thereafter the record shall be made up for the year ending December 31.

#### § 1262.2 General.

So that the Commission may be able to comply with the Interstate Commerce Act, Section 10784, the carriers shall establish a uniform records system. In these records carriers shall record the extensions, improvements, or other changes that are made in their physical property after the date fixed by the Commission for the inventory of that property. For convenience, such changes in physical property are referred to as property changes. Carriers shall be ready to prepare from these records and file with the Commission certain reports upon request.

#### § 1262.3 Records to be established.

(a) The records which compose the system that shall be established are the following:

(1) Authority for Expenditure.

(2) Detailed Estimate Sheet to supplement the Authority for Expenditures.
(3) Register of Authorities for Expenditures.
(4) Roadway Completion Report.
(5) Continuation Sheet to supplement the Roadway Completion Report.
(6) Record of Property Changes.
(b) Records mention in paragraph (a) of this section are the minimum required for the Commission's purposes. Any of these records may vary as to the order and arrangement of the data required to be shown, and additional data may be shown at the option of the carrier.

**§ 1262.4 Classification of property changes.**

The property changes recorded in the records here prescribed shall be classified in conformity with the accounting regulations prescribed by the Commission, Part 1201 of this chapter.

**§ 1262.5 Recording of quantities.**

The actual quantities of material and property installed during the course of a property change shall be recorded in the prescribed records. If payments to contractors or others in settlement of losses or claims have been based upon other than the actual quantities installed, the amounts paid shall be entered in the appropriate accounts in the records, but the constructive quantities upon which such payment have been computed shall be excluded from these records.

**§ 1262.6 Recording changes participated in by other carriers.**

Where one carrier assumes the cost of a change upon another carriers' property, or where one or more carriers participate with the owner in the cost of a change in the latter's property, the full detail of the property units involved and their costs shall be recorded in but one set of records and they shall be the records of the carrier to which the property in which the change has been made was originally inventoried by the Commission.

**§ 1262.7 Data required for newly built roads, branch lines constructed, or extensions of existing lines.**

(a) Carriers shall maintain such maps, profiles, plans, diagrams, or other data for newly built roads as will show the nature and extent of their property and its location. Upon request of the Commission, such roads shall file an inventory of their property. The valuation section references to be given such newly built roads shall be assigned under advice of the Commission.
(b) Carriers shall also maintain maps, profiles, plans, diagrams, or other data relating to branch lines built, or to extensions of existing lines. Valuation section references which shall be a continuation in consecutive numerical order of those previously assigned to the other owned property within the State, shall be given to such branch lines and extensions.
(c) When so directed, carriers shall file with the Commission such maps, profiles, plans, diagrams, or other data relating to betterments, improvements, conversions, or retirements of property, as will show the general character and extent of those changes. (For map specifications, see Part 1263 of this chapter.)

**§ 1262.8 Aids, gifts, grants, and donations.**

The nature, amount, extent, and value of any aid, gift, grant of right of way or donation made by the Government of the United States or by any State, county or municipal government or by individuals, associations, or corporations to any common carrier in connection with property changes in its property shall be recorded in the records of the carrier that was the recipient of such aid.

**§ 1262.9 Property acquired through purchase, merger or consolidation.**

(a) If a common carrier, by purchase or through merger or consolidation, acquires part or all of the physical property of another common carrier, the vendor shall issue an Authority for Expenditure and prepare a Completion Report to record its release of the property. The vendee shall issue an Authority for Expenditure and prepare a Completion Report to record its acquisition of the property.
(b) If the transaction involves all of the property devoted to common carrier purposes by the vendor, and that property has been inventoried by the Commission, or if the part transferred consists of one or more valuation sections in entirety, the entries under the heading "Property Retired" in the vendor's Completion Report shall consist of a list of the valuation sections that comprise the property released, arranged by States and with the valuation section termini shown. A copy of the Record of Property Changes recording the changes that have been made in the property during the interval between the date it was inventoried and the date transferred to the vendee, shall be prepared by the vendor and given to the vendee at the time the transfer is effected. The record thus secured by the vendee shall be perpetuated and used to record the changes which it makes in the property subsequent to its acquisition. As reference the vendee shall use its own valuation section number or numbers and also refer to the previous owner and its valuation section number or numbers. The vendee shall list in its Completion Report, under the heading "Property Units Added," the valuation sections that comprise the property acquired; the list shall be so arranged, described, and referenced as to correspond with the vendor's list. If new valuation section references are assigned by the vendee to the property acquired, they also shall be shown.
(c) If all, or part, of the property transferred consists of only a portion of a valuation section, and inventory of the portion transferred that is less than a valuation section shall be taken and the Completion Reports of both the vendor and vendee shall list the property units and quantities determined in that inventory, and their costs whenever possible.
(d) If a common carrier acquires railway property from individuals, firms, corporations, or others, that were not common carriers, the vendee shall inventory the property acquired and shall embody the inventory in the appropriate Completion Report.

**§ 1262.10 Recording cost of property sold and cost of property acquired.**

The Completion Report of the vendor shall show the cost to the vendor of the property released. The Completion Report of the vendee shall show the cost to the vendee of the property acquired. If, in accordance with prescribed accounting regulations, the vendee is required to record the purchase price of property acquired, such cost shall be distributed equitably among the primary accounts applicable to such property.

**§ 1262.11 Units, quantities and discriptions.**

The unit designations, the quantities and discriptions recorded in the Completion Reports and in the Record of Property Changes shall be stated so far as possible in the terms of the inventory taken by this Commission.

**§ 1262.12 Reports to be attested.**

The reports requested by the Commission shall be attested under oath by the official under whose direction they were prepared.

**§ 1262.13 Authorities for expenditures.**

(a) Carriers shall issue an Authority for Expenditure for each change in their property. In so far as possible these Authorities ahallbe issued in advance of making the property changes. Those covering involuntary retirements of property, or changes effected under emergency may be issued when the change are made.

(b) The Authorities issued for roadway and structural changes shall not overlap valuation section limits. Each Authority issued shall describe the change authorized and its location. A blanket Authority may be issued for minor changes in valuation section and for such changes as affect an entire valuation section. Changes in the form of additions, improvements, or retirements, made in connection with a general maintenance program upon a valuation section, may also be authorized under blanket Authority.

(c) Roadway changes shall be authorized separately form equipment changes, except when a railway property, in whole or in part, is acquired in which is included the acquisition of equipment.

(d) In case the Authorities for Expenditure are issued by other than the company that owns the property in which the change is to be made, the pertinent facts of the circumstance shall be stated. Before issuance, each authority shall be referenced by a registered number with the name of the State and the number of the valuation section suffixed.

**§ 1262.14 Detailed estimate sheet.**

Whenever it is desired to make an extended statement of the estimated cost of any property change, a detailed estimate sheet to supplement the Authority for Expenditure shall be used.

**§ 1262.15 Register of authorities for expenditures.**

Each carrier shall establish a register in which to record in consecutive numerical order with the appropriate State and valuation section references, the Authorities for Expenditures issue. The registered number with the State and valuation section references suffixed shall become the identifying reference of the change authorized and shall thereafter be so used.

**§ 1262.16 Completion reports.**

(a) As each change affecting roadway property is turned over to, or retired from, operation, and as common carrier property is transferred from one owner to another, a Completion Report shall be prepared to record the details of each such change. Each Roadway Completion Report shall show:

Reference to the authority for expenditure.
The significant facts of ownership and operation.
The location of the property change.
A description of the property change.
By whom the costs involved are borne.
A listing by primary accounts of units added.
Aggregate cost but not cost cost per unit unless work was done by contract at a price per unit, in which case unit contract price shall be given. Aggregate cost of property added and retired shall be distributed by constituent parts or items of property under each primary account.
Cost of effecting property retirements shall be distributed by primary accounts.
Descriptive detail of the property units retired and their costs, and of any valuation sections, in whole or in part, released and their costs.
Classification of the property changes and of the costs involved among the appropriate accounts.

(b) For changes in equipment the completion report shall show:

Reference to the authority for expenditure.
The significant facts of ownership and operation.
The number, name or other designation of the unit or series of units to which the change is applicable.
Description of the equipment to which the change is applicable.
Number of units affected by the change.
Description of the change.
Date of change.
Cost of the change.
Distribution to the appropriate accounts of the cost of the change.

(c) If completion reports are prepared by other than the carrier that owns the property in which the change has been made, the pertinent facts of the circumstance shall be stated.

(d) Where roadway or structural changes are effected under contract and paid for in a lump sum, a list of the units involved in the change, if not obtainable otherwise, shall be secured by an inventory of the property change. The amount paid under the contract shall be distibuted to the accounts to which the property is classified in the inventory.

(e) If portions of an authorized change are turned over to operation before completion of the project as a whole, "Progressive" completion reports, referenced as such and numbered, shall be prepared to record the portions of the change that have been brought into operation. The report that records the conclusion of the authorized change shall be designated as the "final" completion report.

(f) Completion reports covering property changes that were in progress on the date of valuation, portions of which changes had been turned over to operation and included in the inventory of this Commission, shall be divided into two parts—the first part to show the property turned over to operation and inventoried as of the date of valuation and its costs, the second part to show the property units subsequently installed and their cost. The quantities and costs included in the second part only shall be transcribed to the Record of Property Changes.

**§ 1262.17 Record of property changes.**

(a) As of July 1 next succeeding the date fixed by the Commission for inventory of the property, carriers shall establish for each valuation section a Record of Property Changes to which shall be transcribed from the Completion Reports, a record of the changes which affect the property included in each valuation section. The record shall be established according to owners of the property in which the change is made and shall be arranged by those primary accounts of the classification prescribed by this Commission for investment in road and equipment that are applicable to each valuation section.

(b) For equipment, the Record of Property Changes shall be established according to owners of the property in which the change is made and in conformity with those primary accounts of the aforementioned classification which are applicable to that class of property.

(c) Each transcript to the record shall show reference to the appropriate Authority for Expenditure. In the case of installations of property, the date that such property was turned over to operation shall be shown. In the case of retirement of property, the date that such property was withdrawn from the service shall be shown. The amounts transcribed as the cost of property installed shall be those only that affect the investment in road and equipment. Those costs in the Completion Report that are distibuted to other than the investment in road and equipment shall be omitted from the Record of Property Changes. The costs inserted for additional property or improvements shall be stated separately from the cost of property that has been retired. Under the appropriate property unit headings there shall be shown separately the units added and the units retired. The entries for retired units shall be in red or otherwise clearly indicated.

(d) The property unit headings in the Record of Property Changes shall be stated so far as possible in the terms of the Commission's inventory of the property. As new types of property units are introduced, appropriate headings shall be inserted.

(e) In aggregating the items entered in the Record of Property Changes, the total of each primary account shall be so arranged as to show separately the property additions and their costs, from the property retirements and their costs, for the period for which the total is being stated. Nowhere in the record shall carriers list net figures or amounts in recording property changes.

(f) The Record of Property Changes shall contain no entries for the inventoried portions of property changes that were under way on the date fixed by this Commission as of which the property was to be valued.

**§ 1262.18 Statement of property units added and retired and their costs.**

Carriers shall prepare and file with this Commission, when directed, statements that shall show for each valuation section and for equipment: (a) A list of property added since the inventory or since the date of any such previous list and its cost: (b) a list of property retired or released since the inventory or since the date of any such previous list and its cost. The property listed shall be stated in the terms of the inventory and shall be so arranged and classifed as to correspond with the inventory. Provision shall be made under each account for inserting descriptions of any new types of property or units that may have been introduced since the inventory. The entries to be inserted in the columns headed "Property Added" and "Property Retired" shall be taken from the Record of Property Changes and shall correspond with the data there recorded. The amounts representing the cost inserted under the heading "Property Added" shall be those only that affect the investment in road and equipment.

Form of Records

**§ 1262.51 Form of records.**

The carrier shall maintain statements that will show for each valuation section and for equipment: (a) a list of property added since the inventory or since the date of any such previous list and its cost.

(b) A list of property retired or released since the inventory or since the date of any such previous list and its cost.

**§ 1262.52 Property added.**

Property added shall be recorded, together with its cost, separately from property retired and by actual "in place" quantities.

(For statement of property units added and retired and their costs, see § 1262.18.)

**§ 1262.53 Property retired.**

Property retired shall be recorded separately from property added, and shall also be recorded in terms of units with descriptive details to conform with those prescribed, except however, properly included in the basic valuation reports and subsequently retired may be stated in terms of units. The retirement of a complete structure need be described only to the extent necessary to permit ready identification of such structure in the records.

**§ 1262.54 Retirement quantities.**

(a) In recording retirement of property which was included in the final valuation reports of the Commission the quantities shall agree with the quantities included in the final Engineering Report.

(b) In recording retirements of property which was not included in the final valuation reports of the Commission, but subsequently included in the records prepared in compliance with valuation order No. 3, the quantities shall conform with the record covering the installation of such property.

**§ 1262.55 Land for transportation purposes.**

The following shall be recorded:

(a) Changes in land owned or used for the purpose of a common carrier including acquisition of land or rights and land retired, sold or transferred.

(b) Assessments for public improvements applicable to land owned or used for common-carrier purposes, in total for each valuation section and by years.

**§ 1262.56 Property transferred from carrier use to noncarrier classification and vice versa.**

In recording changes in carrier property, transfers from noncarrier to carrier use shall be considered additions and transfers from carrier use to noncarrier classification shall be considered retirements and conversely when recording noncarrier property.

**§ 1262.57 Jointly owned or jointly constructed property.**

Changes in jointly owned or jointly constructed property shall be recorded separately from other property. The total quantities and total costs shall be recorded. The names of the owning or participating companies, individuals or political subdivisions with the amounts or proportions owned and contributed by each shall be in carriers' files.

**§ 1262.58 Changes made in or to property of other common carriers.**

Where one carrier assumes the cost of a change upon another carrier's property or where one or more carriers participate with the owner in the cost of a change in the latter's property, the full details of the property units involved and their cost shall be recorded separately from other property changes and the facts as to ownership and use shall be stated.

**§ 1262.59 Changes in use of property.**

(a) Changes in use of carrier property, through leases from or to common carriers, shall be recorded in sufficient detail to permit identification of the property by ownership and physical characteristics in the basic valuation report or other valuation records.

(b) Changes in the use of property through leases from individuals, firms, corporation, or others not common carriers shall be appropriately recorded.

**§ 1262.60 Roads acquired through purchase, merger, consolidation, or reorganization.**

(a) The changes made in the property during the interval between the date it was inventoried to the former owner and the date transferred to the vendee shall be recorded separately from the changes made in such property subsequent to its acquisition. In addition to such changes carriers shall record separately a statement of the property acquired together with the money outlay for constructing and improving such property.

(b) If the property has been acquired from individuals, firms, corporations or others that were not commmon carriers the statement shall show in addition to the foregoing the manner in which an inventory of the property was determined.

(For railroad consolidation plan and procedure, see Part 1111 of this chapter)

**§ 1262.61 Reconstruction of road acquired through purchase, merger, consolidation, or reorganization.**

(a) Property changes incident to reconstruction of road acquired shall be recorded separately from all other property changes. The units installed and their costs and the units retired and their costs shall be allocated to the primary accounts applicable to the property and each such account shall be subdivided to show:

(1) Property added in replacement of like property and the retirements in connection with the transaction.

(2) Property added in betterment of existing property together with retirements in connection with the transaction.

(b) With the exception of the foregoing subdivision, the reporting of the units and cost for the property added and property retired shall conform to the general rules set forth in this part for other additions and retirements.

**§ 1262.62 Miscellaneous physical property.**

Changes which affect the condition and value of miscellaneous physical property shall be recorded separately, with their costs, from those the cost of

which affects the investment in road and equipment account, but in conformity with the general rules given in this part and an explanation made of the accounting performed in connection with such changes.

**§ 1262.63 Division of road accounts.**

For the pupose of conveniently indicating the treatment to be accorded different classes of property, General Account I, Road (except land), will be considered as containing two distinct classes of property; namely, "mass property" and "structural property." By mass property is meant property of like kind and characteristics, the quantities of which may be considered collectively and reported as single item. By structural property is meant property which from its nature must be individualized and reported separately from property of like kind and characteristics.

**§ 1262.64 Mass property.**

This class of property shall be construed generally to include the following:

(a) All items in Account 3, Grading.

(b) All items in Account 6, Bridges, trestles, and culverts and Account 7, Elevated structures, except as required to be individualized.

(c) All items in Accounts 8, Tie; 9, Rails; 10, Other track material; 11, Ballast; 12, Track laying and surfacing.

(d) All items in Account 13, Fences, snowsheds, and signs.

(e) All items in Account 26, Communication systems, except as required to be individualized.

(f) All items in Account 27, Signals and interlockers except as required to be individualized.

(g) All items in Account 39, Public Improvements-Construction except as required to be individualized.

**§ 1262.65 Structural property.**

This class of property shall be construed generally to include the following:

(a) Under Account 5, Tunnels and subways, each tunnel or subway.

(b) Under Account 6, Bridges, trestles, and culverts; Account 7, Elevated structures; and Account 39, Public Improvements—Construction, each bridge or other structure under Account 6, to be treated individually.

(c) Under Account 16, Station and office buildings, and Account 17, Roadway buildings, each building except those of minor importance which conform in size and character to an established standard of construction.

(d) Under Account 18, Water stations, each water station or watertreating plant.

(e) Under Account 19, Fuel stations, each fuel station.

(f) Under Account 20, Shops and engine houses, each shop building, engine house, turntable, cinder pit, or gas production plant, each plant.

(g) Under Account 22, Storage warehouses, each building.

(h) Under Account 23, Wharves and docks, and Account 24, coal and ore wharves, each wharf, dock, or pier.

(i) Under Account 25, TOFC, COFC terminals, each TOFC/COFC terminal.

(j) Under Account 26, Communication systems, except for mass properties, e.g. pole lines.

(k) Under Account 27, Signals and interlockers, except for mass properties, e.g. pole line.

(l) Under Account 29, Power plants each building, including power substation buildings.

(m) Under Account 31, Power-transmission systems, each shop plant or power system, including each power-distribution system, power-line poles and fixtures system, and underground conduits system.

(n) Under Account 35, Miscellaneous structures, important structures as may be appropriate.

(o) All items in Account 37, Roadway machines.

(p) All items in Account 39, Public Improvements—Construction required to be individualized.

(q) Under Account 44, Shop machinery, and Account 45, Power-plant machinery, each separate plant.

**§ 1262.66 Manner of recording changes in structural property.**

(a) Each bridge, building, structure, plant, or facility referred to in § 1262.65 as "structural property" shall be recorded separately from every other bridge, building, structure, plant, or facility and the accessories attached or unattached, such as furniture, fixtures, equipment, and appurtenances shall be grouped and recorded in appropriate units with descriptive detail.

(b) Structural property shall be recorded in such a manner as to show date of installation of new facilities, date (year) of additions and betterments made to existing facilities, and date of retirements of facilities or parts thereof.

**§ 1262.67 Structural property additions and betterments.**

(a) In recording additions and betterments to and retirements from structural property all changes affecting a given bridge, building, structure, plant, or facility shall be grouped under a common description of such facility or an appropriate reference to the same by page and item number of the Engineering Report. Each change shall be separately recorded.

(b) In recording retirements of units designated as structural property to which additions and betterments have been added since valuation date, the net cost of such additions and betterments shall be stated separately from the costs attaching to the unit as existing on valuation date or as installed subsequently.

**§ 1262.68 Structural property: major renewals.**

When an important building or structure has been retired and replaced due to the renewal of its major portion, the retirement entry shall show all parts of the structure, including those left in place for reused parts, in order that the units installed shall embrace all those in the facility as restored to service. Reused units and quantities must be separately recorded.

**§ 1262.69 Valuation sections.**

(a) Records shall be maintained separately for each valuation section shown in the basic engineering report and for those since established.

(b) Appropriate combinations of present valuation sections should be made within practical limitations to promote facility and economy, subject to the approval of the Commission.

**§ 1262.70 Mileage changes.**

Records shall be maintained for all changes in track mileage divided to show separately first main track, second main track, third main track, fourth main track, etc., and yard tracks and sidings.

**§ 1262.71 Modifications of items and units.**

Modification in the items and units may be made only with the approval of the Commission.

**§ 1262.72 Inventory groups.**

(a) The instructions pertaining to the equipment accounts are based on the group plan of recording changes in such property.

(b) This plan contemplates the establishment of groups of cars, locomotives, etc., hereinafter referred to as "inventory groups." A group once established should remain unaltered except to the extent of additions and betterments to individual units and the retirement of units. An inventory group for property included in the final Engineering Report shall be the group established by the Commission as indicated in the final Engineering Report. For equipment acquired since

valuation date each class or series of like units built under uniform plans and specifications shall constitute a new inventory group except that subdivisions may be made for convenience in accounting where a series is constructed at different plants or under varying unit contract costs.

**§ 1262.73 Equipment acquired.**

(a) Each inventory group established for equipment shall be maintained separately from every other such group. Freight charges shall be separately recorded with the place built, f.o.b. point and also the setting-up point for locomotives and receiving point for cars.

(b) For rebuilt or converted units constituting a new inventory group reference shall be made to the original group.

[FR Doc. 80-14286 Filed 5-8-80; 8:45 am]

BILLING CODE 7035-01-M

# Notices

Federal Register
Vol. 45, No. 92
Friday, May 9, 1980

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.

## CIVIL AERONAUTICS BOARD

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations

Notice is hereby given that, during the week ended May 2, 1980 CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

Subpart Q Applications

| Date filed | Docket No. | Description |
|---|---|---|
| Apr. 30, 1980 | 38104 | Trans World Airlines, Inc., 605 Third Avenue, New York, New York 10016.<br>Application of Trans World Airlines, Inc. pursuant to Section 40 of the Act and Subpart Q of the Board's Regulations requests an amendment to its certificate of public convenience and necessity for Route 147 to add the United Arab Emirates as an additional point. Specifically, TWA requests that the route description contained in segment I of its certificate of public convenience and necessity for Route 147 be amended by adding United Arab Emirates as a new intermediate point after Yemen and before Oman. As amended segment I would read as follows (added language italic):<br>I. A. Between the coterminal points Denver, Colo.; Kansas City and St. Louis, Mo.; Minneapolis-St. Paul, Minn.; Chicago, Ill.; Detroit, Mich.; Cleveland, Ohio; Pittsburgh, Pa.; Washington, D.C.-Baltimore, Md.; Philadelphia, Pa.; New York, N.Y.-Newark, N.J.; Boston, Mass.; McGuire Air Force Base, New Jersey; Dover Air Force Base, Delaware;<br>B. Between the coterminal points Los Angeles and San Francisco-Oakland-San Jose, Calif.; the intermediate points within the following areas: Ireland; the intermediate points London and Mildenhall, England; France, including the intermediate point Paris but excluding Marseilles and Nice; the intermediate point Frankfurt, Germany; Switzerland; Italy, including the intermediate point Rome; Greece; Egypt; Israel; Jordon; Iraq; Kuwait; Saudi Arabia; Yemen; *United Arab Emirates;* Oman; Sri Lanka and that portion of India which lies south of the twentieth parallel;<br>(1) Beyond Sri Lanka and that portion of India which lies south of the twentieth parallel, the intermediate points Calcutta, India; Mandalay, Burma; Hanoi, Vietnam; Canton, China, and the terminal point Shanghai, China;<br>(2) Beyond Sri Lanka and that portion of India which lies south of the twentieth parallel, the intermediate point Bangkok, Thailand, and the terminal point Hong Kong. |
| May 1, 1980 | 38112 | Pan American World Airways, Inc., Pan Am Building, New York, New York 10017.<br>Application of Pan American World Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests issuance of a certificate of public convenience and necessity authorizing it to engage in air transportation of persons, property, and mail over the following route:<br>"Between the terminal point New York, N.Y./Newark, N.J. and the terminal point San Diego, California."<br>Conforming Applications and Answers are due May 28, 1980. |

Phyllis T. Kaylor,
*Secretary.*

[FR Doc. 80-14336 Filed 5-8-80; 8:45 am]
BILLING CODE 6320-01-M

[Docket 37867]

### Boston-London Service Case; Reassignment of Proceeding

This proceeding has been reassigned from Administrative Law Judge William A. Pope, II to Administrative Law Judge William A. Kane, Jr. Future communications should be addressed to Judge Kane.

Dated at Washington, D.C., May 2, 1980.

Joseph J. Saunders,
*Chief Administrative Law Judge.*

[FR Doc. 80-14339 Filed 5-8-80; 8:45 am]
BILLING CODE 6320-01-M

### Palm Springs-West Coast Subpart Q Proceeding

**AGNECY:** Civil Aeronautics Board.

**ACTION:** Notice of Order 80-5-24, Palm Springs-West Coast Subpart Q Proceeding, Docket 37862.

**SUMMARY:** The Board is instituting the Palm Springs-West Coast Subpart Q Proceeding and is proposing to grant Palm Springs-Los Angeles/Portland/San Francisco/Seattle authority to Continental Air Lines, Inc. under the expedited procedures of Subpart Q of its Procedural Regulations. The tentative findings and conclusions will become final if no objections are filed. The complete text of this order is available as noted below.

**DATES:** All interested persons having objections to the Board issuing the proposed authority shall file and serve upon all persons listed below, no later than June 9, 1980, a statement of objections, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections.

**ADDRESSES:** Objections to the issuance of a final order should be filed in Docket 37862, which we have entitiled the Palm Springs-West Coast Subpart Q Proceeding. This shoud be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

In addition, copies of such filings should be served on Continental Air Lines, the California, Oregon and

Washington State Departments of Transportation Aeronautics Division; the Mayors of Palm Springs, Los Angeles and San Francisco, Calif., Portland, Ore., and Seattle, Wa.; and the managers of the airports in Palm Springs, Los Angeles, Portland, San Francisco, and Seattle.

**FOR FURTHER INFORMATION CONTACT:** Peter Bonanno, Jr., Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Ave., N.W., Washington, D.C. 20428; (202) 673-5009.

**SUPPLEMENTARY INFORMATION:** The complete text of Order 80-5-24 is available from our Distribution Section, Room 516 Civil Aeronautics Board, 1825 Connecticut Ave., N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 80-5-24 to that address.

By the Bureau of Domestic Aviation: May 2, 1980.

Phyllis T. Kaylor,

*Secretary.*

[FR Doc. 80-14337 Filed 5-8-80; 8:45 am]

BILLING CODE 6320-01-M

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[Docket 38003; Order 80-5-5]

## Order; Western Air Lines, Inc.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 1st day of May, 1980. Application of Western Air Lines, Inc. for compensation for losses at Sheridan, Wyoming.

On October 12, 1979, Western Air Lines, Inc., filed a 90-day notice to terminate its certificate obligation at Sheridan, Wyoming, effective January 15, 1980. By Order 80-1-24, January 4, 1980, and succeeding orders, the Board extended Western's obligation to provide service at Sheridan for successive 30-day periods.

On April 7, 1980, Western filed an application for compensation for losses incurred in providing service at Sheridan. The carrier requests compensation of $125,058 for the period January 15 through March 31, 1980. According to Western, actual revenues from service at Sheridan were only $301,724, while, based on fourth quarter 1979 unit operating costs, expenses were $426,782, for an operating loss of $125,058; these figures include no allowance for interest or return.

Upon examination of Western's filing, we believe the appropriate interim rate of compensation is $868.45 [1] per essential air service flight completed; we will set Western's level of compensation at that rate.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 102, 204, 419, and 1002 thereof, and the regulations promulgated in 14 CFR 324,

1. We set the interim level of compensation for losses sustained by Western Air lines, Inc., by virtue of its provision of essential air service to Sheridan, Wyoming, for periods beginning on or after January 15, 1980, at $868.45 per essential air service flight completed, subject to a maximum compensation of $1,624.13 per day that essential air service is performed;

2. This proceeding shall remain open pending entry of an order fixing the final rate of compensation, and the amount of such rate of compensation, may be the same as, lower than, or higher than the interim rate established here; and

3. We will serve a copy of this order on Western Air Lines, Inc.

This order shall be published in the Federal Register.

By the Civil Aeronautics Board (all members concurred).

Phyllis T. Kaylor,

*Secretary.*

[FR Doc. 80-14338 Filed 5-8-80; 8:45 am]

BILLING CODE 6320-01-M

[1] Western's losses of $125,058 divided by 144, the number of departures actually performed during the period.

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# DEPARTMENT OF COMMERCE

## National Bureau of Standards

### NBS Solicits Comments on Plans To Enhance I/O Channel Level Interface Standards

*Correction*

In FR Doc. 80-13250, published at page 28789, on Wednesday, April 30, 1980, on page 28792, in the first column, in the third line, "(please insert date of publication of this notice in the Federal Register)." should be corrected to read "June 30, 1980."

BILLING CODE 1505-01-M

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# COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Additional Levels of Restraint for Certain Man-Made Fiber Textile Products From the Polish People's Republic

May 6, 1980.

**AGENCY:** Committee for the Implementation of Textile Agreements.

**ACTION:** Amending the bilateral agreement with Poland to establish subceilings for knit and woven coats of man-made fibers within the level of restraint established for Category 634 (men's and boys' other coats), produced or manufactured in Poland and exported to the United States during the twelve-month period which began on January 1, 1980. (A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 F.R. 13172), as amended on April 23, 1980 (45 F.R. 27643))

**SUMMARY:** The Governments of the United States and the Polish People's Republic have exchanged notes further amending the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 6 and January 25, 1978, as amended, to establish sublimits for man-made fiber textile products within Category 634 of 84,746 dozen for T.S.U.S.A. numbers 380.0405, 380.8101, 380.8106, 380.8109, 380.8112, and 791.7460; and 36,320 dozen for T.S.U.S.A numbers 376.5609, 380.0445, 380.5167, 380.5169, 380.8410, 380.8416, 380.8418, 380.8419, and 791.7471.

**EFFECTIVE DATE:** May 12, 1980.

**FOR FURTHER INFORMATION CONTACT:** Shirley Hargrove, Trade and Industry Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

**SUPPLEMENTARY INFORMATION:** On December 27, 1979, there was published in the Federal Register (44 FR 76571) a letter dated December 20, 1979 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established levels of restraint for certain cotton, wool and man-made fiber textile products, produced or manufactured in Poland, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1980 and extends through December 31, 1980. The letter published below from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs amends the directive of December 20, 1979 to establish two sublimits within Category 634 during the agreement year which began on January 1, 1980 and extends through December 31, 1980. The levels of restraint have not been adjusted to reflect any imports after December 31, 1979. Charges will be made for the period which began on January 1, 1980

and extends through the effective date of this action.

Paul T. O'Day,

*Chairman, Committee for the Implementation of Textile Agreements.*

May 6, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
*Department of Treasury, Washington, D.C. 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 20, 1979 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Poland.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreements of January 6 and January 25, 1978, as amended, between the Governments of the United States and the Polish People's Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on May 12, 1980 and for the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 634 and its sublimits, produced or manufactured in Poland, in excess of the following levels of restraint:

*Category and Twelve-Month Level of Restraint* [1]

634—114,264 dozen of which not more than 84,746 dozen shall be in T.S.U.S.A. numbers 380.0405, 380.8101. 380.8106, 380.8109, 380.8112, and 791.7460 and not more than 36,320 dozen shall be in T.S.U.S.A. numbers 376.5609, 380.0445, 380.5167, 380.5169, 380.8410, 380.8416, 380.8418, 380.8419, and 791.7471.

In carrying out this directive entries of textile products in the foregoing category and its sublimits, which have been exported to the United States prior to January 1, 1980, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period which began on January 1, 1979 and extended through December 31, 1979. In the event that the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

Textile products in Category 634 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

[1] The levels of restraint have not been adjusted to reflect any imports after December 31, 1979.

The actions taken with respect to the Government of the Polish People's Republic and with respect to imports of man-made fiber textile products from Poland have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Paul T. O'Day,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 80-14334 Filed 5-8-80; 8:45 am]

BILLING CODE 3510-25-M

## Committee for Purchase From the Blind and Other Severely Handicapped

### Procurement List 1980; Proposed Additions

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

**ACTION:** Proposed Additions to Procurement List.

**SUMMARY:** The Committee has received proposals to add to Procurement List 1980 commodities to be produced by and a service to be provided by workshops for the blind and other severely handicapped. Comments must be received on or before June 11, 1980.

**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. Its purpose is to provide interested parties an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1980, November 27, 1979 (44 FR 67925):

Class 7340

Flatware, Plastic, Picnic
7340-00-170-8374 (Spoon)
7340-00-205-3342 (Fork)
7340-00-205-3167 (Knife)
(For GSA Regions 2,3,5,6)

Class 9905

Tag, Marker, Red
9905-00-537-8954

SIC 7349

Janitorial/Custodial for the following buildings:
GSA Administration Building
U.S. Post Office
FAA Building
GSA Motor Pool Building
The Charles Building
The Maurice Building
Executive Terminal Building
Salt Lake City, Utah

C. W. Fletcher,

*Executive Director.*

[FR Doc. 80-14304 Filed 5-8-80; 8:45 am]

BILLING CODE 6820-33-M

### Procurement List 1980; Additions

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

**ACTION:** Additions to Procurement List.

**SUMMARY:** This action adds to Procurement List 1980 commodities to be produced by workshops for the blind and other severely handicapped.

**EFFECTIVE DATE:** May 9, 1980.

**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:** On March 14, 1980, March 7, 1980, March 21, 1980, and February 15, 1980, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (45 FR 16523, 45 FR 14914, 45 FR 18422, and 45 FR 10394) of proposed additions to Procurement List 1980, November 27, 1979 (44 FR 67925).

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following commodities are hereby added to Procurement List 1980:

Class 7210

Washcloth
7210-01-013-2824

Class 7510

Envelope, Crystal Clear Vinyl
7510-00-NIB-0003
7510-00-NIB-0004
7510-00-NIB-0005
7510-00-NIB-0006

Class 7910

Pad, Floor Polishing Machine
7910-00-820-7991

7910-00-820-7989
7910-00-820-7990
7910-00-820-9926
7910-00-820-9925
7910-00-820-9924
7910-00-820-9898
7910-00-820-7997
7910-00-820-7996
(For GSA Regions 6, 7, 8, 9, 10)

Class 8105

Bag, Assembly, Crew Relief
8105-00-922-9469

C. W. Fletcher,
*Executive Director.*

[FR Doc. 80-14305 Filed 5-8-80; 8:45 am]
BILLING CODE 6820-33-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary of Defense

### Defense Intelligence Agency Advisory Committee; Closed Meeting

Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92-463, as amended by Section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a Panel of the DIA Advisory Committee will be held as follows: Tuesday, 10 June 1980, Pomponio Plaza, Rosslyn, Virginia.

The entire meeting, commencing at 0900 hours is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a study on special signals.

M. S. Healy,
*OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.*

May 6, 1980.

[FR Doc. 80-14351 Filed 5-8-80; 8:45 am]
BILLING CODE 3810-70-M

## DEPARTMENT OF ENERGY

### National Petroleum Council

### Oil Supply, Demand and Logistics Task Group, Refinery Capability Task Group and the Coordinating Subcommittee of the Committee on Refinery Flexibility; Meetings

Notice is hereby given that the Refinery Capability Task Group, the Oil Supply, Demand and Logistics Task Group, and the Coordinating Subcommittee of the National Petroleum Council's (NPC) Committee on Refinery Flexibility will meet on Monday, May 12; Tuesday, May 20; and Tuesday, May 27, 1980, respectively. Meeting locations and agendas are listed below.

The National Petroleum Council provides technical advice and information to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries. Accordingly, the Committee on Refinery Flexibility has been requested by the Secretary to undertake an analysis of the factors affecting crude oil quality and availability and the ability of the refining industry to process such crudes into marketable products. This analysis will be based on information and data to be gathered by the Oil Supply, Demand, and Logistics Task Group and the Refinery Capability Task Group, whose efforts will be coordinated by the Coordinating Subcommittee. The tentative agendas and exact locations of the meetings are as follows:

Agenda for the Refinery Capability Task Group meeting, Monday, May 12, 1980, beginning at 1:30 p.m., Suite 1300, Gulf Oil Company, Two Houston Center, 909 Fannin Street, Houston, Texas:

1. Review and approve summary minutes of the April 8, 1980 meeting of the Task Group.
2. Review and discuss progress of study groups A, B, and C.
3. Discuss plans for the final phase of the Refinery Flexibility report.
4. Discuss any other matters pertinent to the overall assignment of the Task Group.

Agenda for the Oil Supply, Demand and Logistics Task Group meeting, Tuesday, May 20, 1980, beginning at 10:00 a.m., in Room 1681 of Texaco Inc., 2000 Westchester Avenue, White Plains, New York:

1. Review results of second survey of the Task Group.
2. Review drafts of the Task Group's report.
3. Discuss timetable for completion of Task Group's assignment.
4. Discussion of any other matters pertinent to the overall assignment of the Task Group.

Agenda for the Coordinating Subcommittee meeting, Tuesday, May 27, 1980, beginning at 9:00 a.m., Suite 601, NPC Headquarters, 1625 K Street NW., Washington, D.C.:

1. Review and discuss the progress of the Refinery Capability Task Group.
2. Review and discuss the progress of the Oil Supply, Demand and Logistics Task Group.
3. Review and discuss introductory materials for the overall report on refinery flexibility.
4. Discuss any other matters pertinent to the overall assignment of the Coordinating Subcommittee.

All meetings are open to the public. The Chairman of the Task Groups and the Subcommittee are empowered to conduct the meetings in a fashion that will, in their judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with either the Task Groups or the Subcommittee will be permitted to do so, either before or after the meetings. Members of the public who wish to make oral statements at any of the meetings should inform Joan Walsh Cassedy, National Petroleum Council, (202) 393-6100, prior to the meeting, and provision will be made for their appearance on the respective agendas. Transcripts of the Coordinating Subcommittee meeting will be available for public review at the Freedom of Information Public Reading Room, Room 5B180, Department of Energy, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on May 1, 1980.

R. Dobie Langenkamp,
*Deputy Assistant Secretary for Resource Development and Operations.*

[FR Doc. 80-4386 Filed 5-8-80; 8:45 am]
BILLING CODE 6450-01-M

### Proposal To Establish a Part-Time Career Employment Program

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of Proposal to Establish a Part-Time Career Employment Program.

**SUMMARY:** The U.S. Department of Energy (DOE) is proposing to establish a Part-Time Career Employment Program pursuant to the Federal Employees Part-Time Career Employment Act of 1978 (Pub. L. 95-437, 92 Stat. 1055, (5 U.S.C. 3392)).

**DATE:** Written comments regarding the DOE Part-Time Career Employment Program must be received on or before June 11, 1980.

**ADDRESS:** Comments should be addressed to:
Department of Energy, Division of Personnel Policies and Programs, Employment Policies and Programs Branch, 1000 Independence Avenue, SW., Room 4E040, Washington, D.C. 20585, Attention: Girtha Burks

**FOR FURTHER INFORMATION CONTACT:**
Girtha Burks, (202) 252-8514, at the following address:
Department of Energy, Division of Personnel Policies and Programs, Employment Policies and Programs Branch, 1000 Independence Avenue, SW., Room 4E040, Washington, D.C. 20585, Attention: Girtha Burks

**SUPPLEMENTARY INFORMATION:** The DOE is proposing to establish a Part-Time Career Employment Program pursuant to

the Federal Employees Part-Time Career Employment Act of 1978 (Pub. L. 95–437, hereafter referred to as "the Act.") The Act requires Federal agencies to develop and administer a program to expand part-time career employment opportunities.

Additionally, the Act narrows the definition of part-time career employment in the Federal Government from scheduled work of less than 40 hours per week to scheduled work between 16 and 32 hours per week and changes the personnel ceiling and fringe benefit provisions governing part-time career Federal employees. This proposal establishes the DOE Part-Time Career Employment Program; expresses the purpose of such program; states DOE policy with regard to part-time career employment; and defines part-time career employment and certain technical terms. In addition, this proposal indicates to which DOE positions the Part-Time Career Employment Program applies; the exceptions; the program responsibilities; and requires each DOE personnel office to establish a part-time program and submit semiannual reports to the DOE Part-Time Career Employment Program Coordinator. The DOE intends to implement the Part-Time Career Employment Program by issuing a DOE order on part-time employment. Such DOE order will contain DOE policy; objectives, management officials' and supervisors' responsibilities; definitions; implementing procedures and reporting requirements; and requirements for notifying the public of part-time career positions, requirements for establishing goals and timetables, converting full-time career positions to part time, reviewing vacant positions, and a requirement for a continuing review of the DOE Part-Time Career Employment Program.

Note.—The DOE has determined that this document does not contain a major proposal requiring preparation of an economic impact analysis statement under Executive Orders 11821 and 11979 and Office of Management and Budget Circular A–107.

Issued in Washington, D.C. April 30, 1980.

Authority: (Section 3(a) of the Federal Employees Part-Time Career Employment Act of 1978, Pub. L. 95–437, 92 Stat. 1055, (5 U.S.C. 3392)).

William S. Heffelfinger,

*Director of Administration.*

Subject: DOE Part-Time Career Employment Program.

Pursuant to the provisions of the Federal Employees Part-Time Career Employment Act of 1978 (Pub. L. 95–437, October 10, 1978) the U.S. Department of Energy (DOE) is establishing the DOE Part-Time Career Employment Program. DOE will implement the Part-Time Career Employment Program by issuance of a DOE order.

1. Purpose. The purposes of the DOE Part-Time Career Employment Program are to:

a. Provide permanent part-time employment opportunities to potential and current DOE employees at all grade levels through GS–15 (or equivalent) in professional, administrative, technical, clerical, and trades occupations;

b. Benefit the DOE as an employer by increasing productivity and job satisfaction while lowering turnover rates and absenteeism;

c. Provide management with flexibility in meeting work requirements and filling shortages in various occupations;

d. Provide an alternative to individuals who need or desire shorter working hours; and

e. Support affirmative action programs for minorities, women, and handicapped individuals.

2. Policy. It is the policy of the DOE to maximize part-time career employment opportunities in positions up to and including GS–15 (or equivalent), subject to Departmental resources and mission requirements. The DOE recognizes that part-time career employment can be an effective management tool to increase productivity and job satisfaction, lower turnover rates and absenteeism, and provide flexibility in meeting work requirements and filling positions in various shortage occupations.

3. Limitation. DOE employees working on a full-time basis shall not be required to accept part-time employment as a condition of continued employment. DOE shall not abolish any position occupied by an employee solely to make all or part of the duties of such position available to be performed on a part-time career employment basis. Rather, the principal consideration shall be the DOE mission and the impact of an employee's work schedule on DOE needs and requirements.

4. Definitions:

a. The Coordinator. DOE Part-Time Career Employment Coordinator.

b. Part-Time Career employment. Regularly scheduled work, from 16 to 32 hours per week, performed by employees whose appointments are in tenure group I or II and whose employment on such basis commenced on or after April 8, 1979.

c. Tenure Group I.

(1) Competitive Service. Employees serving in the competitive service on career appointments who are not serving a probationary period (Federal Personnel Manual chapter 315, subchapter 8) after competitive appointment.

(2) Excepted Service. Permanent employees in the excepted service whose appointments carry no restrictions or conditions, e.g., time limitation.

d. Tenure Group II.

(1) Competitive Service. Employees in the competitive service serving a probationary period (Federal Personnel Manual chapter 315, subchapter 8) after competitive appointment, career conditional employees, and career employees in obligated positions.

(2) Excepted Service. Employees in the excepted service serving trial periods, whose tenure is indefinite solely because they occupy obligated positions; or whose tenure is equivalent to career conditional employees in the competitive service.

e. Intermittent Employees. Employees who work on an occasional or irregular basis without a prearranged schedule and receive compensation only for the hours actually worked or for services actually rendered.

f. *Obligated Positions. Positions to* which employees have statutory restoration rights based on active military service or reemployment rights based on emergency situations.

5. Applicability. The DOE Part-Time Career Employment Program applies to all occupations and grade levels through GS–15 and to all permanent part-time personnel appointed after April 7, 1979.

6. *Exceptions. The DOE Part-Time* Career Employment Program does not apply to the following:

a. Part-time career employment in positions for which the rate of basic pay is fixed at a rate equal to or greater than the minimum rate fixed for GS–16 of the General Schedule.

b. Part-time employees who were appointed on or before April 7, 1979, regardless of work schedules so long as their part-time employment continues without a break in service of one workday.

c. Nontemporary employment for less than 16 hours per week when appointments are approved by the servicing personnel offices.

d. Noncareer, temporary or intermittent employment.

e. Positions for which a collective bargaining agreement was in effect on April 8, 1979, establishing the number of hours of employment as less than 16 or more than 32 hours per week.

7. Program Responsibilities. The Director of Administration is responsible for the DOE policy and general direction of the Part-Time Career Employment Program. The Director of Personnel develops and

recommends policy to the Director of Administration and implements DOE policies, standards and procedures for the Part-Time Career Employment Program. The Director of Personnel designates a Departmental Part-Time Career Employment Program Coordinator who shall administer the DOE Part-Time Career Employment Program.

8. Part-Time Career Employment Program. Personnel offices shall develop part-time career employment programs which comply with the following and are in accord with the DOE order implementing the Part-Time Career Employment Program:

a. Provide for review of vacant positions. Vacant positions must be reviewed to determine the feasibility of filling them on a part-time career employment basis. The following factors should be considered in determining part-time employment opportunities:

(1) Agency mission;

(2) Workload fluctuations;

(3) Size of workforce, occupational mix, turnover and employment trends;

(4) Potential for improving service to public;

(5) Affirmative action;

(6) Geographic dispersion;

(7) Current employee interest in part-time career employment; and

(8) Personnel ceiling and fiscal constraints.

b. Prescribe a system for allowing DOE full-time permanent employees to convert to part time. A system shall be designed to permit permanent DOE employees voluntarily to request and recieve consideration for conversion from full-time to part-time employment schedules. The factors listed above should be considered in establishing such positions or determining such conversions.

c. Establish a system for notifying the public of part-time employment opportunities. The public must be notified of available DOE part-time career employment opportunities. Notification may involve utilizing Departmental vacancy announcements, Federal job information announcements, publicizing vacancies in recruiting bulletins, and maintaining contact with state employment service offices, schools, organizations, and other sources of recruitment.

d. Establish annual goals and timetables. Annual goals for converting or creating positions for part-time career employment and a timetable setting forth deadlines for achieving such goals shall be established. Goals and timetables shall be established annually on a fiscal year basis (October 1–September 30) and reported to the Director of Personnel by October of each year.

e. Provide for continuing review. DOE personnel offices will continually review and evaluate the Part-Time Career Employment Program and recommend changes where appropriate to the Coordinator.

9. Reporting Requirement. Servicing personnel offices shall prepare and submit to the Departmental Part-Time Career Employment Program Coordinator semiannual statistical and narrative reports on the program. These reports will be based on data as of March 31 and September 30 each year and shall be submitted to the Departmental Part-Time Career Employment Program Coordinator by April 20 and October 20, respectively each year. Reports must note any impediments encountered in filling part-time career positions and measures taken to overcome the impediments, as well as the extent to which part-time career employment opportunities were provided to older persons, the handicapped, students, and persons with family responsibilities. In addition, reports must indicate by occupational series and grade level, the number of new part-time career positions established during the reporting period and the percent of total jobs filled by conversion of current full-time employees to part-time permanent schedules. Any subsequent data requested by the Office of Personnel Management will be communicated by the coordinator.

10. Personnel Ceilings. Effective October 1, 1980, any DOE employee, subject to this regulation, who is employed on a part-time career employment basis shall be counted for personnel ceiling purposes as a fraction of a staff year which is determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled work week.

[FR Doc. 80-14258 Filed 5-8-80; 8:45 am]
BILLING CODE 6450-01-M

## Office of Assistant Secretary for International Affairs

### Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning the Peaceful Uses of Atomic Energy and the Agreement for Cooperation Between the Government of the United States of America and the Government of Austria.

The subsequent arrangement to be carried out under the above mentioned agreements involve approval of the following retransfer: RTD/EU(AT)-13, Austria to West Germany, coated particles containing 0.0343 grams Uranium, 0.0257 grams of U-235 (74.923%), and 0.5 grams of Thorium, for post-irradiation analysis.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that approval of this retransfer will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: May 5, 1980.

Harold D. Bengelsdorf,

*Director for Nuclear Affairs, International Nuclear and Technical Programs.*

[FR Doc. 80-14383 Filed 5-8-80; 8:45 am]
BILLING CODE 6450-01-M

### Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Norway.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale: S-NO-34, United States to Norway, 0.02 nanocuries of Plutonium-236 to be used for standardization of equipment for measuring plutonium for environmental purposes for health physics.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: May 5, 1980.

Harold D. Bengelsdorf,

*Director for Nuclear Affairs, International Nuclear and Technical Programs.*

[FR Doc. 80-14384 Filed 5-8-80; 8:45 am]
BILLING CODE 6450-01-M

### Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the International Atomic Energy Agency (IAEA).

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following contract: WC–IA–111, United States to the IAEA Laboratory, Seibersdorf, Austria, 1 gram of uranium enriched to 93.09% U–235, 2.5 grams of uranium enriched to 2.38% U–235, 7.5 grams of uranium enriched to 2.35% U–235, and 0.6 grams of uranium enriched to 93.16% U–235. These materials are to be used as standards for evaluation of measurement methods.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: May 5, 1980.

Harold D. Bengelsdorf,

*Director for Nuclear Affairs, International Nuclear and Technical Programs.*

[FR Doc. 80-14385 Filed 5-8-80; 8:45 am]

BILLING CODE 6450-01-M

## Economic Regulatory Administration

### Lakes Gas Co., Inc., Action Taken on Consent Order

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of action taken and opportunity for comment on consent order.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order.

**DATES:** Effective date: April 17, 1980.

**COMMENTS BY:** June 11, 1980.

**ADDRESS:** Send comments to William D. Miller, Central District Manager of Enforcement Department of Energy, 324 East 11th Street; Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Jeannie C. Fox, Chief, Refined Products Programs Management Branch, 324 East 11th Street, Kansas City, Missouri 64106, (phone) 816–374–5932.

**SUPPLEMENTARY INFORMATION:** On April 17, 1980, the Office of Enforcement of the ERA executed a Consent Order with Lakes Gas Company, Inc., Forest Lake, Minnesota. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Lakes Gas Company, Inc., with its home office located in Forest Lake, Minnesota, is a firm engaged in the marketing of Propane through bulk plants located in Minnesota and Wisconsin and is subject to the Mandatory petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Lakes, the Office of Enforcement, ERA, and Lakes Gas Company, Inc., entered into a Consent Order.

The Consent Order encompasses Lakes' sale of covered products during the period November 1, 1973 through February 29, 1980.

II. Submission of Written Comments

The ERA invites interested persons to comment on the terms, conditions or procedural aspects of this Consent Order.

You should send your comments to William D. Miller, Central District Manager of Enforcement, Department of Energy, 324 East 11th Street, Kansas City, Missouri 64106. You may obtain a free copy of this Consent Order by writing to the same address or by calling 816–374–5932.

You should identify your comments on the outside of your envelope and on the documents you submit with the designation, "Comments on Lakes Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on June 11, 1980. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Kansas City, Missouri on the 28th day of April 1980.

William D. Miller,

*District Manager of Enforcement.*

Dated: April 28, 1980.

Concurrence:

David H. Jackson,

*Chief, Enforcement Counsel.*

[FR Doc. 14361 Filed 5-8-80; 8:45 am]

BILLING CODE 6450-01-M

### Northern Oil Co., Inc. and Bray Oil Co., Inc.; Proposed Consent Order

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of proposed consent order and of opportunity for comments.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order and provides an opportunity for public comment on the proposed Consent Order and on potential claims against the refunds deposited in an escrow account established to the Consent Order.

**COMMENTS BY:** June 11, 1980.

**ADDRESS:** Send comments to: Edward F. Momorella, Acting District Manager of Enforcement, Northeast District, Economic Regulatory Administration, 10th Floor, 1421 Cherry Street, Philadelphia, PA 19102.

**SUPPLEMENTARY INFORMATION:** On March 27, 1980, the Office of Enforcement of the ERA executed a proposed Consent Order with Northern Oil Company, Inc. and Bray Oil Company, Inc. both of Burlington, Vermont. Under 10 CFR 205.199J(b), a proposed Consent Order which involves a sum of $500,000 or more in the aggregate, excluding penalties and interest, becomes effective only after the DOE has received comments with respect to the proposed Consent Order. Although the ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate an alternative Consent Order.

I. The Consent Order

Northern Oil Company, Inc. and Bray Oil Company, Inc. (Northern/Bray) with their home offices located in Burlington, Vermont, were engaged in the reselling and retailing of petroleum products and were subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, and 212. To resolve certain disputes between the ERA and Northern/Bray without resort to expensive and time consuming proceedings, the ERA and Northern/Bray entered into a Consent Order. The more important terms of the Consent Order are as follows:

1. The Consent Order settles all issues involving the sale of No. 2 heating oil and kerosene during the period November 1, 1973 through April 30, 1974.

2. During the period November 1, 1973 through April 30, 1974, it is alleged by DOE that Northern/Bray recovered in its sales of No. 2 heating oil and kerosene, revenues in excess of amounts allowed if selling prices were calculated in accordance with the applicable price rule 10 CFR 212.93, (as preceded by 6 CFR 150.359) which states that "a seller may not charge a price for an item subject to this subpart which exceeds the weighted average price at which the item was lawfully priced by the seller in transactions with the class of purchaser concerned on May 15, 1973, plus an amount which reflects, on a dollar-for-dollar basis, the increased product costs concerned."

3. This Consent Order represents a compromise between the DOE and Northern/Bray and does not require remedies in the full amount that the Department would contend for if the matter proceeded through the Department's hearing process. Execution of this Consent Order by Northern/Bray does not constitute an admission by Northern Bray that it has violated DOE regulations.

4. Records showed that September 1974, through August 4, 1976, Northern/Bray reduced its selling prices for No. 2 heating oil to affect refunds to its customers. The DOE has allowed offset of $845,555 against amounts to be refunded for overcharges in sales of No. 2 heating oil.

5. Records showed that from March 1975 through July 1976, Northern reduced its selling prices for kerosene to effect refunds to its customers. The DOE has allowed an offset of $14,746 against amounts to be refunded for overcharges in sales of kerosene.

6. In addition to the offset allowed in accordance with paragraph 5 above, the alleged overcharges on kerosene by Northern/Bray shall be satisfied as follows. Northern/Bray shall, in accordance with the schedule of Payments attached hereto, deliver certified checks in the sum of $75,000, made payable to the United States Department of Energy.

7. The provisions of 10 CFR 205.199J are applicable to this Consent Order and are incorporated herein.

## II. Disposition of Refunded Overcharges

In this Consent Order, Northern/Bray agrees to refund, in full settlement of any remaining civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I. above, the sum of $75,000 on or before January 1, 1982. Refunded overcharges will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

## III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments.* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Arthur H. Shaw, Deputy District Managerof Enforcement, Northeast District, Economic Regulatory Administration, Room 700, 150 Causeway Street, Boston, MA 02114. You may obtain a free copy of this Consent Order by writing to the same address or by calling 617-223-5275.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Northern/Bray Consent Order." We will consider all comments we receive by 4:30 P.M., local time on June 11, 1980. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Philadelphia, PA on the 17th day April 1980.

Edward F. Momorella,

*Acting District Manager of Enforcement, Northeast District.*

[FR Doc. 80-14382 Filed 5-8-80; 8:45 am]

BILLING CODE 6450-01-M

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## Ross Production Co.; Action Taken on Consent Order

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of action taken and opportunity for comment on Consent Order.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

**DATES:** Effective Date: April 28, 1980.

**COMMENTS BY:** On or before June 11, 1980.

**ADDRESS: WAYNE I. TUCKER, DISTRICT MANAGER OF ENFORCEMENT, SOUTHWEST DISTRICT, DEPARTMENT OF ENERGY, P.O. BOX 35228, DALLAS, TEXAS 75235.**

**FOR FURTHER INFORMATION CONTACT:** Send comments to: Wayne I. Tucker, District Manager of Enforcement, Southwest District, Department of Energy, P.O. Box 35228, Dallas, Texas 75235, phone 214/767-7745.

**SUPPLEMENTARY INFORMATION:** On April 28, 1980 the Office of Enforcement of the ERA executed a Consent Order with Ross Production Company (Ross), P.O. Box 1185, Shreveport, LA 71163. Under 10 CFR § 205.199J(b), the Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

Because the DOE and Ross wish to expeditiously resolve the matter as

agreed and to avoid delay in the payment of refunds, the DOE has determined that it is in the public interest to make the Consent Order with Ross effective as of the date of its execution by the DOE and Ross.

I. The Consent Order

Ross, with its office in Shreveport, Louisiana, is a firm engaged in production, and sale of crude oil, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 C.F.R., Parts 210, 211, 212. The Office of Enforcement of the Economic Regulatory Administration and Ross entered into a Consent Order to resolve certain civil actions which could be brought by ERA as a result of its audit of the crude oil sales by Ross from properties located in Catahoula and Concordia Parishes in the State of Louisiana.

The significant terms of the Consent Order with Ross are as follows:

1. The period covered by the audit was September 1, 1973 through January 31, 1976.

2. Ross allegedly misapplied the provisions of 10 C.F.R § 212.73 and its predecessor, 6 C.F.R. § 150.354 when determining the prices to be charged for the crude oil sold from the properties located in Catahoula and Concordia Parishes.

3. In order to expedite resolution of the disputes involved, the DOE and Ross have agreed to a settlement in the amount of $100,000.00. The negotiated settlement was determined to be in the public interest as well as the best interests of the DOE and Ross.

4. The provisions of 10 C.F.R. § 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

Refunded overcharges as described in I.3. above will be in the form of certified checks made payable to the United States Department of Energy, made payable in twelve or less monthly installments, and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will ramain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 C.F.R. § 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 C.F.R. § 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 C.F.R. § 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order. You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager of Enforcement, Southwest District, Department of Energy, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling 214/767-7745.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Ross Production Company Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on June 11, 1980. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 C.F.R. § 205.9(f).

Issued in Dallas, Texas on the 1st day of May 1980.

Wayne I. Tucker,

*District Manager, Southwest District Enforcement, Economic Regulatory Administration.*

[FR Doc. 80-14279 Filed 5-8-80; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL 1487-1]

### Agency Comments on Environmental Impact Statements and Other Actions Impacting the Environment

Pursuant to the requirements of the section 102(2)(C) of the National Environmental Policy Act of 1969, and section 309 of the Clean Air Act, as amended, the Environmental Protection Agency (EPA) has reviewed and commented in writing on Federal agency actions impacting the environment contained in the following appendices during the period of March 1, 1979 and March 31, 1979.

Appendix I contains a listing of draft environmental impact statements reviewed and commented upon in writing during this review period. The list includes the Federal agency responsible for the statement, the number and title of the statement, the classification of the nature of EPA's comments as defined in Appendix II, and the EPA source for copies of the comments as set forth in Appendix VI.

Appendix II contains the definitions of the classifications of EPA's comments on the draft environmental impact statements as set forth in Appendix I.

Appendix III contains a listing of final environmental impact statements reviewed and commented upon in writing during this review period. The listing includes the Federal agency responsible for the statement, the number and title of the EPA source for copies of the comments as set forth in Appendix VI.

Appendix IV contains a listing of final environmental impact statements reviewed but not commented upon by EPA during this review period. The listing includes the Federal agency responsible for the statement, the number and title of the statement, a summary of the nature of EPA's comments, and the EPA source for copies of the comments as set forth in Appendix VI.

Appendix V contains a listing of prposed Federal agency regulations, legislation proposed by Federal agencies, and any other proposed actions, reviewed and commented upon

in writing pursuant to section 309(a) of the Clean Air Act, as amended, during the referenced reviewing period. This listing includes the Federal agency responsible for the proposed action, the title of the action, a summary of the nature of EPA's comments, and the source for copies of the comments as set forth in the Appendix VI.

Appendix VI contains a listing of the names and addresses of the sources of EPA reviews and comments listing in Appendices I, III, IV, and V.

Note that this is a 1979 report; the backlog of reports should be eliminated over the next three months.

Copies of the EPA Manual setting forth the policies and procedures for EPA's review of agency actions may be obtained by writing the Public Information Reference Unit, Environmental Protection Agency, Room 2922, Waterside Mall SW, Washington, D.C. 20460, telephone 202/755-2808.

Copies of the draft and final environmental impact statements referenced herein are available from the originating Federal department or agency.

Dated: April 30, 1980.

William N. Hedeman, Jr.,

*Director, Office of Environmental Review.*

**Appendix I.**—*Draft Environmental Impact Statements for Which Comments Were Issued Between Mar. 1 and Mar. 31, 1980*

| Identifying No. | Title | General nature of comments | Source for copies of comments |
|---|---|---|---|
| | **Corps of Engineers** | | |
| D-COE-D35014-00 | Commercial Sand and Gravel Operations, Dredging, Mile 0 to 438, Ohio River, Kentucky, Ohio, Pennsylvania, and West Virginia. | ER2 [1] | D |
| DS-COE-D36025-PA | Flood Control Improvements, South Harrisburg, Dauphin County, Pennsylvania | LO2 | D |
| D-COE-E24002-AL | Proposed Pipeline and Wastewater Outfall in Mobile Bay, Theodore Industrial Park, Permit Application, Alabama. | ER2 | E |
| DS-COE-F32050-MI | Grand Haven Harbor Modifications, Lake Michigan, Ottawa County, Michigan | LO2 | F |
| D-COE-F36057-OH | Flood Protection, Clear Creek, Franklin, Warren County, Ohio | ER2 | F |
| D-COE-G34031-AR | Toad Suck Ferry Lock and Dam, Arkansas River, Conway County, Arkansas | LO1 | G |
| DS-COE-G36051-AR | Flood Control Improvement, Eight Mile Creek, Greene County, Arkansas | LO1 | G |
| DS-COE-G36069-LA | Beach Erosion and Hurricane Protection, Grand Isle and Vicinity, Louisiana | ER2 | G |
| D-COE-H32003-MO | Caruthersville Harbor, Navigation Channel, Pemiscot County, Missouri | ER3 | H |
| D-COE-K28005-CA | Operation of the Delta Pumping Plant, Contra Costa and Alameda Counties, California | ER2 | J |
| DS-COE-L36015-00 | Lower Granite Project, Snake River Interstate Bridge, Lewiston, Nez Perce County, Idaho and Clarkston, Asotin County, Washington. | ER2 | K |
| DS-COE-L36046-WA | Columbia River and Tributaries, Interim Report, Yakima and Union Gap, Flood Damage Reduction, Yakima River Basin, Washington. | LO1 | K |
| D-COE-L36060-WA | Ice Harbor Lock and Dam, Operation and Maintenance, Snake River, Washington | LO1 | K |
| | **Department of Agriculture** | | |
| D-AFS-B6500-NH | Draft Presidential Unit Plan, White Mountain National Forest, New Hampshire | LO2 | B |
| D-AFS-J61021-WY | Snake River, a Potential Wild and Scenic River, Bridger-Teton National Forest, Wyoming | LO1 | I |
| D-AFS-J61022-CO | Encampment Wild and Scenic River Study, Routt National Forest, Colorado | LO2 | I |
| D-AFS-K61030-AZ | Management Plan Lower Salt River Recreation, Maricopa County, Arizona | ER2 | J |
| D-AFS-L65044-OR | Ten-Year Timber Resource Plan, Wallowa-Whitman National Forest, Baker, Grant, Malheur, Umatilla, Union, and Wallowa Counties, Oregon (USDA-FS-06-16-79-03). | LO2 | K |
| D-REA-G07015-NM | Ojo-Taos 345 kV Transmission Line, Taos and Rio Arriba Counties, New Mexico | LO2 | G |
| D-REA-J08009-ND | Loan Commitment, Basin Electric Power Cooperative, North Dakota to Saskatchewan Intertie 230 kV Transmission, North Dakota. | LO2 | I |
| D-SCS-E36058-FL | Upper Tampa Bay Watershed, Hillsborough County, Florida | ER2 | E |
| D-SCS-G36068-TX | Pine Creek Watershed, Lamar County, Texas | 3 | G |
| | **Department of Commerce** | | |
| D-NOA-C90004-VI | Virgin Islands Coastal Management Zone Program | LO1 | C |
| D-NOA-L64004-AK | State of Alaska Coastal Zone Management Program | ER2 | K |
| | **Department of Defense** | | |
| DS-UAF-A10050-00 | Airforce Missile MX: Milestone II, Air Mobile Alternative | LO1 | A |
| D-UAF-A10051-MA | Operation of Pave Paws Radar System Operation, Otis Air Force Base, Barnstable County, Massachusetts. | LO2 | A |
| D-UAF-K52003-AZ | Flight Operations, Sells Airspace Overlying the Papago Indian Reservation, Southern Arizona | LO2 | J |
| D-USN-K11012-CA | Long Beach Naval Station, Reestablishment, Los Angeles County, California | ER2 | J |
| D-USN-K11013-CA | Proposed New Naval Regional Medical Center, San Diego County, California | LO2 | J |
| | **Department of Energy** | | |
| D-DOE-A00142-00 | Charge for Spent Fuel Storage, National (DOE/EIS-0041D) | ER2 | A |
| D-BPA-L08035-00 | Proposed FY79 Facility Plan, Southeast Oregon Area Service, Idaho and Oregon | ER2 | K |
| | **Department of Interior** | | |
| D-BLM-A01054-00 | Federal Coal Management Program, Revised | ER2 | A |
| D-BLM-A02137-00 | 1979 Outer Continental Shelf (OCS), Oil and Gas Lease Sale #58A, Western and Central Gulf of Mexico, Offshore Texas, Louisiana, Mississippi and Alabama. | LO/EU2 [2] | A |
| D-BLM-L03001-00 | Crude Oil Transportation System, Northern Tier Pipeline Company, Port Angeles, Washington to Clearbrook, Minnesota. | 3 | K |
| D-IBR-K28006-AZ | Salt-Gila Aqueduct and Transmission System Project, Arizona | ER2 | J |
| D-NPS-J61023-SD | Badlands National Park, Master Plan, South Dakota | LO2 | I |
| D-NPS-K91000-AZ | Burro Management, Restoration Plan, Grand Canyon National Park, Arizona | LO1 | J |

| | | | |
|---|---|---|---|
| **Department of Transportation** | | | |
| DS-FHW—A41227-KY | APD 127 (43) U.S. 23 and U.S. 119, Brushy Fork to Dorton, Pike County, Kentucky (FHWA-KY-EIS-72-08-DS). | LO1 | E |
| DS-FHW—A50117-MT | Bridge Over Missouri River Near Winifred, MT-236, Chouteau and Fergus Counties, Montana | LO2 | I |
| DS-FHW—E40128-NC | Proposed Primary Highway Extension, I-40 Terminus at I-95 Near Benson to Wilmington, Johnston, Sampson, Duplin, Pender, and New Hanover Counties, North Carolina. | EU2 | E |
| D-FHW—E40163-TN | TN-33, Southern Bypass of Maryville, Intersection of TN-115 and TN-95, East to TN-73, Blount County, Tennessee (FHWA-TN-EIS-78-07-D). | LO2 | E |
| D-FHW—E40164-TN | I-440, I-40 to I-24, Nashville, Davidson County, Tennessee (FHWA-TN-EIS-78-06-D) | LO1 | E |
| D-FHW—E40166-NC | I-85, Charlotte Bypass, NC-273 to U.S. 29/NC-49 Connector, Gaston and Mecklenburg Counties, North Carolina (FHWA-NC-EIS-78-03-D). | LO1 | E |
| D-FHW—E40167-KY | Louisa By-Pass, U.S. 23, Relocation, Lawrence County, Kentucky (Project No. APD 133 (42) (FHWA-KY-EIS-78-03-D). | LO1 | E |
| D-FHW—F40123-IN | South L Street and Garwood Road, Richmond, Wayne County, Indiana | LO2 | F |
| D-FHW—G40068-LA | Gulf Outlet Bridge, I-10 Spur Route, I-510, Orleans Parish, Louisiana | LO1 | G |
| D-FHW—G40070-TX | Loop 340 From U.S. 77 South of Waco Northwest to TX-6, McLennan County, Texas | LO1 | G |
| D-FHW—L40076-OR | The Corvallis Bypass, Corvallis Study, Benton County, Oregon (FHWA-OR-EIS-78—09—D) | LO2 | K |
| **Federal Communications Commission** | | | |
| D-FCC-K91001-AZ | FM Station Permit Application, Tucson FM Broadcasting Corporation, Pima County, Arizona | LO1 | J |
| **Department of Housing and Urban Development** | | | |
| D-HUD—E28031-AL | Proposed North-Central Jefferson County Water System, Alabama (CDBG) | LO2 | E |
| D-HUD—E85042-TN | Easthill Subdivision, Arlington Road, City of Bartlett, Shelby County, Tennessee (HUD-R04-EIS-77-27D). | ER2 | E |
| D-HUD—E89011-SC | Charleston Center Redevelopment, Charleston, South Carolina (EDA Title 1, HUD-R04) | LO2 | E |
| D-HUD—F85043-OH | Independence Village East, Columbus, Franklin County, Ohio | ER2 | F |
| D-HUD—F85044-IL | Spring Valley, Village of Carol Stream, DuPage County, Illinois | ER2 | F |
| D-HUD—F85045-MN | Blackhawk Park, Planned Unit Development, Eagan, Dakota County, Minnesota | LO1 | F |
| D-HUD—F85046-MN | Lexington South Development, Eagan, Dakota County, Minnesota | LO1 | F |
| D-HUD—G38002-AR | Brumps Bayou Drainage Project, Pine Bluff, Jefferson County, Arkansas (CDBG) | ER2 | G |
| D-HUD—G85132-TX | Keegans Wood Subdivision, Harris and Fort Bend Counties, Texas | LO2 | G |
| D-HUD—G85133-TX | Sugarmill Subdivision, Fort Bend County, Texas | ER2 | G |
| D-HUD—J85018-CO | Denver Metropolitan Area-Wide, Housing Projects, Colorado | ER2 | I |
| **Nuclear Regulatory Commission** | | | |
| D-NRC-J00025-UT | White Mesa Uranium Mill, San Juan County, Utah | ER2 | I |
| **Veterans Administration** | | | |
| D-VAD-D80010-MD | VA Replacement Medical Center, Baltimore, Maryland | ER2 | D |

[1] D-COE-D35014-00: EPA's comments were dated Jan. 3, 1979, and were inadvertently left out of the Jan. 1979 report published in the Apr. 9, 1980, FEDERAL REGISTER.

[2] D-BLM-A02137-00: This action involves the proposed sale of 115 leases for tracts offshore Texas, Louisiana, Mississippi, and Alabama. EPA's review of the EIS on this proposal generally indicates a lack of environmental objections regarding the offering of 105 of the 115 lease tracts. However, EPA views as environmentally unacceptable the offering, as currently proposed, of 10 tracts.

## Appendix II—Definitions of Codes for the General Nature of EPA Comments

*Environmental Impact of the Action*

LO—Lack of Objection

EPA has no objections to the proposed action as described in the draft impact statement; or suggests only minor changes in the proposed action.

ER—Environmental Reservations

EPA has reservations concerning the environmental effects of certain aspects of the proposed action. EPA believes that further study of suggested alternatives or modifications is required and has asked the originating Federal agency to reassess these impacts.

EU—Environmentally Unsatisfactory

EPA believes that the proposed action is unsatisfactory because of its potentially harmful effect on the environment. Furthermore, the Agency believes that the potential safeguards which might be utilized may not adequately protect the environment from hazards arising from this action. The Agency recommends that alternatives to the action be analyzed fruther (including the possibility of no action at all).

*Adequacy of the Impact Statement*

Category 1—Adequate

The draft impact statement adequately sets forth the environmental impact of the proposed project or action as well as alternatives reasonably available to the project or action.

Category 2—Insufficient Information

EPA believes that the draft impact statement does not contain sufficient information to assess fully the environmental impact of the proposed project or action. However, from the information submitted, the Agency is able to make a preliminary determination of the impact on the environment. EPA has requested that the originator provide the information that was not included in the draft statement.

Category 3—Inadequate

EPA believes that the draft impact statement does not adequately assess the environmental impact of the proposed project or action, or that the statement inadequately analyzes reasonable alternatives. The Agency has requested more information and analysis concerning the potential environmental hazards and has asked that substantial revision be made to the impact statement.

Appendix III.—*Final Environmental Impact Statements for Which Comments Were Issued Between Mar. 1 and Mar. 31, 1979*

| Identifying No. | Title | General Nature of Comments | Source for copies of comments |
|---|---|---|---|
| | **Corps of Engineers** | | |
| F-COE-C07003-NY | Cayuga Station, Permit, New York State Electric and Gas, Somerset, Niagara County, New York. | EPA's concerns were adequately addressed in the final EIS. EPA believes the impacts of the proposed project can be mitigated to be acceptable and stated further mitigation is expected through the State discharges permitting process. | C |
| F-COE-D35011-PA | Rohm and Haas Company, Permit, Placing Solid Fill in the Delaware River Off Bridge Street, Philadelphia, Pennsylvania. | EPA has serious environmental reservations regarding the proposal. EPA believes that issuance of the permits would be contrary to the expressed goal of rehabilitating the Delaware River and recommends that permit application NAPOP-R-953 (Rohm and Haas Co.) be denied and that no permit be issued to the applicant. | D |
| F-COE-E34010-MS | Arkabutla, Enid, Grenada and Sardis Lake, Operation and Maintenance, Mississippi. | EPA continues to have environmental reservations concerning this project. EPA finds that previous comments regarding water quality remain largely unanswered. By virtue of the potential health hazards as well as the environment perturbations which could accrue from degraded water quality, some definitive answers are needed. | E |
| F-COE-F39004-MN | Lake Rebeccas Development Upper Mississippi River at Hastings, Dakota County, Minnesota. | EPA's concerns were adequately addressed in the final EIS. | F |
| F-COE-G32029-TX | Gulf Intracoastal Waterway, Chocolate Bayou, Channel Navigation Improvement, Brazoria County, Texas. | EPA's concerns were adequately addressed in the final EIS. | G |
| F-COE-K39007-CA | Pillar Point Marina, Regulatory Permit, San Mateo County, California. | EPA's concerns were adequately addressed in the final EIS. | J |
| | **Department of Agriculture** | | |
| F-AFS-A61295-00 | Roadless Area Review Evaluation, RARE II | EPA continues to have serious environmental reservations about the consequences of the RARE II decisions as presently proposed. On the basis of our analysis we believe that the methodology used in the RARE II program is, with certain exceptions, theoretically sound. However, we believe that (1) the methodology has been applied in a manner which has tended to bias the decision in favor of nonwilderness allocation, and (2) the criteria used in the decision process did not include the concept of environmental sensitivity, as requested by EPA in our comments on the draft EIS. It is EPA's belief that, in certain cases, non-wilderness designation may lead to unacceptable water quality impacts. | A |
| F-AFS-K61205-AZ | Arizona Snow Bowl Ski Area Proposal, Coconino National Forest, Arizona. | EPA's concerns were adequately addressed in the final EIS. | J |
| F-SCS-D36029-WV | Brush Creek Watershed, Mercer County, West Virginia. | EPA recommended the SCS consider a more environmentally acceptable alternative involving selected channel work combined with dike and floodwall construction, relocation of existing structures, and floodproofing of those structures which cannot be moved. | D |
| F-SCS-G36059-IL | Little Calumet River Watershed, Will and Cook Counties, Illinois. | EPA's concerns were adequately addressed in the final EIS. | F |
| F-SCS-G36066-TX | Big Sandy Creek Watershed, Trinity River, Clay, Jack, Montague, Tarrant and Wise Counties, Texas. | EPA's concerns were adequately addressed in the final EIS. | G |
| F-SCS-J36015-WY | Douglas Watershed Plan, Converse County, Wyoming. | EPA's concerns were adequately addressed in the final EIS. | I |
| | **Department of Commerce** | | |
| F-NOA-G32031-LA | Port Fourchon Development Plan, Phase 4, Lafourche Parish, Louisiana. | EPA's concerns were adequately addressed in the final EIS. | G |
| | **Department of Defense** | | |
| F-USA-K11011-CA | National Training Center, Fort Irwin Site, California | EPA's concerns were adequately addressed in the final EIS. However, EPA will consider the wastewater control measures in its review of the Fort Irwin master plan. | J |
| | **Department of Energy** | | |
| RF-DOE-A86128-00 | National, Motor Gasoline Deregulation and the Gasoline Tilt. | EPA's comments stressed the need to constrain the price differential between leaded and unleaded gasoline. If the differential were not constrained and allowed to increase, EPA believed that this would cause fuel switching, resulting in significant adverse effects on air quality. | A |
| | **Department of Interior** | | |
| F-BLM-A02130-00 | 1979 Outer Continental Shelf (OCS), Oil and Gas Lease Sale No. 58, Offshore Western and Central Gulf of Mexico. | EPA has determined that portions of the FEIS dealing with the regulation and impacts of deep water technology and with the protective stipulations for two sensitive hard bank areas are unresponsive to the concerns raised in our review of the DEIS. EPA continues to assert that it is improper to lease for development tracts that may later require subsea completion or production technology when there are no relevant standards to provide for safe operations. Subsea technology should be evaluated in a programmatic impact statement, and standards covered in a set of deepwater operating orders. | A |
| F-BLM-K08005-AZ | 500 kV Transmission Line, Construction, Permit, Palo Verde-Devers, Arizona. | EPA's concerns were adequately addressed in the final EIS. | J |
| F-IBR-G39003-00 | Pecos River Basin Water Salvage Project, New Mexico and Texas. | EPA's concerns were adequately addressed in the final EIS. | G |

Appendix III.—*Final Environmental Impact Statements for Which Comments Were Issued Between Mar. 1 and Mar. 31, 1979*—Continued

| Identifying No. | Title | General Nature of Comments | Source for copies of comments |
|---|---|---|---|
| | **Department of Transportation** | | |
| F-CGD-E50004-FL | Tampa South Crosstown Expressway Eastern Extension to I-75, Hillsboro County, Florida. | Generally EPA's concerns were adequately addressed in the final EIS. However, that carbon monoxide NAAQS are predicted to be violated in the year 2003 along various segments of the proposed route. If the project is built, action must be taken by the state of Florida to assure that the attainment and maintenance of the county standard will be achieved in the future. | E |
| F-FHW-A41911-KY | Jefferson Freeway, KY-841, Dixie Highway to Taylorsville Road, Jefferson County, Kentucky (FHWA-KY-EIS-73-04-F). | EPA's concerns were adequately addressed in the final EIS. | E |
| F-FHW-F40106-MI | MI-29, Reconstruction, Dana Drain to Channelyde Drive, City of Algonac, St. Clair County, Michigan. | EPA's concerns were adequately addressed in the final EIS. | F |
| F-FHW-G53002-TX | U.S. 69, Railroad Demonstration Project, Hunt and Greenville Counties, Texas. | EPA's concerns were adequately addressed in the final EIS. | G |
| F-FHW-K40053-CA | Death Valley Road, CA-168 to Death Valley Monument, Inyo County, California. | EPA's concerns were adequately addressed in the final EIS. | J |
| | **General Services Administration** | | |
| F-GSA-B11004-RI | Naval Auxiliary Landing Field, Charlestown, Rhode Island. | Generally, EPA's concerns were adequately addressed in the final EIS. However, EPA requested that GSA describe in detail the process by which it would decide who will receive the property. | B |
| | **Department of Housing and Urban Development** | | |
| F-HUD-85036-TN | Northwood Hills Subdivision, Northeast Shelby County, Tennessee (HUD-R04-EIS-77-29F). | EPA has environmental reservations concerning the cumulative impact of this and similar facilities on the water quality in receiving streams in the Loosahatchie Basin. EPA appreciates a detailed estimate of future growth within the basin may be difficult to obtain, but an outline of subsequent land use trends would be extremely helpful. | E |
| F-HUD-F85022-IL | Westlake Development, Bloomingdale and Glendale Heights, DuPage County, Illinois. | EPA's concerns were adequately addressed in the final EIS. | F |
| F-HUD-F85034-OH | Strawberry Farms Development, Project #346, Columbus, Franklin County, Ohio. | EPA's concerns were adequately addressed in the final EIS. However, EPA is still concerned about noise and two water related impacts, wastewater and flooding. | F |
| F-HUD-F85037-MN | Woodlane Hills Development, Woodbury, Washington County, Minnesota. | EPA's concerns were adequately addressed in the final EIS. | F |
| F-HUD-G85085-TX | Westland Creek Village Subdivision, Harris County, Texas. | EPA's concerns were adequately addressed in the final EIS. | G |
| F-HUD-G85102-TX | LaSalle Crossing Subdivision, Montgomery County, Texas. | EPA's concerns were adequately addressed in the final EIS. | G |
| F-HUD-G85113-TX | Paddock Subdivision, Harris County, Texas | EPA's concerns were adequately addressed in the final EIS. | G |
| F-HUD-G85122-TX | Southbrook Addition Subdivision, Tarrant County, Texas. | EPA's concerns were adequately addressed in the final EIS. | G |
| F-HUD-G85134-TX | Northwest El Paso Joint Venture Subdivision, El Paso County, Texas. | EPA's concerns were adequately addressed in the final EIS. | G |
| F-HUD-K85020-HI | Village Park, Waipau, Oahu Island, Honolulu County, Hawaii. | EPA's concerns were adequately addressed in the final EIS. | J |
| | **Nuclear Regulatory Commission** | | |
| F-NRC-CO6003-NY | Greene County Nuclear Power Plant, Construction Permit, (PASNY), Cementon, Greene County, New York. | EPA concurs with the NRC staff recommendation that a nuclear power plant should not be built at this site. Recent studies regarding the rare and endangered shortnose sturgeon should be seriously considered in any evaluation of alternative sites. | C |
| | **Pennsylvania Avenue Development Corporation** | | |
| FS-PAD-A89142-DC | Pennsylvania Avenue Plan, Market Square Archives, Washington, DC. | EPA's concerns were adequately addressed in the final EIS. | D |
| | **Water Resources Council** | | |
| F-WRC-F39007-00 | Maumee River Basin Study, Level B, Michigan, Indiana and Ohio. | EPA's concerns were adequately addressed in the final EIS. | F |

Appendix IV.—*Final Environmental Impact Statements Which Were Reviewed and Not Commented on Between Mar. 1 and Mar. 31, 1979*

| Identifying No. | Title | Source of review |
|---|---|---|
| | **Department of Agriculture** | |
| F-AFS-J65069-MT | East Shore Flathead Lake Planning Unit, Flathead National Forest, Montana | I |
| F-AFS-J65071-00 | Keeler Planning Unit, Kootenai National Forest, Montana and Idaho | I |
| F-AFS-J65072-MT | Lick Mountain, Rock Candy Planning Unit, Kootenai National Forest, Montana | I |
| F-AFS-J65074-00 | Star Planning Unit, Kootenai National Forest, Montana and Idaho | I |
| | **Department of Interior** | |
| F-BLM-J99007-WY | Domestic Livestock Grazing Management, Seven Lakes, Wyoming | I |

**Appendix IV.**—*Final Environmental Impact Statements Which Were Reviewed and Not Commented on Between Mar. 1 and Mar. 31, 1979*—Continued

| Identifying No. | Title | Source of review |
|---|---|---|
| | **Department of Transportation** | |
| F-FHW-B40034-VT | Northfield and Williamstown State Highway, VT-12 to I-89, Washington and Orange Counties, Vermont (FHWA-VT-EIS-78-02-F) | B |
| F-FHW-E40109-TN | TN-42, Proposed Algood Bypass to South of Livingston Bypass, Overton and Putnam Counties, Tennessee (FHWA-TN-EIS-76-06-F) | E |
| F-FHW-H40071-IA | Extension of I-380, Waterloo-Cedar Falls Metropolitan Area, Black Hawk County, Iowa | H |
| F-FHW-H40084-IA | IA-13, Elkader Bypass, Improvement, Clayton County Iowa | H |
| F-FHW-J40036-ND | Improvement, 3rd Street S.E. in Mandan, North Dakota | I |
| | **Department of Housing and Urban Development** | |
| F-HUD-B89011-MA | Chelsea Naval Hospital Urban Renewal Project, Chelsea, Suffolk County, Massachusetts | B |
| F-HUD-E28030-AL | West Wilcox Water System, Boykin Community Water System, Wilcox County, Alabama | E |

**Appendix V.**—*Regulations, Legislation and Other Federal Agency Actions for Which Comments Were Issued Between Mar. 1, and Mar. 31, 1980*

| Identifying No. | Title | General nature of comments | Source for copies of comments |
|---|---|---|---|
| | **Department of Commerce** | | |
| R-NOA-A60107-00 | 15 CFR Part 931, Coastal Energy Impact Program, Proposed Administrative Procedures (44 FR 3230). | EPA made a number of recommended changes in the language of these proposed regulations to more accurately reflect environmental values in coastal areas. EPA would like an opportunity to review the threshold criteria before they are made final and circulated by CEIP. | A |
| | **Department of Energy** | | |
| A-DOE-A07016-00 | Notice, Powerplant and Industrial Fuel Use Act, Proposed Guidelines for Preparation of Environmental Reports (44 FR 6177). | EPA comments presented suggestions for structuring the information contained in environmental reports so that it could be more effectively used in preparing environmental assessments and impact statements and in permit actions. | A |
| | **Department of Interior** | | |
| R-BLM-A01051-00 | 43 CFR 3800, Mining Claims Under the General Mining Rules, Exploration and Mining, Wilderness Review Program. | EPA is concerned with the permitting of activities in wilderness study area which would make those areas unacceptable for congressional designation as part of the national wilderness system, or which could adversely affect designation of national wild and scenic rivers. | A |
| A-BLM-A02133-00 | Resource Report, Outer Continental Shelf (OCS) Oil and Gas Lease Sale #52, North Atlantic, Second Sale. | EPA expressed concern with the increased size of an already large area and is especially concerned with the extension of the area shoreward to the territorial sea boundary. In addition, EPA made several comments for consideration. | A |
| A-BLM-A02135-00 | Resource Report, Outer Continental Shelf (OCS) Oil and Gas Lease Sale #56, South Atlantic, Georgia Embayment. | EPA provided specific information in response to BLM's request | A |
| A-BLM-A02150-AK | Resource Report, Outer Continental Shelf (OCS) Oil and Gas Lease Sale #55, Eastern Gulf of Alaska. | EPA continues to recommend that final operating orders be in effect before the lease takes place. EPA also commented on the scoping process and requested a substantive outline be considered during the scoping process. | A |
| A-IGS-A02132-00 | Proposed Standard, Requirements for Verifying the Structural Integrity of OCS Platforms (43 FR 56945). | EPA Offered comments on USGS's platform verification program. EPA has concerns about design systems for hydrocarbon production in deepwater. The proposed program can address EPA's concerns about platform design. However, EPA's concerns about the development and environmental safety of deepwater subsea technology are not addressed by the proposed program. EPA suggested several factors that need to be addressed and information to be compiled, in order to evaluate the safety of this technology so that sound management and regulation of the deepwater OCS development program will result. | A |
| R-IGS-A02136-00 | 30 CFR Parts 250, 252, Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS) (44 FR 3513). | EPA's principal concern pertains to the availability of exploration plans, development and production plans and environmental reports under specific sections of the proposed rulemaking. | A |
| | **Nuclear Regulatory Commission** | | |
| R-NRC-A00129-00 | 10 CFR Chapter 1, Generic Rulemaking to Improve Nuclear Power Plant Licensing (43 FR 58377). | EPA suggested that the factor of energy conservation be included in the estimate of need for computing additional baseload generating capacity as well as the availability of alternate energy technologies. EPA also believes that the curtailment of the scope of the environmental review at the operating license stage would require a more extensive review at the construction permit stage. | A |

## Appendix VI—Source for Copies of EPA Comments

A. Public Information Reference Unit (PM-213), Environmental Protection Agency, Room 2922, Waterside Mall, SW, Washington, D.C. 20460

B. Director of Public Affairs, Region 1, Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203

C. Director of Public Affairs, Region 2, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10007

D. Director of Public Affairs, Region 3, Environmental Protection Agency, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106

E. Director of Public Affairs, Region 4, Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30308

F. Director of Public Affairs, Region 5, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604

G. Director of Public Affairs, Region 6, Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270
H. Director of Public Affairs, Region 7, Environmental Protection Agency, 1735 Baltimore Street, Kansas City, Missouri 64108
I. Director of Public Affairs, Region 8, Environmental Protection Agency, 1860 Lincoln Street, Denver Colorado 80203
J. Office of External Affairs, Region 9, Environmental Protection Agency, 213 Fremont Street, San Francisco, California 94108
K. Director of Public Affairs, Region 10, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

[FR Doc. 80-14097 Filed 5-8-80; 8:45 am]
BILLING CODE 6560-01-M

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[FRL 1490-2]

## Notice of Availability of Environmental Impact Statements

**AGENCY:** Office of Environmental Review (A-104), U.S. Environmental Protection Agency.

**PURPOSE:** This notice lists the environmental impact statements (EISs) 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 1506.9).

**PERIOD COVERED:** This notice includes EIS's filed during the week of April 28, 1980 to May 2, 1980.

**REVIEW PERIODS:** The 45-day review period for draft EIS's listed in this notice is calculated from May 9, 1980 and will end on June 23, 1980. The 30-day review period for final EIS's as calculated from May 9, 1980 will end on June 9, 1980.

**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 with charge from the following sources:

**FOR PUBLIC AVAILABILITY AND/OR HARD COPY REPRODUCTION OF EIS'S FILED PRIOR TO MARCH 1980:** Environmental Law Institute, 1346 Connecticut Avenue, NW., Washington, DC 20036.

**FOR HARD COPY REPRODUCTION OR MICROFICHE:** Information Resources Press, 1700 North Moore Street, Suite 700A, Arlington, VA 22209, (703) 558-8270.

**FOR FURTHER INFORMATION CONTACT:** Kathi L. Wilson, Office of Environmental Review (A-104), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 245-3006.

**SUMMARY OF NOTICE:** On July 30, 1979, the CEQ regulations became effective. Pursuant to section 1506.10(A), the 30-day review period for final EIS's received during a given week will now be calculated from Friday of the following week. Therefore, for all final EIS's received during the week of April 28, 1980 to May 2, 1980 the 30-day review period will be calculated from May 9, 1980. The review period will end on June 9, 1980.

Appendix I sets forth a list of EIS's filed with EPA during the week of April 28, 1980 to May 2, 1980. 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, is listed in this notice. 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 EPA has approved 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 newly established 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 agency.

Appendix V sets forth a list of reports or additional supplemental information relating to 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: May 6, 1980.

William N. Hedeman, Jr.,

*Director, Office of Environmental Review (A-104).*

Appendix I.—EIS's Filed With EPA During the Week of April 28 Through May 2, 1980

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Director, Office of Environmental Quality, Office of the Secretary, U.S. Department of Agriculture, Room 412-A, Admin. Building, Washington, D.C. 20250, (202) 447-3965.

Forest Service

*Draft*

Paddy Creek Wilderness Study, Mark Twain National Forest, Texas County, Mich., April 28: Proposed is the designation and management of the Paddy Creek Area within the Mark Twain National Forest, Texas County, Missouri, as a wilderness area under the National Wilderness Preservation System. Management alternatives considered include: 1) wilderness management with minimum development, 2) non-wilderness management with maximum development, and 3) non-wilderness management with modified development. (EIS Order No. 800317.)

*Final*

Main Bay Hatchery, Chugach National Forest, Permit, Alaska, April 29: Proposed is the issuance of a special permit for the construction and operation of a chum salmon egg incubation facility on approximately 14 acres near Main Bay in the western Prince William Sound area of the Chugach National Forest in southcentral Alaska. The hatchery will include 12 structures, water pipelines, a combination biological/chemical sewage treatment system, hydroelectric plant, and a holding pond. Also proposed is the designation of the Main Bay Area as wilderness. Comments made by: EPA, DOI, USDA, HUD, State and Local Agencies, Groups, Individuals and Businesses. (EIS Order No. 800328.)

*Final*

Mt. Magazine Recreation Development, Logan County, Ark., May 2: Proposed is a recreational development plan for 2,200 acres on top of Mt. Magazine, Ozark National Forest, Logan County, Arkansas. Features include: replacement of a lodge that burnt in 1971 with a structure containing a restaurant, visitor information center and observation deck; replacement of deteriorated cabins; a sewage treatment plant and related facilities; rehabilitating campgrounds and picnic areas along with increased capacity; and increasing trail mileage. (USDA-FS-08-10-79-03.) Comments made by: State and Local Agencies, Groups and Individuals. (EIS Order No. 800339.)

Soil Conservation Service

*Draft*

Spring Creek Subwatershed Protection, Sonoma County, Calif., April 30: Proposed is a watershed protection plan for the Spring Creek Subwatershed in Sonoma County, California. The project involves the

installation of flood control measures consisting of the combination of a rectangular concrete channel, natural channel, shaped earthern channel, low profile drop structures and an underground conduit to divert peak flow. The alternatives consider: 1) no action, 2) a rectangular concrete channel, 3) underground conduit, and 4) combination of channels with underground conduit. (EIS Order No. 800331.)

*Final*

Stewart Creek Watershed, Hopkins County, Ky., April 29: Proposed is a project for watershed protection and flood prevention in Hopkins County, Kentucky. The planned works of improvement include conservation land treatment, supplemented by channel work and two water control structures. The channel work will involve approximately 1.7 miles of channel enlargement with a riprap lining along the existing alignment. Comments made by: COE, EPA, USDA, DOI, State Agencies. (EIS Order No. 800327.)

*Final*

Donaldson Creek Watershed Protection, Caldwell and Crittenden Counties, Ky., April 28: 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, 5 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 areas 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)-80-1-F-KY.) Comments made by: USDA, COE, DOC, EPA, FERC, DOI, HEW, State Agencies. (EIS Order No. 800314.)

Hogansburg Agricultural Land Drainage, St. Lawrence and Franklin Counties, N.Y., April 28: Proposed is an agricultural land drainage plan for the Hogansburg watershed in St. Lawrence anf Franklin Counties, New York. The watershed encompasses approximately 3,141 acres of cropland. The works of improvement include approximately 9.5 miles of channel modification to be coordination with on farm drainage. Proper drainage outlets would be provided through channel modification with subsurface and surface drainage. Comments made by: USDA, EPA, State and Local Agencies. (EIS Order No. 800315.)

**U.S. Army Corps of Engineers**

Contact: Mr. Richard Makinen, Office of Environmental Policy, Attn.: DAEN-CWP-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314, (202) 272-0121.

*Final*

Aquatic Plant Management Program, King and Okanogan Counties, Wash., April 28: Proposed is a program for the management of the aquatic plant Eurasian watermill foil in the Counties of King and Okanogan, Washington. The initial program would include the treatment of approximately 100 acres of Lakes Washington Sammamish, and Union and spot treatment in Osoyoos Lake and the Okanogan River. The primary control methods would be mechanical harvesting and 2,4-D application. Other treatments which were considered are: 1) dredging, 2) hydraulic washing; 3) water level fluctuations; 4) use of simazine, siluex, fenac, and endothall; and 5) herbivorous fish, insects and pathogens. (Seattle District.) Comments made by: DOI, AHP, HUD, HEW, State and Local Agencies, Groups, Individuals and Businesses. (EIS Order No. 800311.)

**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**

*Draft*

Padilla Bay Estuarine Sanctuary, Grant, Skagit County, Wash., May 1: Proposed is the awarding of a grant for the acquisition of 11,612 acres and the creation of the Padilla Bay Estuarine Sanctuary located in Skagit County, Washington. Of the total amount, approximately 1,260 acres will be acquired in less than fee simple, all other in fee. The lands to be acquired are presently owned by state and local agencies; and private businesses and owners. (EIS Order No. 800333.)

**ENVIRONMENTAL PROTECTION AGENCY**

Contact: Environmental Protection Agency Library (MD-35), Research Triangle Park, N.C. 27711, (919) 541-2777.

*Draft*

Benzene Emissions from Maleic Anhydride Industry, Regulatory, April 30: Proposed are standards for the control of benzene emissions from the domestic maleic anhydride production industry. The alternatives are: 1) a 97 percent reduction from uncontrolled emission levels, based on the best control that has been achieved at an existing maleic plant using universally applicable equipment; and 2) a 99 percent reduction from uncontrolled levels, based on the best control considered feasible using technology transfer. (EPA-450/3-80-001a.) (EIS Order No. 800332.)

Mr. Edward Vest, Region VII, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64108, (816) 374-2921.

*Final*

Dry Creek Interceptor, Wichita, Sedgwick County, Kans., April 30: 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 replace 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-907/9-80-001.) Comments made by: USDA, HUD, DOI, State and Local Agencies, Groups and Individuals. (EIS Order No. 800330.)

**FEDERAL ENERGY REGULATORY COMMISSION**

Contact: Dr. Jack M. Heinemann, Advisory on Environmental Quality, Room 3000, S-22, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8228.

Anyone desiring to protest or file a petition to intervene with the FERC on the basis of a draft EIS listed below should do so in accordance with the requirements of FERC's rules of practice and procedure, 18 CFR 1.8, 1.10 (1979), within the time period set forth in this notice, unless otherwise stated.

*Draft*

Kootenai River Hydroelectric Project, License, Lincoln County, Mont., May 2: Proposed is the issuance of a license for the construction, operation and maintenance of the Kootenai River Hydroelectric Project in Lincoln County, Montana. The project will require: 1) a diversion structure; 2) intake/outlet structure; 3) access portal and tunnel; 4) head tunnel, underground powerstation, and tail tunnel; 5) underground switchyard and bus; 6) new and improved recreational facilities; 7) access road; and 8) other appurtenant facilities. (FERC/EIS-0017/D No. 2752.) (EIS Order No. 800340.)

**GENERAL SERVICES ADMINISTRATION**

Contact: Mr. Carl W. Penland, Acting Director, Environmental Affairs Division, General Services Administration, 18th and F Streets N.W., Washington, D.C. 20405, (202) 566-1416.

*Draft*

Varick Street Federal Building, Manhattan, N.Y., May 1: Proposed is the repair and alteration of the federal office building at 201 Varick Street in the Borough of Manhattan, City of New York, New York. The building would provide 230,000 square feet of space to house the Immigration and Naturalization Service and related facilities. The alternatives consider: 1) repair and alteration, 2) no action, and 3) postponement. (EIS Order No. 800335.)

*Final*

Lease Construction of Federal Building, Milwaukee, Milwaukee County, Wis., April 28: Proposed is the lease of 327,000 occupiable square feet of space in a building which is to be constructed for GSA by a private developer in the City and County of Milwaukee, Wisconsin. Additionally, parking will be provided for 338 vehicles. The facility would provide replacement space for agencies presently housed in two Federally owned buildings, and provide for the consolidation of agency activities housed in 11 widely scattered locations. (EWI-78001.) Comments made by: HEW, USDA, DOI, AHP, EPA, FERC, COE, State Agencies, Individuals and Businesses. (EIS Order No. 800313.)

Department of HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, (202) 755-6300.

*Draft*

Countryside Subdivision Mortgage Insurance, Pima County, Ariz., May 1: Proposed is the issuance of HUD home mortgage insurance for the Countryside Subdivision in Tucson, Pima County, Arizona. The development will include 2,505 units on 640 acres, of which, 88 acres have been dedicated as open space. The subdivision will consist of both single and multiple family units. (HUD-R09-EIS-79-2D) (EIS Order No. 800336.)

*Final*

North Hills Acres, 2nd/Washington, 4th developments, Stark County, N. Dak., April 29: Proposed is the issuance of HUD home mortgage insurance for the North Hills Acres, 2nd and Washington, 4th residential developments located in Dickinson, Stark County, North Dakota. North Hill Acres will contain 166 units on 67 acres, and Washington 4th contains 376 units on 105 acres. All units would be single family detatched. (HUD-R08-EIS-80-1F). Comments made by: COE, DOI, EPA, HEW, USDA, State and Local Agencies. (EIS Order No. 800326.)

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.

*Draft*

City of De Pere Rehabilitation, CDBG, Brown County, Wis., April 28: Proposed is awarding of a CDB grant to the City of De Pere, Brown County, Wisconsin. The grant would be used for the construction of a 900 foot segment of storm sewer, placement of fill over the sewer, and development of park facilities on the fill. The project site is located on De Pere's west side in a steep ravine occupied by a small stream, Penore Creek. The alternatives considered: (1) no action, (2) stream channelization, (3) flow diversion, and (4) ravine/wetlands park development. (EIS Order No. 800318.)

Department of Interior

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256 Interior Bldg., Department of the Interior, Washington, D.C. 20240, (202) 343-3891.

Bureau of Land Management

*Draft*

Powderhorn Wilderness Study, Gunnison and Hinsdale Counties, Colo., May 2: Proposed is wilderness designation of the Powderhorn Instant Study Area and contiguous areas with wilderness character in Gunnison and Hinsdale Counties, Colorado. The areas under consideration encompass 50,140 acres. The alternatives considered: (1) designation of the 40,480 acre primative area and 4,471 contiguous acres, (2) designation of the existing primitive area (40,480 acres), (3) use alternatives, (4) no action, and (5) designation of all lands. (DES-80-31) (EIS Order No. 800341.)

Tonopah Resource Area Livestock Grazing Management, Nye County, Nev., May 1: Proposed is the implementation of a livestock grazing management program for the Tonopah Resource Area in Nye County, Nevada. The area encompasses approximately 3.6 million acres of public, private, state and other lands. Components of the proposed action will include: (1) a vegetation allocation program, (2) levels of grazing management, (3) livestock support facilities, (4) a general implementation schedule, (5) standard operating procedures, and (6) interrelations. The alternatives considered: (1) no action, (2) no livestock grazing, and (3) livestock reduction/maximizing wild horses. (DES-80-30) (EIS Order No. 800334.)

*Draft*

Ironside grazing management program, Baker and Malheur Counties, Oreg., April 28: Proposed is the implementation of a livestock grazing management program for the Ironside area in Baker and Malheur Counties, Oregon. The area encompasses 1,001,964 acres of public land. Intensive grazing is proposed on 914,000 acres, nonintensive on 71,131 acres, unallocated status on 14,219 acres and elimination of grazing on 2,609 acres. Implementation of program would include: (1) allocation of vegetation to livestock, wild horses, wildlife and nonconsumptive uses; (2) establishment of grazing systems; and (3) construction of range improvements. (DES-80-28) (EIS Order No. 800319).

Kanab/Escalante grazing management, Arizona and Utah, April 29: Proposed is a grazing management plan for the Kanab/Escalante area in Washington, Kane and Garfield Counties in Utah and Coconino County, Arizona. The preferred alternative includes: (1) specific management applied on 129 allotments, (2) continuous seasonal management applied on 60 allotments, and (3) elimination of grazing on 20 allotments. The alternatives consider: (1) continuation of management, (2) elimination of grazing, (3) multiple resource enhancement, (4) adjustment to grazing capacity, (5) rangeland management recommendation, and (6) livestock optimization. (DES-80-29) (EIS Order No. 800325).

Interstate Commerce Commission

Contact: Mr. Carl Bausch, Chief, Section of Energy and Environment, Interstate Commerce Commission, Room 3371, 12th & Constitution Ave., N.W., Washington, D.C. 20423, (202) 275-7658.

*Final*

CSX Corp. and Chessie System/Seaboard Coast merger, several, May 1: Proposed is the merger of the CSX Corporation with the Chessie System and Seaboard Coast Line Industries. The action would create a single system rail network of approximately 27,000 miles. Combined, the two systems would serve all states east of the Mississippi River except for Wisconsin and those in New England. Six alternatives are considered. Comments made by: EPA, DOI, State and Local Agencies, Groups, and Businesses. (EIS Order No. 800337).

State Department

Contact: Mr. William H. Mansfield III, Office of Environmental Affairs, Department of State, Washington, D.C. 20520, (202) 632-2418.

*Draft*

East coast fishery resources, United States and Canada, Pacific Ocean, April 28: Proposed is ratification and implementation of the Agreement Between the Government of the United States of America and the Government of Canada on East Coast Fishery Resources. The action will impact the U.S. fishery conservation zone in the Gulf of Maine and Georges Bank area. The agreement would require that total allowable catches be established annually and vests, individually or collectively, both countries with exclusive or primary management responsibility for each stock covered. (EIS Order No. 800320).

Department of Transportation

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590 (202) 426-4357.

Federal Highway Administration

*Draft*

Haleiwa bypass, Kamehameha Hwy. realignment, Honolulu County, Hawaii, April 28: Proposed is the construction of the Haleiwa Bypass in the Town of Haleiwa, City and County of Honolulu, Island of Oahu, Hawaii. The bypass would begin at the Weed Junction Traffic Circle and rejoin Kamehameha Highway (FAP 83) near the Haleiwa Beach Park, a distance of approximately 2.3 miles. Right-of-way would be acquired to accommodate additional lanes should the need arise. The alternatives consider three alignments beginning and ending at the same points but varying in distance. Also considered is no action, widening Kamehameha Highway and mass transit improvement. (FHWA-HI-EIS-80-01-D) (EIS Order No. 800316).

Hackett Road bypass, Waterloo, Black Hawk County, Iowa, April 29: Proposed is the construction of the Hackett Road Bypass from the junction of US 63 and West Ridgeway Avenue to the junction of Rainbow Drive and I-380 in the Town of Waterloo, Black Hawk County, Iowa. The highway will be a limited-access roadway with at-grade intersections and one graded-separated interchange. Portions of the above-described alignment are deleted or changed to a two-lane facility in certain alternatives. (FHWA-IOWA-EIS-80-03-D) (EIS Order No. 800322).

*Draft Supplement*

561 portion of Dubuque North-West Arterial, (DS-1), Dubuque County, Iowa, April 29: Proposed is the construction of a four-lane divided highway known as Arterial 561 beginning on Kerrigan Road (US 61/US 151) just north of Grandview Avenue in

Dubuque and terminating at 16th Street just west of Kerper Boulevard in Dubuque County, Iowa. The alternatives consider: 1) a fully controlled access highway with access only at interchanges, 2) a partially controlled access highway with at-grade intersections, and 3) four possible alignments. (FHWA-IOWA-EIS-72-07-02) (EIS Order No. 800323).

*Final*

Western bypass of the city of Talladega, April 29: Proposed is the construction of a bypass around the western side of the City of Talladega. The project begins just north of Talladega Creek on US Alternate 231 and swings to the western side of Talladega tying back into US Alternate 231 north of Talladega. The project calls for a two-lane highway to be constructed on four-lane right-of-way with grade separations over the Southern Railway tracks and the Atlantic Coastline tracks. The approximate length of the project is five miles. The project is located in Talladega County, Alabama. (FHWA-ALA-EIS-78-04-F) Comments made by: USDA, HUD, EPA, HEW, DOT, DOI, AHP, State and Local Agencies (EIS Order No. 800329).

Cromwell Bridge replacement, Gunpowder Falls, Baltimore County, Md., April 29: Proposed is the replacement of the existing bridge carrying Cromwell Bridge Road over Gunpowder Falls in Baltimore County, Maryland. Reconstruction or replacement of the approach roads would be done as necessary to provide adequate connections to the new bridge. The new bridge and improve roadway would be raised above the 100-year flood level. The alternatives consider: 1) no action, 2) improvements in existing location, and 3) improvements in a new location. (FHWA-MD-EIS-80-01-D) (EIS Order No. 800321).

*Final*

NY-47, Rochester Outer Loop, Greece, Monroe County, N.Y., May 2: Proposed is the construction and/or extension of three roads in the Town of Greece, Monroe County, New York. The plan proposes extension of NY-47 with its present terminus with Ridge Road for 4.4 miles to the Lake Ontario State Parkway. The freeway will be located on existing right-of-way. The project also provides for the extension of the Dorsey Road, with four travel lanes for 1.95 miles, and Fetzaer Road, with two travel lanes, for 1 mile. (FHWA-EIS-78-03F) Comments made by: EPA, HUD, HEW, DOT, State and Local Agencies, Groups, and Businesses (EIS Order No. 800338).

**EIS's Filed During the Week of Apr. 28, 1980 Through May 2, 1980**

[Statement title index—by State and county]

| State | County | Status | Statement title | Accession No. | Date filed | Originating agency No. |
|---|---|---|---|---|---|---|
| Regulatory | | Draft | Benzene Emissions from Maleic Anhydride Industry | 800332 | Apr. 30, 1980 | EPA |
| Alabama | Talladega | Final | Western Bypass of the City of Talladega | 800329 | Apr. 29, 1980 | DOT |
| Alaska | | Final | Main Bay Hatchery, Chugach NF, Permit | 800328 | Apr. 29, 1980 | USDA |
| Arizona | Coconino | Draft | Kanab/Escalante Grazing Management | 800325 | Apr. 29, 1980 | DOI |
| | Pima | Draft | Countryside Subdivision Mortgage Insurance | 800336 | May 1, 1980 | HUD |
| Arkansas | Logan | Final | Mt. Magazine Recreation Development | 800339 | May 2, 1980 | USDA |
| California | Somma | Draft | Spring Creek Subwatershed Protection | 800331 | Apr. 30, 1980 | USDA |
| Colorado | Gunnison | Draft | Powderhorn Wilderness Study | 800341 | May 2, 1980 | DOI |
| | Hinsdale | Draft | Powderhorn Wilderness Study | 800341 | May 2, 1980 | DOI |
| Hawaii | Honolulu | Draft | Haleiwa Bypass, Kamehameha Hwy, Realignment | 800316 | Apr. 28, 1980 | DOT |
| Iowa | Black Hawk | Draft | Hackett Road Bypass, Waterloo | 800322 | Apr. 29, 1980 | DOT |
| | Dubuque | Supple | 561 Portion of Dubuque North-West Arterial, (DS-1) | 800323 | Apr. 29, 1980 | DOT |
| Kansas | Sedgwick | Final | Dry Creek Interceptor, Wichita | 800330 | Apr. 30, 1980 | EPA |
| Kentucky | Caldwell | Final | Donaldson Creek Watershed Protection | 800314 | Apr. 28, 1980 | USDA |
| | Crittenden | Final | Donaldson Creek Watershed Protection | 800314 | Apr. 28, 1980 | USDA |
| | Hopkins | Final | Stewart Creek Watershed | 800327 | Apr. 29, 1980 | USDA |
| Maryland | Baltimore | Draft | Cromwell Bridge Replacement, Gunpowder Falls | 800321 | Apr. 29, 1980 | DOT |
| Michigan | Texas | Draft | Paddy Creek Wilderness Study, Mark Twain NF | 800317 | Apr. 28, 1980 | USDA |
| Montana | Lincoln | Draft | Kootenai River Hydroelectric Project, License | 800340 | May 2, 1980 | FERC |
| Nevada | Nye | Draft | Tonopah Resource Area Livestock Grazing Management | 800334 | May 1, 1980 | DOI |
| New York | | Draft | Varick Street Federal Building, Manhattan | 800335 | May 1, 1980 | GSA |
| | Franklin | Final | Hogansburg Agricultural Land Drainage | 800315 | Apr. 28, 1980 | USDA |
| | Monroe | Final | NY-47, Rochester Outer Loop, Greece | 800338 | May 2, 1980 | DOT |
| | St. Lawrence | Final | Hogansburg Agricultural Land Drainage | 800315 | Apr. 28, 1980 | USDA |
| North Dakota | Stark | Final | North Hills Acres 2nd/Washington 4th Developments. | 800326 | Apr. 29, 1980 | HUD |
| Oregon | Baker | Draft | Ironside Grazing Management Program | 800319 | Apr 28, 1980 | DOI |
| | Malheur | Draft | Ironside Grazing Management Program | 800319 | Apr. 28, 1980 | DOI |
| Pacific Ocean | | Draft | East Coast Fishery Resources, US and Canada | 800320 | Apr. 28, 1980 | STAT |
| Several | | Final | CSX Corp and Chessie System/Seaboard Coast Merger. | 800337 | May 1, 1980 | ICC |
| Utah | Kane | Draft | Kanab/Escalante Grazing Management | 800325 | Apr. 29, 1980 | DOI |
| | Garfield | Draft | Kanab/Escalante Grazing Management | 800325 | Apr. 29, 1980 | DOI |
| Washington | King | Final | Aquatic Plant Management Program | 800311 | Apr. 28, 1980 | COE |
| | Okanogan | Final | Aquatic Plant Management Program | 800311 | Apr. 28, 1980 | COE |
| | Skagit | Draft | Padilla Bay Estuarine Sanctuary, Grant | 800333 | May 1, 1980 | DOC |
| Wisconsin | Brown | Draft | City of De Pere Rehabilitation, CDBG | 800318 | Apr. 28, 1980 | HUD |
| | Milwaukee | Final | Lease Construction of Federal Building, Milwaukee | 800313 | Apr. 28, 1980 | GSA |

**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 |
|---|---|---|---|---|---|
| DEPARTMENT OF AGRICULTURE | | | | | |
| Mr. Barry Flamm, Director, Office of Environmental Quality, Office of the Secretary, U.S. Department of Agriculture, Room 412-A, Admin. Building, Washington, D.C. 2050, (202) 447-3965. | Paddy Creek Wilderness Study, Mark Twain FN, Texas County, Missouri. | Draft 800317 | May 9, 1980 (see app. I). | Extension | June 30, 1980. |
| FEDERAL ENERGY REGULATORY COMMISSION | | | | | |
| Dr. Jack M. Heinemann, Advisor on Environmental Quality, Room 3000 S-22, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, (202) 357-8228. | Kootenai River Falls Hydroelectric Project No. 2725, Kootenai River, Lincoln County, Montana. | Draft 800340 | May 9, 1980 (see app. I). | Extension | June 26, 1980. |

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 INTERIOR | | | | | |
| Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256, Interior Bldg., Department of the Interior, Washington, D.C. 20240, (202) 343-3891. | Ironside Grazing Management, Baker and Malheur Counties, Oregon. | Draft 800319 | May 9, 1980 (see app. I). | Extension | July 7, 1980. |
| | Tonopah Resource Area Domestic Livestock Grazing Mgmt. Program, Nye County, Nevada. | Draft 800334 | May 9, 1980 (see app. I). | Extension | June 3, 1980. |
| | Powderhorn Primitive Area, Wilderness Designation, Gunnison and Hinsdale Counties, Colorado. | Draft 800341 | May 9, 1980 (see app. I). | Extension | July 7, 1980. |
| DEPARTMENT OF TRANSPORTATION | | | | | |
| Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426-4357. | Haleiwa Bypass/FAP 83, Weed Junction to Haleiwa Beach Park, Oahu Island, Hawaii. | Draft 800316 | May 9, 1980 (see app. I). | Extension | June 25, 1980. |
| | Cromwell Bridge Road Over Gunpowder Falls, Baltimore County, Maryland. | Draft 800321 | May 9, 1980 (see app. I). | Extension | June 30, 1980. |
| | 561 Portion of the Dubuque North-West Arterial, Dubuque County, Iowa. | Draft 800323 | May 9, 1980 (see app. I). | Extension | July 1, 1980. |
| 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, Washington, D.C. 20314, (202) 272-0121. | Presque Isle Beach Erosion Control Program, Erie, Pennsylvania. | Draft 800155 | Mar. 14, 1980 | Extension | May 15, 1980. |

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 Date of availability published in FEDERAL REGISTER | of withdrawal |
|---|---|---|---|---|
| None. | | | | |

Appendix IV.—*Notice of Official Retraction*

| Federal agency contact | Title of EIS | Status/No. | Date notice published in FEDERAL REGISTER | Reason for retraction |
|---|---|---|---|---|
| None. | | | | |

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 published in FEDERAL REGISTER | Correction |
|---|---|---|---|---|
| None. | | | | |

[FR Doc. 80-14409 Filed 5-8-80; 8:45 am]
BILLING CODE 6560-01-M

[PF-184; FRL 1489-Z]

## Filing of Pesticide and Feed Additive Petition

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

**ACTION:** Notice.

**SUMMARY:** Shell Chemical Company, Washington, DC 20036. Proposes that 40 CFR 180.379 be amended by establishing tolerance limitations for the insecticide cyano (3-phenoxyl-phenyl)methyl 4-chloro-alpha-(1-methylethyl)benzeneacetate in or on raw agricultural commodities and 21

CFR 561 be amended by establishing a regulation permitting residues of the insecticide cyano (3-phenoxyl-phenyl)methyl 4-chloro-alpha-(1-methylethyl)benzeneacetate in or on peanut hulls.

**ADDRESS:** Written comments and inquiries should be directed to:

Franklin D. R. Gee, Product Manager (PM) 17, Room E-341, Registration Division (TS-767);

Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460 202/426-9417.

Written comments may be submitted while the petition is pending before the Agency. The comments are to be identified by the document control number "PF-184" and the petition numbers.

Pursuant to sections 408(d)(1) and 409(b)(5) of the Federal Food, Drug, and Cosmetic Act, the EPA gives notice that the following petitions have been submitted to the Agency for consideration.

PP 9F2254. Shell Oil Company, Washington, D.C. 20036. Proposes that 40 CFR 180.379 be amended by establishing tolerance limitations for the insecticide cyano (3-phenoxyl-phenyl)methyl 4-chloro-alpha-(1-methylethyl)benzeneacetate in or on the raw agricultural commodities:

| Commodities: | *Parts per million* |
|---|---|
| Apples | 0.02 |
| Pears | 0.02 |

The proposed analytical method for determining residues is by a gas-liquid chromatography procedure using an electron capture detector.

FAP 9H5237. Shell Oil Company, Washington, DC 20036. Proposes that 21 CFR 561 be amended by establishing a regulation permitting residues of the insecticide cyano (3-phenoxyl-phenyl)methyl 4-chloro-alpha-(1-methylethyl)benzeneacetate in or on the following raw agricultural commodity:

| Commodity: | *Parts per million* |
|---|---|
| Peanut hulls | 0.10 |

All written comments filed pursuant to this notice will be available for public inspection in the Product Manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 408(d)(1) and 409(b)(5) of the Federal Food, Drug, and Cosmetic Act)

Dated: May 5, 1980.

**Douglas D. Campt,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 80-14373 Filed 5-8-80; 8:45 am]

BILLING CODE 6560-01-M

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**[PF-182; FRL 1489-5]**

## Filing of Pesticide Petition

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the filing of a pesticide petition by Thompson-Hayward Chemical Company to establish tolerances for the fungicide triphenyltin hydroxide in or on various agricultural commodities.

**ADDRESS:** Written comments and inquires should be directed to: Mr. Henry M. Jacoby, Product Manager (PM) 21, Rm. E-305, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202/755-2562.

Written comments may be submitted while the petition is pending before the Agency. The comments are to be identified by the document control number "[PF-182]" and the petition number. All written comments filed pursuant to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

**SUPPLEMENTARY INFORMATION:** Thompson-Hayward Chemical Co., 5200 Speaker Road, Kansas City, KS 66106, has submitted a pesticide petition (PP OF2340) to EPA proposing that 40 CFR 180.236 be amended by establishing tolerances for residues of the fungicide triphenyltin hydroxide in or on the raw agricultural commodities eggs, milk, meat, fat and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.05 part per million (ppm) and rice seed at 0.10 ppm. The proposed analytical method for determining residues is gas chromatography with mass spectrometer programmable multiple ion monitoring.

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 1351))

Dated: May 5, 1980.

**Douglas D. Campt,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 80-14372 Filed 5-8-80; 8:45 am]

BILLING CODE 6560-01-M

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**[OPP-50478; FRL 1488-6]**

## Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants under the Federal Insecticide, Fungicide, and Rodenticide Act. Such permits are in accordance with and subject to, the provisions of 40 CFR Part 172, which defines EPA procedure with respect to the use of pesticides for experimental purposes.

No. 352-EUP-91. E.I. du Pont de Nemours and Company, Wilmington, DE 19898. This experimental use permit allows the use of 3,509 pounds of the active ingredient 3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5,-triazine-2,4(1*H*,3*H*)-dione and its metabolites (calculated as the parent compound) on sugarcane. This program is authorized only in the States of Florida, Hawaii, Louisiana, Puerto Rico, and Texas. The experimental use permit is effective from April 21, 1980 to September 30, 1980. A temporary tolerance for the residues of the active ingredient in or on the raw agricultural commodity has been established. (PM-23, James M. Stone, Room: E-351, Telephone: 202-755-1397.)

No. 275-EUP-24. Abbott Laboratories, Chicago, IL 60064. This experimental use permit allows the use of 3,336 pounds of the active ingredient $1 \times 10^7$ viable propagules per gram of the *Cercospora rodmanii* Conway to evaluate control of water hyacinth. A total of 556 surfaces are involved. The program is authorized only in the States of Florida, Louisiana, Mississippi, and Texas. This experimental use permit is effective from April 23, 1980 to March 31, 1982. (PM-23, James M. Stone, Room: E-351, Telephone: 202-755-1397.)

No. 264-EUP-54. Union Carbide Agricultural Products Company, Inc., Ambler, PA 19002. This experimental use program allows the use of 17,550 pounds of the active ingredient 2,3,6-trichlorophenylacetic acid, sodium salt on lakes to evaluate control of hydrilla, egeria, and water milfoil. A total of 60 surfaces are involved. The program is authorized only in the States of Alabama, Florida, Georgia, and Texas. The experimental use permit is effective from April 23, 1980 to April 23, 1981. (PM-23, James M. Stone, Room: E-351, Telephone: 202-755-1397.)

No. 275-EUP-23. Abbott Laboratories, Chemical and Agricultural Product Division, Chicago, IL 60064. This experimental use permit allows the use of 1,000 pound of the insecticide *Bacillus thruingiensis* Berliner, var *israelensis* $4.5 \times 10^9$ IU/lb on intermittantly flooded pastures, irrigation ditches, sewage lagoons, rice paddies, roadside ditches,

natural marshes, esturaine areas, and running streams to evaluate control of mosquito larvae and blackfly larvae. A total of 500 acres are involved. The program is authorized only in the States of Alabama, Arkansas, California, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from April 4, 1980 to April 4, 1981. (PM-17, Franklin D. R. Gee, Room: E-341, Telephone: 202-426-9417)

Person wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington, DC 20460. Inquiries regarding these permits should be directed to the contact persons given above. It is suggested that interested persons call before visiting the EPA Headquarters Office so that the appropriate file may be made available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

(Sec. 5, 92 Stat. 189 as amended, (7 U.S.C. 136))

Dated: May 5, 1980.

Douglas D. Campt,

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 80-14377 Filed 5-8-80; 8:45 am]

BILLING CODE 6560-01-M

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[OPP-50477 FRL 1488-7]

## Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 10182-EUP-11. ICI Americas, Wilmington, DE 19897. This experimental use permit allows the use of 2,280 pounds of poly(iminoimidocarbonyliminoimido-carbonylimno-hexamethlylene] hydrochloride in swimming pools. A total of 250 swimming pools are involved. The program authorized only in the States of Arizona, Delaware, North Carolina, and Texas. The experimental use permit is effective from December 4, 1979 to December 4, 1980. (PM-32, A.E. Castillo, Rm: E-321, 202-755-9040.)

No. 6704]-EUP-22. U.S. Department of Interior, Fish and Wildlife Service, Washington, D.C. 20240. This experimental use permits allows the use of 6.24 pounds of the pesticide 4-aminopyridine on sunflowers to evaluate the control of grackles and red-winged, rusty, and yellow-headed blackbirds. A total of 1,600 acres are involved. This program is authorized only in the State of North Dakota. The experimental use permit is effective from April 21, 1980 to October 31, 1980. A permanent tolerance for the residues of the active ingredient in or on sunflower seeds has been established (40 CFR 180.312). (PM-16, William H. Miller, Room E-343, Telephone 202-426-4026).

Persons wishing to review the experimental use permits are referred to the designated Product Manager (PM) Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington, D.C. 20460. Inquiries regarding these permits should be directed to the contact persons given above. It is suggested that interested persons call before visiting the EPA Headquarters Office so that the appropriate file may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, as amended 92 Stat. 819 (7 U.S.C. 136))

Dated: May 5, 1980.

Douglas D. Campt,

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 80-14378 Filed 5-8-80; 8:45 am]

BILLING CODE 6560-01-M

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[OPP-50473; FRL 1488-8]

## Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants under the Federal Insecticide, Fungicide, and Rodenticide Act. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 10182-EUP-2. ICI United States, Inc., Wilmington, DE 19897. This experimental use permit allows the use of the remaining supply of 1,690 pounds of the insecticide 2-(dimethylamino)-5,6-dimethyl-4-pyrimidinyl dimethyl carbamate on alfalfa, apples, broccoli, brussels sprouts, cabbage, cauliflower, cotton, ornamentals, lettuce, peppers, potatoes, peaches, pecans, tomatoes, and tobacco to evaluate control of aphids. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, and Wisconsin. This program was authorized in a previous experimental use program which was effective from October 29, 1977 to October 29, 1978. It is now effective from March 28, 1980 to March 28, 1981. This permit is being issued with the limitation that all treated crops, except potatoes with residues not exceeding 0.1 ppm, and except tobacco, be destroyed or used for research purposes only. A permanent tolerance for the residues of the active ingredient has been established for potatoes [40 CFR 180.365]. (PM-16, William H. Miller, Room: E-343, Telephone: 202-426-9458)

No. 3125-EUP-160. Mobay Chemical Corporation, Washington, D.C. 20036. This experimental use permit allows the use of the remaining supply of 10,000 pounds of the active ingredient 1-methylethyl 2-[[ethoxy[(1-methylethyl]amino] phosphinothioyl]oxy benzoate on turf areas of golf course facilities to evaluate the control of Japanese bettle larvae. A total of 5,000 acres are involved. The program is authorized only in the State of Ohio. This program was authorized in a previous experimental use program which was effective from March 23, 1979 to March 23, 1980. It is now effective from March 31, 1980 to December 31, 1980. (PM-16, William H. Miller, Room: E-343, Telephone: 202-426-9458)

No. 7946-EUP-4. J. J. Mauget Company, Burbank, CA 91504. This experimental use permit allows the use of 12.75 pounds of the insecticide s-[2-ethylsulfinyl] ethyl] O,O-dimethyl phosphorothioate on ornamental and non-bearing fruit trees to evaluate the control of various tree-damaging insects. A total of 42.9 acres are involved. The program is authorized only in the States of Arizona, California, Colorado, Massachusetts, New Mexico, Pennsylvania, Tennessee, and Wisconsin. The experimental use permit is effective from March 28, 1980 to March 28, 1982. (PM-16, William H. Miller, Room: E-343, Telephone: 202-426-9458)

No. 2139-EUP-23. Nor-Am Agricultural Products, Inc., Woodstock, IL 60540. This experimental use permit allows the use of 2,000 pounds of the herbicide thidiazuron on cotton to evaluate cotton defoliation. A total of 5,000 acres are involved. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, and Texas. The experimental use permit is effective from July 1, 1980 to July 1, 1981. Temporary tolerances for the residues of the active ingredient in or on cottonseed, cottonseed hulls, milk, eggs, and the meat, fat and meat byproducts have been established. (PM-23, James M. Stone, Room: E-351, Telephone: 202-755-1397)

No. 7946-EUP-3. J. J. Mauget Company, Burbank CA 91504. This experimental use permit allows the use of 13.02 pounds of the insecticide dimethyl phosphate ester of 3-hydroxy-N,N-dimethyl-*cis*-crotonamide on ornamental and non-bearing fruit trees to evaluate control of various tree damaging insects. A total of 40.0 acres are involved. The program is authorized only in the States of Arizona, California,

Massachusetts, Nebraska, New Mexico, New York, Oklahoma, Tennessee, Texas, and Wisconsin. This experimental use permit is effective from March 28, 1980 to March 28, 1982. (PM-16, William H. Miller, Room: E-343, Telephone: 202-426-9458)

No. 10182-EUP-6. ICI Americas, Inc., Wilmington, DE 19897. This experimental use permit allows the use of the remaining supply (3,640 pounds) of the insecticide permethrin on alfalfa, almonds, apples, broccoli, cabbage, cauliflower, field corn, lettuce, peanuts, pears, potatoes, soybeans, sunflowers, sweet corn, tomatoes, and chrysanthemums to evaluate the control of lepidopterous insects. A total of 3,875 acres are involved. This program is authorized only in the States of Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, New Mexico, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, and Wisconsin. This program was authorized in a previous experimental use program which was effective from April 1, 1979 to April 1, 1980. It is now effective from April 7, 1980 to April 7, 1982. This permit is being issued with the limitation that all treated crops are destroyed or used for research purposes only. (PM-17, Franklin D.R. Gee, Room: E-341, Telephone: 202-426-9741)

Persons wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW, Washington, DC 20460. Inquiries regarding these permits should be directed to the contact persons given above. It is suggested that interested persons call before visiting the EPA Headquarters Office so that the appropriate file may be made available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

(Sec. 5, 92 Stat. 189 as amended (7 U.S.C. 136))

Dated: May 5, 1980.

Douglas D. Campt,

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 80-14375 Filed 5-8-80; 8:45 am]

BILLING CODE 6560-01-M

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[FRL 1490-1]

## National Air Pollution Control Techniques Advisory Committee; Open Meeting

Under Public Law 92-463, notice is hereby given that a meeting of the National Air Pollution Control Techniques Advisory Committee will be held at 8:30 a.m. on June 4 and 5, 1980, at the Holiday Inn-Downtown, 320 Hillsborough Street, Raleigh, North Carolina 27602. The commercial telephone number is (919) 832-0501.

The tentative agenda for the meeting is as follows:

*June 4 (Wednesday)—8:30 a.m.*—Volatile Organic Compounds Emissions-Beverage Can Coating Industry, New Source Performance Standard; Volatile Organic Compounds Emissions-Metal Coil Coating Industry, New Source Performance Standard.

*June 5 (Thursday)—8:30 a.m.*—Volatile Organic Compounds Emissions-Large Appliances Industry, New Source Performance Standard; Volatile Organic Compounds Emissions-Bulk Gasoline Terminals, New Source Performance Standards; Adjourn.

All meetings are open to the public. Anyone wishing to make a presentation should contact Mrs. Mary Jane Clark at the Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, by May 30, 1980. The commercial telephone number is (919) 541-5271, and the FTS number is 629-5271.

Dockets containing material relevant to the volatile organic compounds emissions for beverage can surface coating (Docket Number A-80-4), metal coil surface coating (Docket Number A-80-5), large appliances surface coating (Docket Number A-80-6), and bulk gasoline terminals (Docket Number A-79-52) rulemaking are located in the U.S. Environmental Protection Agency, Central Docket Section, Room 2902, 401 M Streets, S.W., Washington, D.C. 20460. The dockets may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays, and a reasonable fee may be charged for copying.

Dated: May 2, 1980.

David G. Hawkins

*Assistant Administrator for Air, Noise, and Radiation.*

[FR Doc. 80-14371 Filed 5-8-80; 8:45 am]

BILLING CODE 6560-01-M

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[OPTS-51061; FRL 1488-5]

## Premanufacture Notices

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

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the Federal Register certain information about each PMN within 5 working days after receipt. This Notice announces receipt of two PMN's and provides a summary of each.

**DATES:** Written comments by:

PMN 80-86: June 21, 1980

PMN 80-87: June 21, 1980

**ADDRESS:** Written comments to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202-426-3980.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Smith, Premanufacturing Review Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. 202-426-8815.

**SUPPLEMENTARY INFORMATION:** Section 5(a)(1) of TSCA requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances complied by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the Federal Register of May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the Federal Register issues of January 10, 1979 (44 FR 2242) and October 6, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the Federal Register of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN Must include the information listed in Section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and uses of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use, and the potential exposure descriptions in the Federal Register.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended Federal Register notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the Federal Register.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before the date shown under "DATES" for each specific PMN, submit to the Document Control Officer (TS-793), Rm. E-447, Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51061]" and the specific PMN number. Comments received may be seen in the above office between 8 a.m. and 4 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: May 2, 1980.

John P. DeKany,

*Deputy Assistant Administrator for Chemical Control.*

*PMN 80-86.*

*Close of Review Period.* July 21, 1980.

*Manufacturer's Identity.* Crosby Chemicals, Inc., PO Box 460, Picayune, MS 39466.

*Specific Chemical Identity.* Claimed confidential. The generic name provided is: Alkene dicarboxylic acids, alkane dicarboxylic acid, rosin, pentaerythritol, and diaminoalkane polyamide.

The following summary is taken from data submitted by the manufacturer in the PMN.

*Use.* Eighty percent of the total production will be used in printing ink formulation and the remainder as adhesive formulation.

Production Estimates

| | Minimum | Maximum |
|---|---|---|
| | (kg/yr) | |
| Production year: | | |
| First year | 10,000 | 100,000 |
| Second year | 20,000 | 150,000 |
| Third year | 50,000 | 200,000 |

Physical/Chemical Properties

| | |
|---|---|
| Specific gravity | 1.06. |
| Boiling point | 510° F. |
| Flash point | 490° F. |
| Volatility | Nil. |
| Solubility in water | Insoluble. |
| Appearance | Dark brown resin. |
| Odor | None. |

*Test Data.* No test data were provided.

Exposure

| Activity | Exposure route | Maximum number exposed | Maximum duration | | Concentration (DPM) | |
|---|---|---|---|---|---|---|
| | | | Hour/day | Day/year | Average | Peak |
| Manufacture | Inhalation | 3 | 4 | 12 | 1-10 | 10-100 |
| Us | Inhalation | (1) | (1) | (1) | 1-10 | 10-100 |

[1] Unknown.

*Occupational:* The molten product is converted to solid flakes on a moving belt. Dust is created during this process. Dust is controlled by ventilation systems which discharge through a baghouse filter.

The product, in the form of solid flakes, will be poured from open bags into a container used for printing ink or adhesive formulation.

Environmental Release/Disposal

| Manufacturing | Amount/duration of chemical release (kilograms per year) |
|---|---|
| Media: | |
| Water | Less than 10. 8 h/d; 8 d/yr. |
| Land | Less than 10. |

The discharge to land will be scrap produced from cleaning out pipes when a reactor is discharged. This will be a solid, nonhazardous, resinous material.

The water discharge will be from the condensation reaction. This stream will be water possibly 5% polyamines.

Solid material is disposed of in the county landfill. The wastewater will be treated in a physical-chemcial, alum coagulation treatment system followed by a biological treatment system.

*PMN 80-87.*

*Close of Review Period.* July 21, 1980.

*Manufacturer's Identity.* Crosby Chemicals, Inc., PO box 460, Picayune, MS 39466.

*Specific Chemical Identity.* Claimed confidential. The generic name provided is: Alkene dicarboxylic acid, alkane dicarboxylic acid, alkane carboxylic acid, and diaminoalkanes polyamide.

The following summary is taken from data submitted by the manufacturer in the PMN.

*Use.* Printing ink formulation.

Production Estimates

| | Minimum | Maximum |
|---|---|---|
| | (kg/yr) | |
| Production year: | | |
| First year | 1,000 | 50,000 |
| Second year | 10,000 | 100,000 |
| Third year | 20,000 | 150,000 |

Physical/Chemical Properties

| | |
|---|---|
| Boiling point | Above 550° F. |
| Flash point | 690° F COC. |
| Specific gravity | 0.96. |
| Volatility | Nil. |
| Appearance | Hard amber resin. |
| Odor | Slight amide odor. |

*Test Data.* No test data were provided.

**Exposure**

| Activity | Exposure route | Maximum number exposed | Maximum duration | | Concentration (ppm) | |
|---|---|---|---|---|---|---|
| | | | Hour/day | Day/year | Average | Peak |
| Manufacture | Inhalation | 3 | 4 | 12 | 1-10 | 10-100 |
| Use | Inhalation | (1) | (1) | (1) | 1-10 | 10-100 |

[1] Unknown.

*Occupational:* The molten product is converted to solid flakes on a moving belt. Dust is created during this process. Dust is controlled by ventilation systems which discharge through a baghouse filter.

The product, in the form of solid flakes, will be poured from open bags into a container used for printing ink or adhesive formulation.

**Environmental Release/Disposal**

| Manufacturing | Amount/duration of chemical release (Kilograms per year) |
|---|---|
| Media: | |
| Water | Less than 10. 8 hr/da; 8 da/yr. |
| Land | Less than 10. |

The discharge to land will be scrap produced from cleaning out pipes when a reactor is discharged. This will be a solid, nonhazardous, resinous material.

The water discharge will be from the condensation reaction. This stream will be water with possibly 5% polyamines.

Solid material is disposed of in county landfill. The wastewater will be treated in a physical-chemical, alum coagulation treatment system followed by a biological treatment system.

[FR Doc. 80-14376 Filed 5-8-80; 8:45 am]

BILLING CODE 6560-01-M

**[PP 8G2024/T238; FRL 1489-1]**

## Shell Chemical Co.; Renewal of Temporary Tolerance

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

**ACTION:** Notice.

**SUMMARY:** EPA has renewed the temporary tolerance for residues of the insecticide cyano(3-phenoxyphenyl)methyl 4-chloro-alpha-(1-methyl-ethyl)benzeneacetate in or on the raw agricultural commodity pears at 1.0 part per million (ppm).

**DATE:** This temporary tolerance expires March 21, 1981.

**FOR FURTHER INFORMATION CONTACT:** Franklin D. R. Gee, Product Manager (PM) 17, Room E-341 (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202-426-9417).

**SUPPLEMENTARY INFORMATION:** In the Federal Register of October 16, 1978 (43 FR 47606) EPA announced the establishment of a temporary tolerance for residues of the insecticide cyano(3-phenoxyphenyl)methyl 4-chloro-alpha-(1-methyl-ethyl)benzeneacetate in or on the raw agricultural commodity pears at 1.0 ppm.The tolerance was established in response to a pesticide petition (PP 8G2024) submitted by Shell Chemical Company. That tolerance permitted the marketing of the above raw agricultural commodity when treated in accordance with the experimental use permit 201-EUP-58. It expired September 19, 1979.

Shell Chemical Co. requested a one-year renewal of this temporary tolerance to permit continued testing to obtain additional data and to permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 201-EUP-58, which has been extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that renewal of the temporary tolerance would protect the public health. Therefore, the temporary tolerance has been renewed on the condition that the experimental use permit be used with the following provisions:

1. The total amount of the insecticide to be used must not exceed the quantity authorized by the experimental use permit.

2. Shell Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm will also keep records of production, distribution, and performance and on request make records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary tolerance expires March 21, 1981. Residues not in excess of 1.0 ppm in or on the above raw agricultural commodity after the expiration date will not be considered actionable if the insecticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerance. This temporary tolerance may be revoked if the experimental use permit is revoked or if any scientific data or experience with this insecticide indicate such revocation is necessary to protect the public health.

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: May 5, 1980.

Douglas D. Campt,

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 80-14374 Filed 5-8-80; 8:45 am]

BILLING CODE 6560-01-M

**[OPP-00118; FRL 1489-4]**

## State-Fifra Issues Research and Evaluation Group (SFIREG), Working Committee on Enforcement; Open Meeting

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

**ACTION:** Notice.

**SUMMARY:** There will be a two-day meeting of the Working Committee on Enforcement of the State-FIFRA Issues Research and Evaluation Group (SFIREG) held at the: Downtowner Motor Inn, 541 Bourbon St., New Orleans, LA 70130, 504/524-7611.

The meeting will be open to the public.

**DATE:** Wednesday and Thursday, May 28-29, 1980, beginning at 8:30 a.m. each day, and concluding by 12 noon on May 29.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Buffaloe, North Carolina Department of Agriculture, Raleigh, NC 27601, 919/733-3556; or Mr. Anthony Dellavecchia, Pesticides and Toxic Substances Enforcement Division, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202/755-9404.

**SUPPLEMENTARY INFORMATION:** This is the fourth meeting of the Working Committee on Enforcement. The meeting will be concerned with the following topics:

1. Enforcement grant criteria;
2. Section 26 regulations;
3. Section 27 regulations;
4. USDA Certification Plan;
5. Status of LV/ULV advisory opinion;
6. Rural America's regional pesticide forums;
7. Need by States for up-to-date labels for EPA-registered products in connection with enforcement actions; and
8. Other items as appropriate.

Dated: May 2, 1980.

Edwin L. Johnson,

*Deputy Assistant Administrator for Pesticide Programs.*

[FR Doc. 80-14370 Filed 5-8-80; 8:45 am]

BILLING CODE 6560-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### FM and TV Translator Applications Ready and Available for Processing Pursuant to Section 73.3572(c) and 73.3573(d) of the Commission's Rules

Adopted: April 25, 1980.
Released: May 2, 1980.

By the Chief, Broadcast Facilities Division:

Notice is hereby given pursuant to §§ 73.3572(c)and 73.3573(d) of the Commission's Rules, that on June 10, 1980, the TV and FM translator applications listed in the attached Appendix will be considered ready and available for processing. Pursuant to §§ 1.227(b)(1) and 73.3591(b) of the Rules, an application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on June 9, 1980 which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and submitted for filing at the offices of the Commission in Washington, D.C., by the close of business on June 9, 1980.

Any party in interest desiring to file pleadings concerning any pending TV of FM translator application, pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 73.3584(a) of the Rules, which specifies the time for filing and other requirements relating to such pleadings.

Federal Communications Commission.

William J. Tricarico,

*Secretary.*

UHF TV Translator Applications

BPTT-790611IP (New), Heppner, Echo, Lexington & Long Creek, Oregon. State of Oregon Acting By & Through the State Board of Higher Education. Req: Channel 63, 764-770 MHz, 100 watts. Primary: KOAP-TV, Portland, Oregon.

BPTT-790611IS (W82AO), Cuba, New York, Boces in Cattaragus, Erie & Wyoming Ctys, New York. Req: Channel Change principal community to Portville, New York.

BPTT-790625IO (New), Arlington, Oregon, State of Oregon Acting by & Through the State Board of Higher Education. Req: Channel 65, 776-782 MHz, 100 watts. Primary: KOAP-TV, Portland, Oregon.

BPTT-790709IH (New), Inyokern, Armitage Field & Ridgecrest, California. Indian Wells Valley TV Booster, Inc. Req: Channel 47, 668-674 MHz, 20 watts. Primary: KBSC-TV, Corona, California.

BPTT-790716IC (New), Woody Creek, Pitkin County Rural Area, Colorado, Roaring Fork TV Association, Inc. Req: Channel 7, 174-180 MHz, 1 watt. Primary: KRMA-TV, Denver, Colorado.

BPTT-790720IE (New), Tucumcari, New Mexico, Regents of Eastern New Mexico University. Req: Channel 63, 764-700 MHz, 100 watts. Primary: KENW-TV, Portales, New Mexico.

BPTT-790720IF (New), Forrest & Mcalister, New Mexico, Regents of Eastern New Mexico University. Req: Channel 65, 776-782 MHz, 100 watts. Primary: KENW-TV, Portales, New Mexico.

BPTT-790720IG (New), Carlsbad, New Mexico, Regents of Eastern New Mexico University. Req: Channel 69, 800-806 MHz, 100 watts. Primary: KENW-TV, Portales, New Mexico.

BPTT-790725ID (New), Herkimer, New York, Roy H. Park Broadcasting of Utica-Rome, Inc. Req: Channel 59, 740-746 MHz, 1000 watts. Primary: WUTR-TV, Utica, New York.

BPTT-790730IH (New), Rosenberg, Texas, Pueblo Broadcasting Corporation. Req: Channel 45, 656-662 MHz, 1000 watts. Primary: KWEX-TV, San Antonio, Texas.

BPTT-800110IB (New), Hawthorne, Nevada, Mineral Television District No. 1. Req: Channel 50, 686-692 MHz, 100 watts. Primary: KBEQ-TV, San Francisco, California.

BPTT-800110IC (New), Babbitt, Nevada, Mineral Television District No. 1. Req: Channel 53, 704-710 MHz, 100 watts. Primary: KBEQ-TV, San Francisco, California.

BPTT-800110ID (New), Mina & Luning, Nevada, Mineral Television District No. 1. Req: Channel 67, 788-794, MHz, 20 watts. Primary: KBEQ-TV, San Francisco, California.

BPTT-800111IA (New), Jackson County, Colorado. Req: Channel 60, 746-752 MHz, 100 watts. Primary: KRMA-TV, Denver, Colorado.

BPTT-800111IB (New), Rural Jackson County & South West, Colorado, Jackson County, Colorado. Req: Channel 69, 800-806 MHz, 1 watt. Primary: KRMA-TV, Denver, Colorado.

BPTT-800111IC (New), Hugo & Rural Area, Colorado, Lincoln County, Colorado. Req: Channel 49, 680-686 MHz, 100 watts. Primary: KRMA-TV, Denver, Colorado.

BPTT-800114IF (New), Waunita Hot Springs & Gunnison, Colorado, City of Ouray. Req: Channel 58, 734-740 MHz, 100 watts. Primary: KTSC-TV, Pueblo, Colorado.

BPTT-8001114IG (New), Ouray & Ridgway, Colorado, City of Ouray. Req: Channel 61, 752-758 MHz, 20 watts. Primary: KTSC-TV, Pueblo, Colorado.

BPTT-800114IH (New), Ridgway & Ouray County, Colorado, City of Ouray. Req: Channel 64, 770-776 MHz, 10 watts. Primary: KTSC-TV, Pueblo, Colorado.

BPTT-800114II (New), Railroad Valley, Duckwater, Currant & Eureka, Nevada, Duckwater Shoshone Tribe. Req: Channel 49, 680-686 MHz, 100 watts. Primary: KLVX-TV, Las Vegas, Nevada.

BPTT-800208IB (New), Montoya & Newkirk, New Mexico, Hubbard Broadcasting, Incorporation. Req: Channel 55, 716-722 MHz, 100 watts. Primary: KOB-TV, Albuquerque, New Mexico.

BPTT-800212ID (New), Susanville & Herlong, California, Honey Lake Community TV Corporation. Req: Channel 65, 776-782 MHz, 100 watts. Primary: KVIE-TV, Sacramento, California.

BPTT-800325IC (New), Gallina, New Mexico, Gallina-Capulin TV Association. Req: Channel 61, 752-758 MHz, 20 watts. Primary: KOB-TV, Albuquerque, New Mexico.

BPTT-800325ID (New), Gallina, New Mexico, Gallina-Capulin TV Association. Req: Channel 67, 788-794 MHz, 20 watts. Primary: KGGM-TV, Albuquerque, New Mexico.

FM Translator Applications

BPFT-790910IM (New), New Castle & Rural Areas, Colorado, Colorado West Broadcasting, Inc. Req: Channel 237, 95.3 MHz, 10 watts. Primary: KMTS-FM, Glenwood Springs, Colorado.

BPFT-790912IF (New), Uravan, Colorado, Union Carbide Communications Company, Inc. Req: Channel 276, 103.1 MHz, 1 watt. Primary: KFSI-FM, Salt Lake City, Utah.

BPFT-790912IG (New), Uravan, Colorado, Union Carbide Communications Company, Inc. Req: Channel 285, 104.9 MHz, 1 watt. Primary: KUBC-FM, Montrose, Colorado.

BPFT-790912IH (New), Uravan, Colorado, Union Carbide Communications Company, Inc. Req: Channel 296, 107.1 MHz, 1 watt. Primary: KREX-FM, Grand Junction, Colorado.

BPFT-790913IB (New), Joplin, Missouri, Stahl Incorporated. Req: Channel 292, 106.3 MHz, 10 watts. Primary: KRFG-FM, Greenfield, Missouri.

BPFT-790921IE (New), Watsonville, California, Christian Broadcasting Fellowship, Inc. Req: Channel 270, 103.1 Mhz, 1 watt. Primary: KAMB-FM, Merced, California.

VHF TV Translator Applications

BPTTV-790625IN (New), Cliff & Gila, New Mexico, Regents of New Mexico State University. Req: Channel 2, 54-60 MHz, 10 watts. Primary: KRWG-TV, Las Cruces, Mexico.

BPTTV-790716ID (New), Aspen, Colorado, Roaring Fork TV Association, Inc. Req: Channel 12, 210-216 MHz, 10 watts. Primary: KRMA-TV, Denver, Colorado.

BPTTV-790806IG (New), Happy Camp & N. Indian Creek, California, Slater Butte

Translator Company. Req: Channel 9, 186–192 MHz, 5 watts. Primary: KIEM–TV, Eureka, California.
BPTTV–790813IF (New), Tygee Valley & Stump Creek, Idaho, Tygee Valley Ranch. Req: Channel 10, 192–198 MHz, 1 watt. Primary: KID–TV, Idaho, Falls, Idaho.
BPTTV–790813IG (New), Tygee Valley & Stump Creek, Idaho, Tygee Valley Ranch. Req: Channel 12, 204–210 MHz, 1 watt. Primary: KIFI–TV, Idaho Falls, Idaho.
BPTTV–791221IN (New), Casper, Wyoming, Casper Community College District. Req: Channel 6, 82–88 MHz, 100 watts. Primary: KRMA–TV, Denver, Colorado.
BPTTV–800114IE (New), Ouray & Ouray County, Colorado, City of Ouray. Req: Channel 9, 186–192 MHz, 10 watts. Primary: KTSC–TV, Pueblo, Colorado.
BPTTV–800114IH (New), Duckwater, Currant & Railroad Valley, Nevada, Duckwater Shoshone Tribe. Req: Channel 9, 186–192 MHz, 10 watts. Primary: KLUX–TV, Las Vegas, Nevada.
BPTTV–800128IA (New), Ouray, Colorado, City of Ouray. Req: Channel 11, 198–204 MHz, 10 watts. Primary: KJCT–TV, Grand Junction, Colorado.
BPTTV–800212IC (New), Litchfield, California, Honey Lake Community TV Cororation. Req: Channel 9, 186–192 MHz, 10 watts. Primary: KVIE–TV, Sacramento, California.
BPTTV–800324IE (New), Ferndale & Swan Lake, Montana, Swan Hill TV Inc. Req: Channel 4, 66–72 MHz, 10 watts. Primary: KSPS–TV, Spokane, Washington.
BMPTTV–790702IM (K06JW), Ponderosa Basin, California, Ponderosa Basin Community TV Association. Req: Add Mariposa County to present principal community, change primary TV Station to KJEO, Channel 47, Fresno, California.

[FR Doc. 80-14400 Filed 5-8-80; 8:45 am]
BILLING CODE 6712-01-M

## FEDERAL MARITIME COMMISSION

[Docket No. 80-26]

### Jute Carpet Backing Council, Inc., and its Members v. Calcutta, East Coast of India and Bangladesh/U.S.A. Conference and its Members; Filing of Complaint and Assignment

Notice is given that a complaint filed by Jute Carpet Backing Council, Inc., and its Members against Calcutta, East Coast of India and Bangladesh/U.S.A. Conference and its Members was served April 30, 1980. The complaint alleges that respondents' proposed increased tariff rates on jute carpet backing are so high as to be detrimental to the commerce of the United States, in violation of section 18(b)(5) of the Shipping Act, 1916.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline. Hearing in this matter, if any is held, shall commence on or before October 30, 1980. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,
*Secretary.*

[FR Doc. 80-14291 Filed 5-8-80; 8:45 am]
BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Clearwater Development Co., Inc.; Proposed Retain of Its General Insurance Agency

Clearwater Development Company, Inc., Clearwater, Nebraska, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain voting shares of its general insurance agency in Clearwater, Nebraska.

Applicant states that the proposed subsidiary would engage in the activities of a general insurance agency. These activities would be performed from offices of Applicant's subsidiary in Clearwater, Nebraska, and the goegraphic area to be served is Clearwater, Nebraska and the surrounding area. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 2, 1980.

Board of Governors of the Federal Reserve System, May 2, 1980.

Cathy L. Petryshyn,
*Assistant Secretary of the Board.*

[FR Doc. 80-14314 Filed 5-8-80; 8:45 am]
BILLING CODE 6210-01-M

### Detroitbank Corp.; Acquisition of Bank

Detroitbank Corporation, Detroit, Michigan, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent (less directors' qualifying shares) of the voting shares of ISB Financial Corporation, Kalamazoo, Michigan, thereby indirectly acquiring 96.7 percent of the voting shares of Industrial State Bank & Trust Company, Kalamazoo, Michigan. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than June 5, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 5, 1980.

Cathy L. Petryshyn,
*Assistant Secretary of the Board.*

[FR Doc. 80-14315 Filed 5-8-80; 8:45 am]
BILLING CODE 6210-01-M

### First Freeport Corp.; Acquisition of Bank

First Freeport Corporation, Freeport, Texas, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of Alvin National Bank, Alvin, Texas. The factors that are considered in acting on the application

are set forth in section 3(c) of the Act (12 U.S.C. 1842 (c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than June 2, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in liew of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 2, 1980.

Cathy L. Petryshyn,

*Assistant Secretary of the Board.*

[FR Doc. 80-14316 Filed 5-8-80; 8:45 am]

BILLING CODE 6210-01-M

## Greater Milwaukee Financial Corp.; Formation of Bank Holding Company

Greater Milwaukee Financial Corp., Milwaukee, Wisconsin, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Greater Milwaukee Bank, Milwaukee, Wisconsin. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than June 2, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 5, 1980.

Cathy L. Petryshyn,

*Assistant Secretary of the Board.*

[FR Doc. 80-14317 Filed 5-8-80; 8:45 am]

BILLING CODE 6210-01-M

## Ohio Citizens Bancorp, Inc.; Formation of Bank Holding Company

Ohio Citizens Bancorp, Inc., Toledo, Ohio, has applied for the Board's approval under 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1) to become a bank holding company by acquiring 100 percent of the voting shares of The Ohio Citizens Trust Company, Toledo, Ohio. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than June 2, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 2, 1980.

Cathy L. Petryshyn,

*Assistant Secretary of the Board.*

[FR Doc. 80-14318 Filed 5-8-80; 8:45 am]

BILLING CODE 6210-01-M

## Republic of Texas Corp.; Proposed Retention of Republic Exchange Company

Republic of Texas Corporation, Dallas, Texas, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain voting shares of Republic Exchange Company, Dallas, Texas.

Applicant states that the proposed subsidiary would continue to engage in the activities of acting as agent in the sale of any insurance to Applicant's subsidiary banks and in the sale of vendor's single interest insurance in connection with extensions of credit by these subsidiary banks. These activities would be performed from offices of Applicant's subsidiary in Dallas, Texas, serving the State of Texas. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing in this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas.

Any views or request for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 2, 1980.

Board of Governors of the Federal Reserve System, May 2, 1980.

Cathy L. Petryshyn,

*Assistance Secretary of the Board.*

[FR Doc. 80-14319 Filed 5-8-80; 8:45 am]

BILLING CODE 6210-0-M

## Tri-County State Agency, Inc.; Proposed Continuation of General Insurance Agency Activities

Tri-County State Agency, Inc., Ortonville, Minnesota, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to continue to engage in the sale of general insurance in a town with a population of less than 5,000. These activities would be performed from offices of Applicant's subsidiary in Ortonville, Minnesota, and the counties to be served are Big Stone and Lac Qui Parle, Minnesota; and Grant and Roberts counties in South Dakota. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue

concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis.

Any views or request for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 3, 1980.

Board of Governors of the Federal Reserve System, May 2, 1980.

Cathy L. Petryshyn,

*Assistant Secretary of the Board.*

[FR Doc. 80-14320 Filed 5-8-80; 8:45 am]

BILLING CODE 6210-01-M

## Union of Arkansas Corp.; Formation of Bank Holding Company

The Union of Arkansas Corporation, Little Rock, Arkansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Union National Bank of Little Rock, Little Rock, Arkansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than June 2, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 2, 1980.

Cathy L. Petryshyn,

*Assistant Secretary of the Board.*

[FR Doc. 80-14321 Filed 5-8-80; 8:45 am]

BILLING CODE 6210-01-M

## United Ohio Bancs, Inc.; Formation of Bank Holding Company

United Ohio Bancs, Inc., Dayton, Ohio, has applied for the Board's approval under 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of the Third National Bank and Trust Company of Dayton, Ohio, Dayton, Ohio. The factors that are considered in acting on the application are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than June 2, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 2, 1980.

Cathy L. Petryshyn,

*Assistant Secretary of the Board.*

[FR Doc. 80-14322 Filed 5-8-80; 8:45 am]

BILLING CODE 6210-01-M

## Waytru Bancorp.; Formation of Bank Holding Company

Waytru Bancorp., Cambridge City, Indiana, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent (less director's qualifying shares) of the voting shares of Wayne Bank & Trust Co., Cambridge City, Indiana. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than June 5, 1980. Any comment on an application that request a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 5, 1980.

Cathy L. Petryshyn,

*Assistance Secretary of the Board.*

[FR Doc. 80-14323 Filed 5-8-80; 8:45 am]

BILLING CODE 6210-01-M

## Worth Bancorp., Inc., Formation of Bank Holding Company

Worth Bancorp., Inc. Chicago, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Worth Bank and Trust, Worth, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Worth Bancorp., Inc., Chicago, Illinois, has also applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Worbank Insurance Agency, Inc., Worth, Illinois and Data Information Systems Corporation, Hickory Hills, Illinois.

Applicant states that Worbank Insurance Agency, Inc., would engage in the activities of writing credit life insurance and health and accident insurance on extensions of credit by Worth Bank and Trust and acting as a broker by the placing of insurance for the holding company subsidiaries. Data Information Systems Corporation would engage in the computer servicing business. These activities would be performed from offices of Applicant's subsidiaries in Worth and Hickory Hills, Illinois, and the geographic areas to be served are Worth, Palos Heights, Oak Lawn, Chicago Ridge, and other surrounding communities located in Cook County and the adjacent counties of DuPage and Will. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or

gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 2, 1980.

Board of Governors of the Federal Reserve System, May 2, 1980.

Cathy L. Petryshyn,

*Assistant Secretary of the Board.*

[FR Doc. 80-14324 Filed 5-8-80; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Food and Drug Administration

[Docket No. 80N-0028]

### Draft Bureau of Foods Research Plan; Availability; Extension of Comment Period

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice; extension of comment period.

**SUMMARY:** The agency is extending the comment period on a notice that requested information on food- and cosmetic-related research needs. This action is taken in response to a request for an extended comment period.

**DATE:** Comments on or before August 18, 1980.

**ADDRESS:** Written comments, data, or information to the hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Patricia Thompson, Bureau of Foods (HFF-25), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-245-1564.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of March 21, 1980 (45 FR 18480), FDA issued a notice announcing the availability of the draft Bureau of Foods Research Plan. The notice solicited certain information from research institutions, universities, industry, and government agencies about food- and cosmetic-related research needs. The notice requested that written comments, data, or information be submitted on or before May 20, 1980.

FDA has received a request for extension of the comment period from the National Nutrition Consortium, Inc. In its request (on file with the Hearing Clerk), the National Nutrition Consortium states that the draft Bureau of Foods Research Plan merits careful review by the scientific community as well as other groups, but that the May 20, 1980 deadline does not allow sufficient time for this type of critical examination because a sufficient number of copies of the plan has not been readily available from FDA.

Requests for copies of the draft Bureau of Foods Research Plan exceeded the number of copies FDA had available for distribution. Additional copies are now available and requests for copies are being processed as quickly as possible. However, because distribution of the plan has been delayed, FDA has concluded that the comment period should be extended 90 days, to August 18, 1980. Written comments on the draft Bureau of Foods Research Plan should be sent on or before August 18, 1980 to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

Dated: May 2, 1980.

Sanford A. Miller,

*Director, Bureau of Foods.*

[FR Doc. 80-14277 Filed 5-8-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79P-0031]

### ITT Components Group, Standard Telephones and Cables, Ltd., Approval of Variance for an Infrared Illuminator

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The agency announces that a variance from the performance standard for laser products has been approved by the Bureau of Radiological Health for an infrared illuminator. The product is designed to illuminate a dark field of view with invisible infrared radiation that can be viewed with night vision equipment. The infrared illuminator is designed for covert operations by governmental, military, and law enforcement agencies.

**DATES:** The variance became effective March 11, 1980 and ends March 11, 1985.

**ADDRESS:** The application and all correspondence on the application have been placed on public display in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Glenn E. Conklin, Bureau of Radiological Health (HFX-460), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

**SUPPLEMENTARY INFORMATION:** ITT Components Group, Standard Telephones and Cables, Ltd, Paignton, Devon, England, United Kingdom TQ4-7BE (U.S. Agents: ITT components Group, 1551 Osgood St., North Andover, MA 01845, and Mr. Joseph A. Cipolla, Technical Representative , 1899 L St., NW., Washington, DC 20036) has applied for a variance from the performance standard for laser products, (21 CFR 1040.10 and 1040.11) for their infrared illuminator, models RT4A and RT5A. Specifically, the requirements of the laser products standard for which a variance has been requested are the performance features of a remote control connector (21 CFR 1040.10(f)(3)), key control (21 CFR 1040.10(f)(4)), and an emission indicator (21 CFR 1040.10(f)(5)(ii)). The product shall bear the variance number 79P-0031.

By letter of March 11, 1980, the Director, Bureau of Radiological Health, approved the requested variance which will terminate March 11, 1985.

In accordance with § 1010.4 (21 CFR 1010.4), the application and all correspondence (including the written notice of approval on this application have been placed on public display in the office of the Hearing Clerk, Food and Drug Administration. This material may be seen from 9 a.m. to 4 p.m. Monday through Friday.

Dated: April 30, 1980.

William F. Randolph,

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 80-13970 Filed 5-8-80; 8:45 am]

BILLING CODE 4110-03-M

## Office of Human Development Services

[Program Announcement No. 13638-801]

## Multidisciplinary Centers of Gerontology Program: Long Term Care Gerontology Centers

**AGENCY:** Office of Human Development Services, HEW.

**SUBJECT:** Announcement of Competition for Grants for Long Term Care Gerontology Centers.

**SUMMARY:** The Administration on Aging (AoA) announces that applications are being accepted under Title IV, part E, of the Older Americans Act of 1965, as amended (42 U.S.C. sec. 3036), Multidisciplinary Centers of Gerontology Program, for grants to support development of Long Term Care Geronotology Centers.

**DATES:** Closing date for receipt of applications is July 18, 1980.

### Scope of This Announcement

This program announcement describes the purpose and overall goals and objectives of the Long Term Care Gerontology Centers Program announced in this issue of the Federal Register. Information describing specific project activities and application requirements for Stage I Planning Grants and State II Operational Grants which are covered by this announcement and other special requirements of the program are contained in *Guidelines for Preparation of Grant Applications—Long Term Care Gerontology Centers Title IV-E of the Older Americans Act—Fiscal Year 1980.*

### Program Purpose

The purpose of the Long Term Care Gerontology Center Program is to foster the planning and development of multidisciplinary gerontology centers oriented around the continuum of community-based health and social services to the chronically ill and functionally impaired aging person.

### Program Goal and Objectives

The goal of the Administration on Aging's Long Term Care Gerontology Centers program is to foster the capability to develop the knowledge base and methods required for improving the health care and social services needed by functionally impaired older people. The objectives of these centers will be to promote an interdisciplinary approach to career and continuing education and training, the development of models of service delivery oriented around the health and social services needs of the functionally impaired elderly, and research. An essential condition for achieving these program objectives is the development of a viable organizational center structure. The program objectives will be achieved through a collaborative effort to join the interests of the Federal government and educational institutions to assist states and communities to improve planning, management, and service priorities for the functionally impaired elderly. Such an effort is expected to produce knowledge about the long term care needs of older people and develop a cadre of professionals from a multiplicity of disciplines who can meet these needs. Centers will have applied settings and carry out their mission through collaboration with health, social service, and aging agencies. The Long Term Care Gerontology Center will be expected to play an important role in collaboration with the community based demonstrations which represent new initiatives authorized by the 1978 Amendments to the Older Americans Act especially in their geographic areas, and participate in HEW Regional Education and Training Programs.

Centers will be developed in three stages. These stages are:

- Stage I—Planning/Developmental.
- Stage II—Operational.
- Stage III—Comprehensive.

### 1. Planning/Developmental Stages of Center Development

At the planning/developmental stage, grantees will specify their programmatic and organizational goals and objectives, organize their resources, establish university commitments, and create and/or expand community linkages. The Administration on Aging provides centers in the planning/developmental stage from one to two years of support with the potential, through the competitive process, to obtain multiyear awards for the operational stage.

### 2. Operational Stage of Center Development

At Stage II, the operational stage, centers will be implementing activities relative to their organizational structure and in the program areas of education, development of service and practice models, and research. The Administration on Aging will give operational stage centers up to five years of core support. A center may apply for comprehensive designation at the end of any budget period in the operational stage at which time a full review will be held to determine the center's readiness for comprehensive status. A complete review will take place at the end of the fifth operational year to determine if a center can be designated as comprehensive.

### 3. Comprehensive Stage of Center Development

It is the Administration on Aging's intent to eventually designate a select number of Stage III comprehensive centers. Comprehensive designation will be a recognition that these select centers have achieved programmatic excellence and strong organizational development within the institution.

Comprehensive Long Term Care Gerontology Centers will combine the functions of a university based or affiliated medical school, other health and social services professional schools, and, if appropriate, a public or private, non-profit health or social service organization to achieve the goals and objectives of the program. At the comprehensive stage Long Term Care Gerontology Centers will meet the following programmatic objectives:

- Develop the health and social services personnel required to meet the needs of functionally impaired older persons through interdisciplinary career and continuing education and training;
- Develop and evaluate models of health care and social services provided through interdisciplinary terms on a continuum of care in order to enable functionally impaired older persons to remain in the least restrictive settings consonant with their needs;
- Develop a knowledge base for long term care through the conduct of interdisciplinary clinical, applied, and policy research;
- Provide technical assistance to public and voluntary health care and social service agencies, academic institutions, and professional organizations; and
- Disseminate information concerning long term care to policy makers and program managers, service providers and consumers, educators and researchers.

It is expected that centers will develop the appropriate governance and structure in order to develop the organizational capability required to achieve the programmatic objectives. Therefore, Comprehensive Long Term Care Gerontology Centers will have accomplished the following organizational objectives:

- Have institutional support and commitment to the center at the highest levels of the larger organizational and hold a relatively high position in the institutional hierarchy.
- Have their own charter, goals and objectives, and responsibility for a range of administrative functions including

budgetary control, faculty appointment, and space allocation.

- Have their own centers director, core faculty, and facilities in order to carry out center programmatic, administrative, and data collection activities.
- Have the ability to generate their own funding, keep such funds to utilize within the center, especially for various discretionary programmatic activities.
- Utilize in a full participatory way their own advisory or steering committee and develop and use its own internal peer review system for the allocation of discretionary funds.

### Coordination with Appropriate Offices on Aging

Activities conducted under Title IV–E Long Term Care Gerontology Center grants are expected to be coordinated with the appropriate HEW Regional Office and with State and Area Agencies on Aging. This coordination will include involvement of the AoA regional office in the planning of courses, workshops and institutes presented by the Long Term Care Gerontology Center. Centers will regularly provide information to the appropriate offices on aging regarding education and training, research, and service activities and seek their guidance with respect to these activities.

### Eligible Applicants

Only public or non-profit organizations or institutions are eligible under the provisions of Title IV–E, Multidisciplinary Centers of Gerontology.

Eligible applicants for the Stage I, 01 Planning Awards are any university or public or private, non-profit health or social service organization provided the applicant is affiliated with a medical school, or has a letter of agreement with a medical school.

Stage I, 02 Planning Awards are limited to those applicants who desire support beyond the one year of funding provided by the Administration on Aging for continued planning of Long Term Care Gerontology Centers.

Stage II, Operational Multiyear Awards are limited to those applicants who are completing one year of planning for Long Term Care Geronotology Centers funded by the Administration on Aging.

It should be noted that applicants which have previously been participants in Stage I, 01 grants may now apply concurrently for Stage I, 02 grants *and* Stage II grants. *However if an applicant desires to apply under more than one grant category, (continued planning and operational), separate applications for each category must be submitted.* (An applicant may only receive funding in one category).

### Available funds

The Administration on Aging expects to award $2.8 million dollars for approximately twenty (20) new, competing continuation, and operational grants for the program pursuant to this announcement.

The project period for inital planning grants is eighteen (18) months; one year for competing continuation planning grants (applies only to applicants currently funded with Stage I, 01 Planning Grants); and one to five years for operational grants. The amounts of the grants on an annual basis, including indirect costs, can range from:

$80,000 to $100,000 for a Stage I, 01 Planning Award.
$90,000 to $110,000 for a Stage I, 02 Planning Award.
$200,000 to $300,000 for a Stage II, 01 Operational Award.

With respect to Stage II Operational grant projects, the initial grant sustains the Federal share of the budget for the first budget period of the project. Support for any additional time remaining in the project period depends upon the availability of funds, and the grantee's satisfactory performance of the project for which the grant was awarded.

### Grantee Share of the Project

Cost sharing is considered to be an important means of demonstrating an applicant's commitment to the objectives of this program. Grantees are expected to provide at least five (5) percent of the total allowable project costs. The grantee share may be cash or in-kind, and must be project related and allowable under the Department's applicable regulations published in 45 CFR Part 74, subparts G and Q (see 43 FR 34076, August 2, 1978).

### The Application Process

#### *Availability of Forms*

Application for a grant under the Long Term Care Gerontology Centers Program must be submitted on Standard Form 424, Application for Federal Assistance, and other forms provided for this purpose. Application kits and appropriate instructions are included in *Guidelines for Preparation of Grant Applications—Long Term Care Gerontology Centers, Title IV–E of the Older Americans Act, Fiscal Year 1980.* Copies may be obtained by writing to:

Long Term Care Unit, Administration on Aging, Room 4644, HEW North Building, 330 Independence Avenue SW., Washington, DC 20201, telephone: (202) 426–8403.

#### *Application Submission*

One (1) signed original and four (4) copies of the grant application, including all attachments, must be prepared. The original and two (2) copies must be submitted to:

Department of Health, Education, and Welfare, Office of Human Development Services, Grants and Contracts Management Division, Room 345F, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

One (1) copy is to be submitted to the appropriate State Agency on Aging and one (1) copy is to be submitted to the Regional Program Director of the HEW Regional Office of Aging. Addresses for State Agencies on Aging and HEW Regional Offices of Aging are included in the application instructions.

#### *A–95 Notification Process*

Applications for Long Term Care Gerontology Centers must follow the provisions of OMB Circular A–95. Applicants for grants must, prior to the submission of an application, notify *both* the State and Areawide A–95 Clearinghouse of their interest to apply for Federal assistance for this program. Applicants should contact the appropriate State Clearinghouse (listed in 42 FR 2210, January 10, 1977), or HEW Regional Offices of Aging for information on how they can meet the A–95 requirements. Addresses of the HEW Regional Offices of Aging are included in the application instructions.

#### *Application Consideration*

The Commissioner of Aging will make the final decision on each grant application under this announcement. Applications which are complete and conform to the requirements of the program guidelines will be subjected to a competitive review and evaluation by qualified persons outside the Administration on Aging. A separate independent review will be conducted for State I, 01 Planning, Stage I, 02 Planning, and Stage II Operational grant Applications. Applications considered as approvable by the review committees will be reviewed by AoA staff for consistency with AoA policy and priorities and appropriateness of the funding which is requested. Subject to the availabilty of funds, site visits will be made to selected applicants in order to develop informed recommendations concerning funding. In making his decision on awards the Commissioner on Aging will consider results of the review, AoA staff recommendations,

and comments by the State Agency on Aging. Unsuccessful applicant will be notified in writing. Successful applicants will be notified through the issuance of a Notice of Grant Awarded. This notice sets forth the amount of funds granted, the terms and conditions of the grant, the budget period for which support is given, the total grantee share expected, and the total period for which project support is intended.

**Special Consideration for Funding**

In determining the order of funding of applications which have been recommended for approval, priority will be given to applications which address one or more of the preferences listed below. Each preference which is met will improve the competitive position of an approved application. However, applications which do not address these preferences will be reviewed and given consideration for funding.

Preferences will be given to applicants for projects which:

1. Propose to implement a Stage II, Operational Long Term Care Gerontology Center that has been highly recommended for funding by the independent peer review panel.
2. Propose to plan or establish a center where currently an AoA award has not been made to establish a Long Term Care Gerontology Center.
3. Propose to plan or establish a center responsive to the special needs of underserved populations including minority and rural elderly.

**Criteria for Review and Evaluation of Applications**

Each application will be generally reviewed to determined that: it meets the objectives of the program; elements for a complete review are incuded; and all applicable Federal statutes and regulations are met. The applications for Stage I, 01 Planning Grants will be specifically reviewed against one set of criteria and applications for Stage I, 02 Planning Grants and Stage II, Operational Grants will be specifically reviewed against another set of criteria.

A. Review Criteria for Stage I; 01, New Planning Grants:

*Criterion 1.* The application proposes a project consistent with the programmatic and organizational objectives for a Long Term Care Gerontology Center as set forth in the guidelines. (25 points.)

*Criterion 2.* The project narrative adequately describes and documents the purpose and the need for the project the applicant purposes. (10 points.)

*Criterion 3.* The implementation plan is capable, if properly executed, of assuring the accomplishment of the proposed project's programmatic and organizational objectives. Specifically:

a. The proposal appropriately identifies the tasks to be accomplished relative to:

(1) The programmatic objectives.

(2) The organizational objectives. (10 points.)

b. The proposal presents an appropriate and feasible method of approach to task accomplishment over the proposed project period relative to:

(1) The programmatic objectives.

(2) The organizational objectives. (10 points.)

c. The proposal documents the extent to which the necessary commitments from within and outside the applicant institution have been secured to assure task accomplishment relative to:

(1) The programmatic objectives.

(2) The organizational objectives. (10 points.)

d. The proposal provides time-lines for task accomplishment that are appropriate and reasonable relative to:

(1) The programmatic objectives.

(2) The organizational objectives. (5 points.)

e. The proposal indicates staff loadings by tasks that are appropriate and reasonable relative to:

(1) The programmatic objectives.

(2) The organizational objectives. (5 points.)

f. The proposal specifies how task accomplishment will be evaluated relative to:

(1) The programmatic objectives.

(2) The organizational objectives. (5 points.)

*Criterion 4.* The proposed resources are appropriate and sufficient to assure the accomplishment of both of the project's programmatic and organizational goals. Specifically:

a. The proposed project staff are well qualified to carry out the project relative to:

(1) The programmatic objectives.

(2) The organizational objectives. (5 points.)

b. Sufficient time of senior staff is allocated to the project to assure adequate and appropriate management of the project tasks relative to:

(1) The programmatic objectives.

(2) The organizational objectives. (5 points.)

c. Other facilities and resources are appropriate and adequate to assure task accomplishment relative to:

(1) The programmatic objectives.

(2) The organizational objectives. (5 points.)

*Criterion 5.* The proposed budget is appropriate, justifiable, and reasonable in relation to support needed for project activities. (5 points.)

B. Review Criteria for Stage I, 02 Planning Grants and Stage II, 01 Operational Grants:

*Criterion 1.* The application proposes a project consistent with the programmatic and organizational objectives for a Long Term Care Gerontology Center as set forth in the guidelines. (10 points.)

*Criterion 2.* The proposal documents the extent to which objectives of the preceding project period have been satisfactorily accomplished. Specifically:

a. The extent to which the programmatic goals and objectives of the preceding project period were appropriately achieved. (15 points.)

b. The extent to which organizational goals and objectives of the preceding project period were appropriately achieved. (15 points.)

*Criterion 3.* The implementation plan is capable, if properly executed, of assuring the accomplishment of the proposed project's programmatic and organizational objectives. Specifically:

a. The proposal appropriately identifies the tasks to be accomplished relative to the grant category for which the proposal was submitted, in the following areas:

(1) The programmatic objectives.

(2) The organizational objectives. (10 points.)

b. The proposal presents an appropriate and feasible method of approach to task accomplishment over the proposed project period relative to the grant category for which the proposal was submitted, in the following areas:

(1) The programmatic objectives.

(2) The organizational objectives. (10 points.)

c. The proposal documents the extent to which the necessary commitments from within and outside the applicant institution have been secured to assure task accomplishment relative to:

(1) The programmatic objectives.

(2) The organizational objectives. (10 points.)

d. The proposal provides time-lines for task accomplishment that are appropriate and reasonable relative to:

(1) The programmatic objectives.

(2) The organizational objectives. (5 points.)

e. The proposal indicates staff loadings by tasks that are appropriate and reasonable relative to:

(1) The programmatic objectives.

(2) The organizational objectives. (5 points.)

f. The proposal specifies how task accomplishment will be evaluated relative to:

(1) The programmatic objectives.

(2) The organizational objectives. (5 points.)

*Criterion 4.* The proposed resources are appropriate and sufficient to assure the accomplishment of both of the project's programmatic and organizational goals. Specifically:

a. The proposed project staff are well qualified and sufficient time of senior staff is allocated to assure adequate and appropriate management of the project tasks relative to:

(1) The programmatic objectives.

(2) The organizational objectives. (5 points.)

b. Other facilities and resources are appropriate and adequate to assure task accomplishment relative to:

(1) The programmatic objectives.

(2) The organizational objectives. (5 points.)

*Criterion 5.* The proposed budget is appropriate, justifiable, and reasonable in relation to support needed for project activities. (5 points.)

### Closing Date For Receipt of Applications

The closing date for receipt of applications under this program announcement is July 18, 1980. Applications will be considered "on time" if they are either postmarked (First Class Mail) or received by the deadline, unless they arrive too late to be considered by the independent review panel.

Applications may be hand delivered to the receiving office as described under Application Submission. Hand delivered applications are accepted during normal working hours of 9:00 a.m. to 5:30 p.m.

Late applications are not accepted and applicants are notified accordingly.

(Catalog of Federal Domestic Assistance Program Number 13.638, Multidisciplinary Centers of Gerntology Program)

Dated: April 23, 1980.

Robert Benedict.

*Commissioner on Aging.*

Approved: May 5, 1980.

Manuel Carballo,

*Acting Assistant Secretary for Human Development Services.*

[FR Doc. 80-14250 Filed 5-8-80; 8:45 am]

BILLING CODE 4110-92-M

## National Institutes of Health

### Clinical Trials Committee; Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Clinical Trials Committee, National Cancer Institute, National Institutes of Health, May 8–9, 1980, which was published in the Federal Register on April 14, 1980 (45 FR 25150). For further information, please contact Dr. Gerald U. Liddell, Executive Secretary, Westwood Building, Room 826, National Institutes of Health, Bethesda, Maryland 20205.

Dated: April 29, 1980.

Suzanne L. Fremeau,

*Committee Management Officer, National Institutes of Health.*

[FR Doc. 80-14294 Filed 5-8-80; 8:45 am]

BILLING CODE 4110-08-M

### National Cancer Institute; Meetings for the Review of Contract Proposals and Grant Applications

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of committees advisory to the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual contract proposals and grant applications, as indicated. These proposals and applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals and applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will furnish summaries of the meetings and rosters of committee members, upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary indicated. Meetings will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205, unless otherwise stated.

Name of Committee: Bladder and Prostatic Cancer Review Committee (Prostatic Subcommittee).
Dates: June 2, 1980.
Place: Cary Meeting Room, Roswell Park Research Study Center, 666 Elm Street, Buffalo, New York.
Times: Open: June 2, 8:30 a.m.–9:00 a.m. Closed: June 2, 9:00 a.m.–adjournment.
Closure reason: To review grant applications.
Executive secretary: Dr. Andrew Chiarodo. Address: Westwood Building, Room 853, National Institutes of Health. Phone: 301/496-7194.

(Catalog of Federal Domestic Assistance Numbers 13.393, 13.394, 13.395, National Institutes of Health)

Name of Committee: Clinical Trials Committee.
Dates: June 3–4, 1980.
Place: Lobby Room 2nd Floor, Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland.
Times: Open: June 3, 9:00 a.m.–9:30 a.m. Closed: June 3, 9:30 a.m.–5:00 p.m. June 4, 9:00 a.m.–adjournment.
Closure reason: To review contract proposals.
Executive secretary: Dr. Gerald U. Liddel. Address: Westwood Building, Room 826, National Institutes of Health. Phone: 301/496-7575.

(Catalog of Federal Domestic Assistance Number 13.395, National Institutes of Health)

Name of committee: Large Bowel and Pancreatic Cancer Review Committee (Large Bowel Subcommittee).
Dates: June 5–6, 1980.
Place: 10th Floor Dining Room, Prudential Building, 1100 Holcombe Boulevard, Houston, Texas.
Times: Open: June 5, 7:30 p.m.–8:00 p.m. Closed: June 5, 8:00 p.m.–adjournment. June 6, 8:30 a.m.–adjournment.
Closure reason: To review grant applications.
Executive secretary: Dr. Vincent J. Cairoli. Address: Westwood Building, Room 855, National Institutes of Health. Phone: 301/496-7194.

(Catalog of Federal Domestic Assistance Numbers 13.393, 13.394, 13.395, National Institutes of Health)

Name of committee: Bladder and Prostatic Cancer Review Committee (Bladder Subcommittee).
Dates: June 5–6, 1980.
Place: Allegheny Room, Ramada Inn, 1412 Beers School Road, Pittsburgh, Pennsylvania.
Times: Open: June 5, 8:30 a.m.–9:00 a.m. Closed: June 5, 9:00 a.m.–adjournment. June 6, 8:30 a.m.–adjournment.
Closure reason: To review grant applications.
Executive secretary: Dr. William E. Straile. Address: Westwood Building, Room 853, National Institutes of Health. Phone: 301/496-7194.

(Catalog of Federal Domestic Assistance Numbers 13.393, 13.394, 13.395, National Institutes of Health)

Name of committee: Large Bowel and Pancreatic Cancer Review Committee (Pancreatic Subcommittee).
Dates: June 9–10, 1980.
Place: Tidewater Place, Suite 1521, 1440 Canal Street, New Orleans, Louisiana.
Times: Open: June 9, 7:00 p.m.–8:00 p.m. Closed: June 9, 8:00 p.m.–10:00 p.m. June 10, 8:00 a.m.–adjournment.
Closure reason: To review grant applications.
Executive secretary: Dr. William E. Straile. Address: Westwood Building, Room 853, National Institutes of Health. Phone: 301/496-7194.

(Catalog of Federal Domestic Assistance Numbers 13.393, 13.394, 13.395, National Institutes of Health)

Name of committee: Cancer Control Grant Review Committee.
Dates: June 9–10, 1980.
Place: Building 31C, Conference Room 7, National Institutes of Health.
Times: Open: June 9, 8:30 a.m.–9:00 a.m. Closed: June 9, 9:00 a.m.–adjournment. June 10, 8:30 a.m.–adjournment.
Closure reason: To review grant applications.
Executive secretary: Robert F. Browning, Ph.D. Address: Westwood Building, Room 806, National Institutes of Health. Phone: 301/496–7113.

(Catalog of Federal Domestic Assistance Number 13.399, National Institutes of Health)

Name of Committee: Clinical Cancer Education Committee.
Dates: June 11–12, 1980.
Place: Landow Building, Conference Room A, 7910 Woodmont Avenue, Bethesda, Maryland.
Times: Open: June 11, 8:30 a.m.–9:30 a.m. Closed: June 11, 9:30 a.m.–5:00 p.m. June 12, 8:30 a.m.–adjournment.
Closure reason: to review grant applications.
Executive secretary: Dr. Margaret H. Edwards. Address: Westwood Building, Room 10A18, National Institutes of Health. Phone: 301/496–7761.

(Catalog of Federal Domestic Assistance Number 13.398, National Institutes of Health)

Name of committee: Cause and Prevention Scientific Review Committee.
Dates: June 19–20, 1980.
Place: Building 31C, Conference Room 9, National Institutes of Health.
Times: Open: June 19, 9:00 a.m.–9:30 a.m. Closed: June 19, 9:30 a.m.–adjournment. June 20, 9:00 a.m.–adjournment.
Closure reason: To review contract proposals.
Executive secretary: Dr. Eugene M. Zimmerman. Address: Westward Building, Room 826, National Institutes of Health. Phone 301/496–7575.

(Catalog of Federal Domestic Assistance Number 13.393, National Institutes of Health)

Name of committee: Cancer Clinical Investigation Review Committee.
Dates: June 23–25, 1980.
Place: Building 31A, Conference Room 4, National Institutes of Health.
Times: Open: June 23, 8:30 a.m.–9:30 a.m. Closed: June 23, 9:30 a.m.–5:00 p.m. June 24, 8:30 a.m.–5:00 p.m. June 25, 8:30 a.m.–adjournment.
Closure reason: To review grant applications.
Executive secretary: Dorothy K. Macfarlane, M.D. Address: Westwood Building, Room 819, National Institutes of Health. Phone: 301/496–7481.

(Catalog of Federal Domestic Assistance Number 13.395, National Institutes of Health)

Dated: April 29, 1980.

Suzanne L. Fremeau,

*Committee Management Officer, National Institutes of Health.*

[FR Doc. 80–14296 Filed 5–8–80; 8:45 am]

BILLING CODE 4110–08–M

## National Diabetes Advisory Board; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Diabetes Advisory Board on June 11, 1980, beginning at 1 p.m., at the Airlie House Conference Center in Warrenton, Virginia. The meeting will be open to the public, limited to available space. The meeting room location and related information may be obtained by contacting Mr. Raymond Kuehne, Executive Director of the Board, P.O. Box 30174, Bethesda, Maryland 20014, (301) 496–6045. Mr. Kuehne will provide summaries of the meeting and a roster of committee members.

The Board meeting will follow a Diabetes Health Services Conference scheduled for June 8–11, 1980, which will consist of several separate and simultaneous workgroups directed toward several specific complications of diabetes and related aspects of the health care delivery system which are critical to a reduction of morbidity and mortality in these complications. Workgroups will be composed of a small number of invited experts. Each workgroup will prepare a summary report including recommendations to the Board. Preliminary reports will be reviewed at the Board meeting stated above, to begin June 11, 1980 at 1 p.m.

Dated: April 29, 1980.

Suzanne L. Fremeau,

*Committee Management Officer, National Institutes of Health.*

[FR Doc. 80–14295 Filed 5–8–80; 8:45 am]

BILLING CODE 4110–08–M

## National Heart, Lung, and Blood Institute, High Blood Pressure Working Group; Meeting

Notice is hereby given of the meeting of the High Blood Pressure Working Group, sponsored by the National High Blood Pressure Education Program, National Heart, Lung, and Blood Institute, on June 27, 1980, in Wilson Hall, Building 1, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205.

The entire meeting, from 9:00 a.m. to 5:00 p.m., will be open to the public. The Working Group is meeting to define the priorities, activities, and needs of the participating groups in the National High Blood Pressure Education Program. Attendance by the public will be limited to space available. For detailed program information and agenda contact: Mr. Graham W. Ward, Chief, Health Education Branch, National High Blood Pressure Education Program, National Heart, Lung, and Blood Institute, NIH, Building 31, Room 4A24, 9000 Rockville Pike, Bethesda, Maryland 20205 (301) 496–1051. For the list of participants and meeting summary contact: Mr. York Onnen, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, NIH, Building 31, Room 4A17, 9000 Rockville Pike, Bethesda, Maryland 20205 (301) 496–4236.

Date: April 29, 1980.

Suzanne L. Fremeau,

*Committee Management Officer, National Institutes of Health.*

[FR Doc. 80–14293 Filed 5–8–80; 8:45 am]

BILLING CODE 4110–08–M

# DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Draft Environmental Assessment on Subsistence Hunting of Migratory Birds in Alaska and Canada; Extension of Comment Period

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

**ACTION:** Extension of comment period.

**SUMMARY:** On March 31, 1980, the Service announced availability for public comment of a draft environmental assessment of a proposal to seek amendments to migratory bird treaties with Canada, Mexico, and Japan that would make them consistent with the 1976 migratory bird treaty with the Soviet Union in regard to subsistence hunting. The amendments would provide a basis for legalizing and managing subsistence hunting of migratory birds in Alaska and Canada, consistent with the intent of Congress.

Because of unavoidable delays in the distribution of the environmental assessment in Alaska the effective comment period was reduced to 35 days. Therefore, in order to allow adequate time for review and comment by rural residents of Alaska who will be most directly impacted by the proposal, the Service has determined that extension of the comment period is desirable. Accordingly, it is extended to May 31, 1980.

**DATES:** Comments on this environmental assessment will now be accepted until May 31, 1980.

**ADDRESS:** Send comments to: Alaska Area Director, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.

The draft environmental assessment is available for inspection or copies may be obtained from: U.S. Fish and Wildlife Service, Office of Migratory Bird Management, 1717 H Street, NW (Room

555), Department of the Interior, Washington, D.C. 20240, *or* Migratory Bird Program Coordinator, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.

**FOR FURTHER INFORMATION CONTACT:** John P. Rogers, Chief, Office of Migratory Bird Management at (202) 254–3207, *or* Wilbur N. Ladd, Jr., Migratory Bird Program Coordinator at (907) 276–3800.

Dated: May 6, 1980.

Lynn A. Greenwalt,

*Director, Fish and Wildlife Service.*

[FR Doc. 80-14367 Filed 5-8-80; 8:45 am]

BILLING CODE 4310-55-M

## Endangered Species Permit; Notice of Receipt of Applications

The applicants listed below wish to be authorized to conduct the specified activity with the indicated Endangered Species:

Applicant: Denver Wildlife Research Center, U.S. Fish & Wildlife Service, Denver, Colorado 80225 [PRT 2–3818].

The applicant requests an amendment to their endangered species permit to authorize the salvage and capture of bald eagles (*Haliaeetus leucocephalus*) and peregrine falcons (*Falco peregrinus anatum*) for banding and release in the states of Montana, Utah, and Colorado. The applicant is presently authorized to conduct this activity in Wyoming.

Applicant: Mark M. Villanueva Zgonina, Aguadilla, Puerto Rico 00603 [PRT 2–6541].

The applicant requests a permit to take from the wild for enhancement of propagation and scientific research six (6) Virgin Islands tree boas (*Epicrates monensis granti*) from Puerto Rico.

Applicant: Ricardo Valentin de la Rosa, Aguadilla, Puerto Rico 00603 [PRT 2–6546].

The applicant requests a permit to take from the wild for enhancement of propagation and scientific research two (2) Virgin Islands tree boas (*Epicrates monensis granti*) from Puerto Rico.

Applicant: Terry McArdle, Chatham, Ohio 44275 [PRT 6464].

The applicant requests a permit to purchase in interstate commerce two (2) Nene or Hawaiian geese (*Branta sandvicensis*) from the New York Zoological Park, Bronx, New York for enhancement of propagation.

Humane care and treatment during transport, if applicable, has been indicated by the applicant.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish & Wildlife Service, WPO, Washington, D.C. 20240.

Interested persons may comment on these applications on or before June 11, 1980, by submitting written data, views, or arguments to the Director at the above address.

Dated April 30, 1980.

Larry LaRochelle,

*Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish & Wildlife Service.*

[FR Doc. 80-14411 Filed 5-8-80; 8:45 am]

BILLING CODE 4310-55-M

## Endangered Species Permit; Notice of Receipt of Applications

The applicants listed below wish to be authorized to conduct the specified activity with the indicated Endangered Species:

Applicant: Dr. William Post, Florida Game & Fresh Water Fish Commission, Gainesville, Florida 32601 [PRT 2–6509].

The applicant requests a permit to take, capture, band, and release yellow-shouldered blackbirds (*Agelaius xanthomus*) in southwestern Puerto Rico for enhancement of survival and scientific research. The applicant also wishes to examine active wild nests of these birds to determine the extent of brood parasitism by shiny cowbirds (*Molothrus bonariensis*).

Applicant: Dr. David Stansbery, Museum of Zoology, The Ohio State University, Columbus, Ohio 43210 [PRT 2–6488].

The applicant requests a permit to take (salvage) from the wild dead specimens of most mussels listed as endangered or threatened for scientific research. The applicant also requests authorization to import dead mussel specimens from foreign countries where they occur. No live mussel is to be taken or imported.

Humane care and treatment during transport, if applicable, has been indicated by the applicant.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish & Wildlife Service, WPO, Washington, D.C. 20240.

Interested persons may comment on these applications on or before June 11, 1980, by submitting written data, views, or arguments to the Director at the above address.

Dated April 30, 1980.

Larry La Rochelle,

*Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish & Wildlife Service.*

[FR Doc. 80-14410 Filed 5-8-80; 8:45 am]

BILLING CODE 4310-55-M

## Endangered Species Permit; Receipt of Application

Applicant: U.S. Army Corps of Engineers, St. Paul District, 1135 U.S. Post Office & Custom House, St. Paul, MN 55101.

The applicant requests a permit to take Higgin's eye pearly mussels (*Lampsilis higginsi*) and fat pocketbook mussels (*Potamilus (=Proptera) capax*) for scientific purposes. Live specimens will be returned to the wild after taxonomic verification is made.

Humane care and treatment during transport has been indicated by the applicant.

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, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2–7021. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before June 11, 1980. Please refer to the file number when submitting comments.

Dated: May 6, 1980.

Donald G. Donahoo,

*Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.*

[FR Doc. 80-14281 Filed 5-8-80; 8:45 am]

BILLING CODE 4310-55-M

## Endangered Species Permit; Receipt of Application

Applicant: Minnesota Zoological Garden, 12101 Johnny Cake Ridge Road, Apple Valley, MN 55124.

The applicant requests a permit to import 1 female clouded leopard *(Neofelis nebulosa)* from the Dresden Zoo, West Germany for the purpose of propagation.

Humane care and treatment during transport has been indicated by the applicant.

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, U.S. Fish and

Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-7026. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before June 11, 1980. Please refer to the file number when submitting comments.

Dated: May 6, 1980.

Donald G. Donahoo,

*Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.*

[FR Doc. 80-14282 Filed 5-8-80; 8:45 a.m.]

BILLING CODE 4310-55-M

## Endangered Species Permit; Receipt of Application

Applicant: Department of Vetebrate Zoology, National Museum of Natural History, Smithsonian Institution, Washington, D.C. 20560.

The applicant requests a permit to import salvaged specimens of the following species for scientific purposes:

| | |
|---|---|
| Alligatoridae | Alligators and Caimans. |
| *Alligator sinensis* | Chinese Alligator. |
| *Caiman crocodilus apaporiensis* | Apaporis river Caiman. |
| *Caiman latirostris* | Broadsnouted Caiman. |
| *Melanosuchus niger* | Black Caiman. |
| Crocodylidae | Crocodiles. |
| *Crocodylus acutus* | American Crocodile. |
| *Crocodylus cataphractus* | African Slendersnouted Crocodile: |
| *Crocodylus intermedius* | Orinoco Crocodile. |
| *Crocodylus moreletii* | Morelet's Crocodile. |
| *Crocodylus novaeguineae mindorensis* | Philippine Crocodile. |
| *Crocodylus niloticus* | Nile Crocodile. |
| *Crocodylus rhombifer* | Cuban Crocodile. |
| *Crocodylus siamensis* | Siamese Crocodile. |
| *Osteolaemus tetraspis tetraspis* | African Dwarf Crocodile. |
| *Osteolaemus tetraspis osborni* | Congo Dwarf Crocodile. |
| *Tomistoma schlegelii* | Tomistoma. |
| Gavialidae | Gavial. |
| *Gavialis gangecticus* | Gavial. |

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, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-7024. Interested persons may comment on this application by submitting writen data, views, or arguments to the Director at the above address on or before June 11, 1980. Please refer to the file number when submitting comments.

Dated: May 6, 1980.

Donald G. Donahoo,

*Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.*

[FR Doc. 80-14283 Filed 5-8-80; 8:45 am]

BILLING CODE 4310-55-M

[CA 3346]

## Termination of Proposed Withdrawal and Reservation of Land

April 30, 1980.

Notice of Fish and Wildlife Service, United States Department of the Interior, application CA 3346 for withdrawal and reservation from all forms of appropriation under the mineral leasing laws, the reserved mineral estate in the acquired lands described below as a part of the Hopper Mountain National Wildlife Refuge System, Ventura County, California was published as Federal Register Document 76-11302 on page 16585, of the issue of April 20, 1976 and republished as Federal Register Document 77-17537 on page 31192, of the issue of June 20, 1977. The applicant agency has cancelled its application in its entirety.

San Bernardino Meridian

T. 4 N., R. 19 W.,
Sec. 2, Lot 2, E½ Lot 7, and SE¼

The area described aggregates approximately 231.24 acres. Therefore, pursuant to the regulations in 43 CFR 2091.2-5(b), such lands at 10:00 a.m. June 9, 1980, will be relieved of the segregative effect of the above-mentioned application.

Joan B. Russell,

*Chief, Lands Section, Branch of Lands and Minerals Operations.*

[FR Doc. 80-14276 Filed 5-8-80; 8:45 am]

BILLING CODE 4310-84-M

## Heritage Conservation and Recreation Service

## National Registry of Natural Landmarks; Notification of Potential National Natural Landmarks

**AGENCY:** Heritage Conservation and Recreation Service, Department of the Interior.

**ACTION:** Notification of Potential National Natural Landmarks.

The area listed below has been identified as a potential National Natural Landmark by the Service's Division of Natural Landmarks in accordance with the provisions of 36 CFR 1212.4. Pursuant to Section 1212.5(b)(1) of 36 CFR part 1212, written comments concerning the potential designation of this area as a National Natural Landmark may be forwarded to the Acting Associate Director for Natural Programs, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, D.C. 20243. Written comments or a request for additional time should be submitted on or before June 11, 1980.

Dated: May 1, 1980.

Robert A Ritsch,

*Acting Associate Director for Natural Programs.*

California

*San Francisco County*

Farallon Islands; a chain of five islands and rocks located 30 miles west of the San Francisco peninsula.

[FR Doc. 80-14335 Filed 5-8-80; 8:45 am]

BILLING CODE 4310-03-M

## Bureau of Mines

## Floodplain Management and Wetlands Protection Procedures

**AGENCY:** Bureau of Mines, Department of the Interior.

**ACTION:** Notice.

**SUMMARY:** This notice provides Bureau of Mines procedures for complying with Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands).

**DATE:** Written comments with respect to these procedures must be received on or before June 11, 1980.

**ADDRESS:** Comments should be addressed to the Director, Division of Mineral Land Assessment, Bureau of Mines, 2401 E St., N.W., Washington, D.C. 20241.

**FOR FURTHER INFORMATION CONTACT:** Wilton Johnson, Division of Mineral Land Assessment, 2401 E St., N.W., Washington, D.C. 20241, telephone 202-634-1285.

**SUPPLEMENTARY INFORMATION:** These procedures implement Executive Orders 11988 and 11990 and are based on Department of the Interior guidelines (520 DM 1) and the Water Resources Council Guidelines (43 FR 6030).

The primary author of these procedures is Wilton Johnson, Bureau of Mines, 2401 E St., N.W., Washington, D.C. 20241.

Dated May 5, 1980.

Rue W. Harris,

*Acting Assistant Director, Bureau of Mines.*

*1. Purpose.*

The purpose of these procedures is to set forth policy and guidance for

carrying out the provisions of Executive Order 11988, Floodplain Management (May 24, 1977), Executive Order 11990, Protection of Wetlands (May 24, 1977), and the Department of the Interior Guidelines on Floodplain Management and Wetland Protection Procedures.

*2. Policy.*

It is the policy of the Bureau of Mines to exercise leadership in fulfilling the requirements of Executive Orders 11988 and 11990 by:

A. Avoiding, to the extent practicable, the long- and short-term adverse impacts associated with the occupancy and modification of wetlands and floodplains.

B. Avoiding the direct or indirect support of wetland or floodplain development whenever there is a practicable alternative.

C. Reducing the risk of flood loss and minimizing the impact of floods on human health, safety, and welfare.

D. Assuring that planning programs and budget requests reflect consideration of the natural and beneficial values served by floodplains and wetlands.

E. Developing an integrated process to involve the public in the floodplain management decisionmaking process.

F. Adhering to the objectives of the Unified National Program for Floodplain Management.

G. Consulting with Water Resources Council (WRC), Council on Environmental Quality (CEQ), Federal Emergency Management Agency (FEMA), Fish and Wildlife Service (FWS), Corps of Engineers (CE), and other institutions with expertise in the natural and beneficial values of floodplains and wetlands.

*3. Applicability.*

These procedures shall apply to the following Bureau actions which may be located in or affect floodplains or wetlands:

A. Acquiring, managing, and disposing of Federal lands and facilities.

B. Providing federally undertaken, financed, or assisted construction and improvements.

C. Conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

*4. Definitions.*

A. Agency. An executive department, a government corporation, or an independent establishment, also including the military departments.

B. Base Flood. That flood which has a one percent chance of occurrence in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.

C. Facility. Any man-made or man-placed item or structure.

D. Flood or Flooding. A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source.

E. Floodplain. The lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands including, at a minimum, that area subject to a one percent or greater chance of flooding in any given year. The base floodplain shall be used to designate the 100-year floodplain (one percent chance floodplain). The critical action floodplain is defined as the 500-year floodplain (0.2 percent chance floodplain).

F. Minimize. To reduce to the smallest possible amount or degree possible.

G. Practicable. Capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of the pertinent factors such as environment, cost, and technology.

H. Preserve. To prevent modification of the natural floodplain or wetland environment or to maintain it as closely as possible in its natural state.

I. Restore. To re-establish a setting or environment in which the natural functions and values of the floodplain or wetland can again be achieved.

J. Wetlands. "Those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds" (as defined in Executive Order 11990, Protection of Wetlands).

*5. Procedures.*

The Division, Branch, Section, or organizational unit of the Bureau with responsibility for the proposal must complete the following steps when proposing to take an action that may impact or be located in floodplains or wetlands. All requests for new authorizations or appropriations for actions to be located in floodplains or wetlands must contain a statement of compliance with these procedures.

A. Determine Whether a Proposed Action is Located in or Will Affect a Floodplain or Wetland. The floodplain determination shall be made according to a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area if available. If further information and assistance are needed, one or more of the following agencies will be consulted: Soil Conservation Service, Corps of Engineers, National Oceanic and Atmospheric Administration, Federal Housing Administration, Federal Insurance Administration, Geological Survey, Bureau of Land Management, Water and Power Resources Service, Fish and Wildlife Service, Tennessee Valley Authority, Delaware River Basin Commission, Susquehanna River Basin Commission, and appropriate State agencies. If a determination regarding wetlands cannot be made on the basis of definition and inspection, assistance will be sought from the Fish and Wildlife Service, the Corps of Engineers, the Environmental Protection Agency, or local planning and zoning agencies.

B. Early Public Review. If it is determined that a proposed action will be located in or impact a floodplain or wetland, the public or persons interested in or affected by the action shall be notified at the earliest possible time of intent to carry out an action in order that they may give their views on the proposal.

C. Identify and Evaluate Practicable Alternatives. If it is determined that a proposed action is located in or affects a floodplain or wetland, alternative sites must be identified and the practicability of such sites evaluated. Alternatives to be evaluated include: (1) carrying out the proposed action at a location outside the base floodplain or at a location that will not result in impacts on wetlands (alternative sites), (2) other means which accomplish the same purpose as the proposed action (alternative actions), and (3) no action.

D. Identify Impacts of the Proposed Action. The full range of impacts of direct Bureau actions and the impacts of actions supported by the Bureau must be evaluated. Since the Executive Order is based primarily on the National Environmental Policy Act (NEPA), the concepts of impact identification and assessment applicable to both NEPA and the Order are identical. The three basic types of impacts to be assessed are:

(1) Positive and negative impacts. Both must be identified so that the practicability of a proposed action can be measured. For example, draining

wetlands establishes an environment which is suitable for certain uses, but at the expense of beneficial values of the wetlands.

(2) Concentrated and dispersed impacts. These impacts may result from any action. The impact is concentrated if it occurs at or near the site of an action and is dispersed if at a site remote from the action. For example, a concentrated impact of constructing a building on a wooded area is the loss of vegetation at the site. A dispersed impact of the same action could be sedimentation downstream caused by erosion at the site.

(3) Short- and long-term impacts. Both must be analyzed to evaluate the total impact of an action or alternative. Short-term impacts are temporary changes occurring during or immediately following an activity and usually persist for a short while. Long-term impacts occur during or after an action and may take the form of delayed changes or changes resulting from the cumulative effects of many individual actions. An example of a short-term impact could be sedimentation at or below a construction site. A long-term impact could be the loss of valley floodwater storage resulting from the cumulative effects of floodplain development.

After determining that a proposed action is in a floodplain, the risk to lives and property involved in using the site must be determined. This assessment includes the identification of high hazard areas (riverine and coastal floodplains). These areas are usually those nearest the watercourse and are subject to frequent flooding.

E. Minimize, Restore, Preserve. If it is determined that a proposed action or alternative will result in harm to lives and property or impact the natural and beneficial values of or within a floodplain or wetland, modifications must be planned to reduce harm to the smallest amount possible and to insure preservation and restoration of as much of the natural and beneficial floodplain or wetland values as possible.

F. Reevaluate Alternatives. After the impacts the proposed action would have on the floodplain or wetland (step D) and methods to minimize these impacts and opportunities to restore and preserve floodplain and wetland values (step E) have been identified, the proposed action should now be reevaluated. For proposed actions in the floodplain or in wetlands, the initiating office must determine whether the action is still feasible in terms of: (1) avoiding support of floodplain or wetland development where there is a practicable alternative; (2) reducing risk of flood loss; (3) protecting human safety, health, and welfare; and (4) restoring and preserving natural and beneficial floodplain values. The evaluation should lead to a determination of whether there are alternatives to the proposed action.

If there is no practicable alternative to the proposal action, consideration must be given to modifying or limiting the proposed action to minimize potential harm to or within floodplains or wetlands. New alternative actions and sites can then be identified and previously rejected ones reevaluated for practicability based on scaled-down expectations. If neither of the above courses of action is feasible, the no action alternative must be reevaluated.

If the proposed action is outside the floodplain or wetland but has impacts which cannot be minimized, consideration must be given to modifying or relocating the action to eliminate or reduce the identified impacts or to choosing the no action alternative.

The reevaluation must include a comparison of relative adverse impacts associated with the proposed action located in and out of the floodplain or wetland, with emphasis on floodplain or wetland values. However, a site outside of a floodplain should not be chosen if the overall harm is significantly greater than that associated with the floodplain site.

G. Findings and Public Explanation. If the reevaluation results in the determination that there is no practicable alternative to locating in or impacting a floodplain, a statement of findings and public explanation must be provided, indicating how any trade off analysis was conducted in making the findings. OMB Circular A-95 and NEPA review procedures will be used to make findings available for agency and public review.

The statement of findings and public explanation must include:

(1) A description of why the proposed action must be located in the floodplain.

(2) A description of all significant facts considered in making the determination including alternative sites and actions.

(3) A statement indicating whether the actions conform to applicable State, or local floodplain protection standards.

(4) A statement indicating why the National Flood Insurance Program criteria are demonstrably inappropriate for the proposed action.

(5) A provision for publication in the Federal Register and other appropriate vehicle.

(6) A provision for a brief comment period prior to agency action (15 to 30 days).

(7) A description of how the activity will be designed or modified to minimize harm to or within the floodplain.

(8) A statement indicating how the action affects natural or beneficial floodplain values.

(9) A statement listing other involved agencies and individuals.

H. Implementatin of Action. With the conclusion of the decision-making process described in steps A through G, the proposed action can be implemented. However, it is the continuing responsibility of the initiating office to monitor all aspects of the project activities to ensure that all requirements relating to minimization, preservation, and restoration will be observed if the proposed action will result in floodplain or wetland impacts. All proposed actions will be coordinated with the Division of Mineral Land Assessment.

*6. Documentation and Circulation.*

Each Division will be responsible for case-by-case documentation of specific analysis of actions covered by EO 11988 and EO11990 and for maintaining current records for reporting purposes.

For proposed actions having national significance or impact, a notice will be published in the Federal Register with sufficient time allowed for public review and comment. For proposed actions affecting areas of lesser geographic coverage, other public information methods such as news releases, newsletters, or public meetings will be used to inform the interested public.

Actions requiring preparation of environmental impact statements or environmental assessments will be coordinated with the Division of Planning, Office of Program Development and Evaluation. To assure interagency coordination, NEPA documents and decision statements concerning floodplains and wetlands will be circulated to the following agencies: EPA, FEMA, USGS, FWS, CE, SCS, WPRS, and State water resources agencies.

[FR Doc. 80-14368 Filed 5-8-80; 8:45 am]
BILLING CODE 4310-53-M

## Bureau of Land Management

**[F-14872-A and F-14872-B]**

## Alaska Native Claims Selections

*Correction*

In FR Doc. 80-12311 appearing at page 27019, in the issue for Tuesday, April 22, 1980, make the following corrections:

1. On page 27020, in the second column, the last line, "T.12S., R.1W."

should be corrected to read "T.12S., R.1E."

2. Also on page 27020, in the third column, the fourteenth line from the top, "T.13S., R.1W." should be corrected to read "T.13S., R.1E."

3. On page 27021, in the second column, the ninth line of paragraph 2, "in case file F-14871-EE, are reserved to" should be corrected to read "in case file F-14872-EE, are reserved to".

BILLING CODE 1505-01-M

## Outer Continental Shelf Advisory Board, Mid-Atlantic Technical Working Group Committee; Meeting

Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Public Law No. 92-463).

**NAME:** Mid-Atlantic Technical Working Group Committee.

**DATES:** May 28-29, 1980.

**PLACE:** Oval Room, One World Trade Center (44th Floor), New York, New York.

**TIME:** 28th: 1:00 p.m.-5:00 p.m.; 29th: 8:30 a.m.-4:30 p.m.

Committee membership consists of representatives from Federal agencies, the coastal states from New York through North Carolina, the petroleum industry, and other private interest.

**AGENDA:** Presentation on deepwater drilling technology; recommendations on the work plan for the first phase of the Mid-Atlantic transportation management plan; and recommendations for development scenarios and critical issues for the proposed OCS Sale #59 environmental statement.

The meeting will be open to the public. Public attendance may be limited by the space available. Persons wishing to make oral presentations to the Committee regarding matters on the agenda should contact Richard Barnett of the New York OCS Office (212-264-5580) by May 21, 1980. Written statements should be submitted by June 5, 1980 to the New York OCS Office, Bureau of Land Management, 26 Federal Plaza, Suite 32-120, New York, New York 10007.

Minutes of the meeting will be available for public inspection and copying by July 24, 1980 at the above address.

Judith Gresham,

*Acting Manager, New York OCS Office.*

[FR Doc. 80-14333 Filed 5-8-80; 8:45 am]

BILLING CODE 4310-84-M

## Outer Continental Shelf; Locations and Dates of Public Hearings Regarding Proposed OCS Oil and Gas Lease Sale No. 53, Offshore Northern and Central California

In accordance with 43 CFR 3314.1, public hearings will be held for the purpose of receiving comments and suggestions relating to the draft environmental statement concerning a proposed oil and gas lease sale offshore northern and central California (OCS Sale #53). The hearings are scheduled as follows:

June 16—Veterans' Memorial Hall, 1351 Maple Avenue, Santa Rosa, California
June 18—Eagles Hall, Redwood & Harold Streets, Fort Bragg, California
June 20—Eureka High School Cafeteria, 1915 J Street, Eureka, California
June 23—Fort Mason, Building "A", Marina Boulevard & Laguna Street, San Francisco, California
June 25—Coconut Grove, Bayview Room (Beach Boardwalk), Santa Cruz, California
June 27—Cuesta College, Old Auditorium, U.S. Highway #1, San Luis Obispo, California

The hearings at all locations will begin at 8 a.m. and adjourn at 8 p.m.

The hearings will provide the Secretary of the Interior with additional information from governmental agencies and public and private sectors to help evaluate the potential effects of the proposed offering of 1.3 million acres (532,588 hectares) of submerged lands on the Outer Continental Shelf. Comments are solicited concerning effects of exploration, development and production resulting from the proposed sale of 243 tracts on the area's marine, cultural, recreational and other resources of the northern and central California region.

The draft environmental statement concerning proposed OCS Sale #53 was made available to the public on April 18, 1980. Copies of this statement can be obtained from the Bureau's Pacific Outer Continental Shelf Office, 1340 W Sixth Street, Room 200, Los Angeles, California 90017, and from the Office of Public Affairs, Bureau of Land Management (130), Washington, D.C. 20420.

Copies of the draft environmental statement are also available for review in the following public locations in California: Crescent City Public Library, Crescent City; North Coast Regional Coastal Commission, Eureka; Eureka-Humboldt County Library, Eureka; Humboldt State University, Arcata; Mendocino County Library, Mendocino; Ukiah Library, Ukiah; Coastal Planning Office, Fort Bragg; North Bay Coop. Library System, Santa Rosa; Bodega Bay Vounteer Fire Dept., Bodega Bay; Sebastropol Public Library, Sebastropol; Petaluma Free Library, Petaluma; Healdsburg Library, Healdsburg; Mill Valley City Library, Mill Valley; Fairfax Library, Fairfax; Novato Library, Novato; Stinsen Library, Stinsen; Corte Madera Library, Corte Madera; Point Reyes Library, Point Reyes; Marin County Library, San Rafael; No. Central Coast Regional Com., San Rafael; University of San Francisco, San Francisco; California Coastal Zone Com., San Francisco; San Francisco Public Library, San Francisco; Oakland Public Library, Oakland; University of California, Berkeley; Richmond Public Library, Richmond; Pacifica Public Library, Pacifica; Pescadero Public Library, Pescadero; San Mateo Public Library, San Mateo; Redwood City Library, Redwood City; San Jose State University, San Jose; Santa Cruz Public Library; McHenry Library, Santa Cruz; Salinas Library, Salinas; Monterey Public Library, Monterey; Assoc. of Monterey Bay Area Govt., Monterey; Pacific Grove Library, Pacific Grove; Grover City Library, Grover City; Morro Bay Library, Morro Bay; Nipoma Elementary Cnty. Library, Nipoma; California Polytech State University Library, San Luis Obispo; San Luis Obispo City-Cnty. Library; Environmental Ctr. S.L.O. Cnty.; Pismo Beach City Library, Pismo Beach; Goleta Public Library; Santa Maria Public Library; Santa Barbara Public Library; University of California Library; So. Central Coast Regional Com., Santa Barbara; and California State Lands Com., Sacramento.

Interested individuals, representatives of organizations, and public officials wishing to testify at the hearings are requested to contact the Manager, Pacific Outer Continental Shelf Office, Bureau of Land Management, at the above address by 4 p.m., June 9, 1980. Written comments from those unable to attend the hearings should also be addressed to the Manager, Pacific Outer Continental Shelf Office, at the above address. The Bureau will accept written comments on the draft environmental statement until July 3, 1980. This will allow time for those unable to testify at the hearings to make their views known and for those presenting oral testimony to submit supplemental materials. Time limitations make it necessary to limit the length of oral presentations to ten (10) minutes. An oral statement may be supplemented, however, by a more complete written statement which should be submitted to a hearing official at the time of oral presentation. Written statements will be considered for inclusion in the hearing record. To the

extent that time is available after presentation of oral statements by those who have given advance notice, the hearing officer will give others present an opportunity to be heard.

After all testimony and comments have been received and considered, a final environmental statement will be prepared.

Joellyn Kapp Murphy,

*Acting Associate Director, Bureau of Land Management.*

Approved: May 5, 1980.

Guy R. Martin,

*Assistant Secretary of the Interior.*

[FR Doc. 80-14278 Filed 5-8-80; 8:45 am]

BILLING CODE 4310-84-M

## INTERSTATE COMMERCE COMMISSION

**[Notice No. 180]**

### Assignment of Hearings

May 5, 1980.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 109533 (Sub-108F), Ovenite Transportation Company, now assigned for continued hearing on May 6, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C. FD-28934, Chicago and North Western Transportation Company Construction and Operation of a line of Railroad in Niobrara and Goshen Counties, WY and in Sioux and Scotts Bluff Counties, NE and FD-29066, Chicago and North Western Transportation Company Construction, now assigned for continued hearing on May 13, 1980, at the Public Service Commission, Hearing Room—2nd Floor, Capitol Hill Bldg., 320 West 25th Streets, at Cheyenne, WY, May 15, 1980 at Torrington, WY in Tri-County, Federal Saving & Loan Association, 2201 Main Street, May 19, 1980 at Cheyenne, WY, in the Conference Room 2016—Federal Center, 22nd & Capitol Avenue, and May 28, 1980 at Cheyenne, WY in the Conference Room 2016—Federal Center, 22nd & Capitol Avenue.

MC 56679 (Sub-109F), Brown Transport Corporation, now assigned for continued hearing on June 17, 1980 (3 Days), at New Orleans, LA, in a hearing room to be designated later. No 37325 Independent Bakers Association-V-Consolidated Rail Corporation, Etal, now assigned for hearing on May 1, 1980 is postponed to June 3, 1980 at the Officers of the Interstate Commerce Commission in Washington, DC.

MC 124170 (Sub-112F), Frostways, Inc., now assigned for hearing July 14, 1980 Detroit, MI is cancelled and transferred to Modified Procedure.

MC 123048 (Sub-441F), Diamond Transportation System, Inc., now assigned for hearing on June 3, 1980 at Chicago, IL. is canceled and transferred to Modified Procedure.

MC 138627 (Sub-68F), Smithway Motor Xpress, Inc., is transferred to Modified Procedure.

MC 97310 (Sub-32F), Sharron Motor Lines, Inc., now being assigned for hearing on June 9, 1980 (5 Days), at the Sheraton Motor Inn Downtown, 300 North 10th Street, Birmingham, AL., and continued to June 23, 1980 (5 Days), at the Holiday Inn, 92 West Beach Street, Biloxi, MS.

MC 127337 (Sub-22F), Chet's Transport, Inc., now being assigned for hearing on July 22, 1980 (1 Day), at Boston, MA, in a hearing room to be designated later.

MC 142040 (Sub-5F), Amber Delivery Service, Inc., now being assigned for hearing on July 23, 1980 (3 Days), at Boston, MA, in a hearing room to be designated later.

MC 8771 (Sub-53F), Saw Mill Supply, Inc., now assigned for hearing on June 19, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 135684 (Sub-94F), Bass Transportation Co., Inc., now assigned for hearing on June 18, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 44605 (Sub-52F), Milne Truck Lines, Inc., now assigned for Prehearing Conference on July 1, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 110325 (Sub-103F), Transcon Lines, now assigned for Prehearing Conference on July 1, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 139482 (Sub-128F), New Ulm Freight Lines, Inc., now assigned for hearing on July 22, 1980 (1 day) at New York, NY in a hearing room to be later designated.

MC 59655 (Sub-20F), Sheehan Carriers, Inc., now assigned for hearing on July 23, 1980 (3 days) at New York, NY in a hearing room to be later designated.

MC 144140 (Sub-31F), Southern Freightways, Inc., now assigned for hearing on June 17, 1980 (2 days) at Tampa, FL in a hearing room to be later designated.

MC 118044 (Sub-3F), Keeshin Charter Service, Inc., now assigned for hearing on June 11, 1980 at Chicago, IL is canceled application dismissed.

MC 41432 (Sub-160F), East Texas Motor Freight, Inc., now assigned for hearing April 29, 1980 at Atlanta, GA in the Harley Hotel (Formerly Hospitality Motor Inn), 3601 N. Desert Drive, and May 5, 1980 at Kansas City, MO in the Inn at Executive Park (formerly Breakenridge Inn), 1601 North Universal Avenue.

MC 145817 (Sub-1F), Recreational Product Transport, Inc., now being assigned hearing on July 8, 1980 (2 days) at Boston, MA, location of hearing room will be designated later.

MC 147919F, Sea Lane Express, Inc., now being assigned for hearing on July 10, 1980 (2 days) at Boston, MA, location of hearing room will be designated later.

MC 113843 (Sub-268F), Refrigerated Food Express, Inc., now being assigned for hearing on July 14, 1980 (1 week) at Boston, MA, location of hearing room will be designated later.

MC 110656 (Sub-11F), Parker Motor Freight, Inc., now being assigned for hearing on July 21, 1980 (1 week) at Traverse City, MI location of hearing room will be designated later.

Agatha L. Mergenovich,

*Secretary.*

[FR Doc. 80-14298 Filed 5-8-80; 8:45 am]

BILLING CODE 7035-01-M

**[Docket No. AB-6 (Sub-62F)]**

### Burlington Northern Inc. Abandonment Near Colton and Hayti in Minnehaha, Lake, Brookings, Kingsbury, and Hamlin Counties, SD; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided March 11, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that the present and future public convenience and necessity permit abandonment by the Burlington Northern Inc. of the line of railroad extending between milepost 37.00 north of Wentworth, SD, and milepost 85.26 at Hayti, ND, a distance of 48.26 miles, in Lake, Brookings, Kingsbury, and Hamlin Counties, SD, provided that conditions for the protection of employees as discussed in *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91(1979) be imposed. A certificate of abandonment will be issued to the Burlington Northern Inc. based on the above-described finding of abandonment, on or before June 11, 1980, unless on or before June 11, 1980 the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment

will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail service over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the Federal Register on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

*Secretary.*

[FR Doc. 80-14299 Filed 5-8-80; 8:45 am]

BILLING CODE 7035-01-M

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[Docket No. AB-6 (Sub-63F)]

## Burlington Northern Inc., Abandonment Near Rosalia and Manning, in Whitman County, WA; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided March 25, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that the present and future public convenience and necessity permit the abandonment by the Burlington Northern Inc. of its line of railroad extending from milepost 50.60 at Balder, WA, to milepost 71.20 near Manning WA, all in Whitman County, WA, subject to the conditions, for the protection of employees as adopted in the decision of the Commission in *Oregon Short Line R. Co. Abandonment Goshen,* 360 I.C.C. 91 (1979); *provided, however,* that the Burlington Northern, Inc., shall keep intact all of the right-of-way underlying the track, including all bridges and culverts, for a period of 120 days from April 23, 1980, to permit any state or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way. A certificate of abandonment will be issued to the Burlington Northern Inc. based on the above-described finding of abandonment, on or before June 11, 1980, unless on or before June 11, 1980, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necesssary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the Federal Register on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

*Secretary.*

[FR Doc. 80-14300 Filed 5-8-80; 8:45 am]

BILLING CODE 7035-01-M

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## Transportation of Government Traffic; Special Certificate Letter Notice(s)

The following letter notices request participation in a Special Certificate of Public Convenience and Necessity for the transportation of general commodities (except classes A and B explosives, radioactive materials, etiologic agents, shipments of secret materials, and weapons and ammunition which are designated sensitive by the United States Government), between points in the United States (including Alaska and Hawaii), restricted to the transportation of traffic handled for the United States Government or on behalf of the United States Government where the government contractor (consignee or consignor), is directly reimbursed by the government for the transportation costs, under the Commission's regulations (49 CFR 1062.4), pursuant to a general finding made in Ex Parte No. MC-107, *Government Traffic,* 131 M.C.C. 845 (1979).

An original and one copy of verified statement in opposition (limited to argument and evidence concerning applicant's fitness) may be filed with the Interstate Commerce Commission within 20 days from the date of this publication. A copy must also be served upon applicant or its representative. Opposition to the applicant's participation will not operate to stay commencement of the proposed operation.

If applicant is not otherwise informed by the Commission, operations may commence within 30 days of the date of its notice in the Federal Register, subject to its tariff publication's effective date, or the filing of an effective tender pursuant to 49 U.S.C. 10721.

GT-252-80 (Special Certificate—Government Traffic), filed April 14, 1980. Applicant: MIDWEST REFRIGERATED EXPRESS, INC., 4440 Buckingham Ave., Omaha, NE 68107. Representative: Arlyn L. Westergren, Westergren & Hauptman, P.C., Suite 106, 7101 Mercy Rd., Omaha, NE 68106. Government Agency involved: Veterans Administration.

GT-253-80 (Special Certificate—Government Traffic), filed April 3, 1980. Applicant: STANLEY'S TRANSFER COMPANY, 950/1000 Marine Blvd. N., Jacksonville, NC 28540. Representative: Robert Pittman, Vice-President and General Manager (address same as applicant). Government Agency involved: Department of Defense, and General Services Administration.

GT-254-80 (Special Certificate—Government Traffic), filed April 11, 1980. Applicant: MORWALL TRUCKING, INC. P.O. Box 76C, R.D. 3; Moscow, PA 18444. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. Government Agency involved: Department of Defense, and General Services Administration.

GT-255-80 (Special Certificate—Government Traffic), filed April 11, 1980. Applicant: FREDERICKSEN TANK LINES, INC., 850 Delta Lane, West

Sacramento, CA 95691. Representative: Michael S. Rubin, Silver, Rosen, Fischer, & Stetcher, P.C., 256 Montgomery St., th Floor, San Francisco, CA 94104. Government Agency involved: Defense Fuel Region-West, 3171 N. Gaffey St., San Pedro, CA 90731.

GT-256-80 (Special Certificate—Government Traffic), filed April 12, 1980. Applicant: ANTONY P. SPARACINO AND RALPH SPARACINO, a partnership, d.b.a. SPARACINO BROTHERS, 1031 Capouse Ave., P.O. Box 1382, Scranton, PA 18501. Representative: David Earl Tinker, 1000 Connecticut Ave. NW., Suite 1200, Washington, DC 20036. Government Agency involved: Department of Defense.

GT-257-80 (Special Certificate—Government Traffic), filed April 14, 1980. Applicant: North American Van Lines, Inc., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Martin A. Weissert, Vice President and Secretary (address same as applicant). Government Agency involved: Department of Defense, and General Services Administration.

GT-258-80 (Special Certificate—Government Traffic), filed April 14, 1980. Applicant: C. O. BRUCE & SON, INC., Rte 1, Blum, TX 76627. Representative: Billy R. Reid, 1721 Carl St., Fort Worth, TX 76103. Government Agency involved: Department of Defense.

GT-259-80 (Special Certificate—Government Traffic), filed April 14, 1980. Applicant: SECURITY VAN LINES, INC., 100 W Airline Hwy, Kenner, LA 70062. Representative: Donald Goldwasser, Security Van Lines, Inc., P.O. Box 830, Kenner, LA 70063. Government Agency involved: General Services Administration.

GT-260-80 (Special Certificate—Government Traffic), filed April 14, 1980. Applicant: TERESI TRUCKING, INC., 900½ Victor Rd., Lodi, CA 95240. Representative: Eldon M. Johnson, The Hartford Bldg., 650 California St., Suite 2808, San Francisco, CA 94108. Government Agency involved: Department of Defense.

GT-261-80 (Special Certificate—Government Traffic), filed April 14, 1980. Applicant: BUILDERS TRANSPORT, INC., 409 14th St. SW., Great Falls, MT 59404. Representative: Irene Warr, 430 Judge Bldg., Salt Lake City, UT 84111. Government Agency involved: Department of Defense.

GT-262-80 (Special Certificate—Government Traffic), filed April 14, 1980. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Ave. North, St. Cloud, MN 56301. Representative: William L. Libby (address same as applicant). Government Agency involved: Department of Defense, and General Services Administration.

GT-263-80 (Special Certificate—Government Traffic), filed April 14, 1980. Applicant: RILEY WHITTLE, INC., 8211 W Sherman, Phoenix, AZ 85031. Representative: Jerry Hawkins, President (address same as applicant). Government Agency involved: Department of Defense.

GT-264-80 (Special Certificate—Government Traffic), filed April 14, 1980. Applicant: SHORT FREIGHT LINES, INC., 459 S. River Rd., Bay City, MI 48706. Representative: Richard L. Poirier (address same as applicant). Government Agency involved: U.S. Government Manual (1979-80 edition).

GT-265-80 (Special Certificate—Government Traffic), filed April 14, 1980. Applicant: AMERICAN VAN & STORAGE, INC., 2125 NW. 1st Court, Miami, FL 33127. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. Government Agency involved: U.S. Government Manual (1979-80 edition).

GT-266-80 (Special Certificate—Government Traffic), filed April 14, 1980. Applicant: DEAN TRUCK LINE, INC., P.O. Drawer 631, Corinth, MS 38834. Representative: A. Doyle Cloud, Jr., 2008 Clark Tower, 5100 Poplar Ave., Memphis, TN 38137. Government Agency involved: Department of Defense.

GT-267-80 (Special Certificate—Government Traffic), filed April 14, 1980. Applicant: GEORGE TRANSFER AND RIGGING CO., INC., P.O. Box 500, Interstate 83 at MD Route 439, Parkton, MD 21120. Representative: John Guandolo, 1000 Sixteenth Street NW., Washington, D.C. 20036. Government Agency involved: Departments of Defense, Agriculture, Energy, Housing and Urban Development, General Services Administration, Federal Aviation Administration, Veterans Administration, and Postal Service.

GT-268-80 (Special Certificate—Government Traffic), filed April 14, 1980. Applicant: TEX-O-KA-N TRANSPORTATION CO., INC., 3301 E. Loop 820 South, P.O. Box 8367, Fort Worth, TX 76112. Representative: James W. Hightower, Hightower, Alexander and Cook, P. C., 5801 Marvin D. Love Freeway, Suite 301, Dallas, TX 75237. Government Agency involved: Departments of Defense and Agriculture, Commodity Credit Corporation, Federal Aviation Authority, General Services Administration, National Aeronautics and Space Administration, Tennessee Valley Authority, U.S. Weather Bureau, and Atomic Energy Commission.

GT-269-80 (Special Certificate—Government Traffic), filed April 14, 1980. Applicant: SMITHWAY MOTOR XPRESS, INC., P.O. Box 404, Fort Dodge, IA 50501. Representative: Arlyn L. Westergren, Westergren & Hauptman, P.C., Suite 106, 7101 Mercy Road, Omaha, NE 68106. Government Agency involved: Department of Defense.

GT-270-80 (Special Certificate—Government Traffic), filed April 14, 1980. Applicant: VERNON MARTELL, 2434 Hillview Avenue, Bismarck, ND 58501. Representative: Charles E. Johnson, Attorney at Law, P.O. Box 1982, Bismarck, ND 58501. Government Agency involved: Department of Defense, General Services Administration.

GT-271-80 (Special Certificate—Government Traffic), filed April 15, 1980. Applicant: K & W TRUCKING CO., INC., 101 Cooper Avenue North, St. Cloud, MN 56301. Representative: William L. Libby (same address as applicant). Government Agency involved: Department of Defense and General Services Administration.

GT-272-80 (Special Certificate—Government Traffic), filed April 15, 1980. Applicant: FOGLEMAN TRUCK LINE, INC., P.O. Box 1504, Crowley, LA 70526. Representative: Austin L. Hatchell, Lanham, Hatchell, Sedberry & Hoffman, Suite 801 Vaughn Bldg., 807 Brazos Street, Austin, Texas 78701. Government Agency involved: Department of Defense.

GT-273-80 (Special Certificate—Government Traffic), filed April 15, 1980. Applicant: BRADY TRANSFER & STORAGE, INC., 200 Southern Boulevard, Wyoming, DE 19934. Representative: Robert J. Gallagher, Esq., 1000 Connecticut Ave. NW., Suite 1112, Washington, D.C. 20036. Government Agency involved: Departments of Defense and Transportation, General Services Administration.

GT-274-80 (Special Certificate—Government Traffic), filed April 15, 1980. Applicant: WILLIAM C. SCOTT d.b.a. SCOTTS TRUCKING, 1514 East Worth Street, Stockton, CA 95205. Representative: William C. Scott (address same as applicant). Government Agency involved: Department of Defense and General Services Administration.

GT-275-80 (Special Certificate—Government Traffic), filed April 18, 1980. Applicant: JACOBS TRANSFER, INC., 2300 Beaver Rd., Landover, MD 20785.

Representative: Eric Meierhoefer, 1511 K St. NW., Suite 423, Washington, DC 20005. Government Agency involved: General Services Administration, and Department of Defense.

GT-276-80 (Special Certificate—Government Traffic), filed April 18, 1980. Applicant: VIRGINIA TRANSPORTATION, INC., P.O. Box 26449, Richmond, VA 23261. Representative: Eric Meierhoefer, 1511 K St. NW., Suite 423, Washington, DC 20005. Government Agency involved: General Services Administration, and Department of Defense.

GT-277-80 (Special Certificate—Government Traffic), filed April 18, 1980. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, VA 24078. Representative: John D. Stone (address same as applicant). Government Agency involved: Departments of Agriculture, Commerce, Interior, Labor, Transportation, Treasury, Defense, Health, Education, and Welfare, and Housing and Urban Development; Federal Prison Industries, Federal Supply Service, General Services Administration, National Aeronautics and Space Administration, US Postal Service, and Veterans Administration.

GT-278-80 (Special Certificate—Government Traffic), filed April 18, 1980. Applicant: HARRY MAHALLY, JR., d.b.a. MAHALLY TRUCKING SERVICE, P.O. Box 1294, Rear 289 New Grant St., Wilkes-Barre, PA 18703. Representative: John W. Frame, ICC Practitioner, P.O. Box 626, 2207 Old Gettysburg Rd., Camp Hill, PA 17011. Government Agency involved: Departments of Defense and Agriculture, General Services Administration.

GT-279-80 (Special Certificate—Government Traffic), filed April 18, 1980. Applicant: TAYNTON FREIGHT SYSTEM, INC., 40 Main St., Wellsboro, PA 16901. Representative: Dewey T. Whitford, Traffic Mgr. (address same as applicant). Government Agency involved: Departments of Defense, Agriculture, Treasury, and State; Atomic Energy Commission, International Cooperative Administration, Internal Revenue Service, Health, Education, and Welfare, Government Printing Office, Postal Service, General Services Administration, and Veterans Administration.

GT-280-80 (Special Certificate—Government Traffic), filed April 16, 1980. Applicant: HAMMOND TRUCKING INC., 1131 S Dunlop #A-302, Forest Park, IL 60130. Representative: William C. Hammond, Jr. (address same as applicant), Government Agency involved: Department of Defense.

GT-281-80 (Special Certificate—Government Traffic), filed April 16, 1980. Applicant: DOTSON TRUCKING CO., INC., 1220 Murphy Ave. SW., Atlanta, GA 30310. Representative: Brian S. Stern, Stern & Jones, 2425 Wilson Blvd., Suite 367, Arlington, VA 22201. Government Agency involved: Internal Revenue Service, Department of Defense, Environmental Protection Agency, and General Services Administration.

GT-282-80 (Special Certificate—Government Traffic), filed April 16, 1980. Applicant: MAY TRUCKING COMPANY, P.O. Box 400, Payette, ID 83661. Representative: James W. Hightower, Hightower, Alexander & Cook, P.C., 5801 Marvin D. Love Freeway, Suite 301, Dallas, TX 75237. Government Agency involved: Departments of Defense, Agriculture; Commodity Credit Corporation, Federal Aviation Authority, General Services Administration, National Aeronautics and Space Administration, Tennessee Valley Authority, U.S. Weather Bureau, and Atomic Energy Commission.

GT-283-80 (Special Certificate—Government Traffic), filed April 17, 1980. Applicant: HOME RUN, INC., 1299 Lavelle Dr., Xenia, OH 45385. Representative: Boyd B. Ferris, Muldoon, Pemberton & Ferris, 50 W. Broad St., Columbus, OH 43215. Government Agency involved: General Services Administration, and Department of Defense.

GT-284-80 (Special Certificate—Government Traffic), filed April 17, 1980. Applicant: GRIFFITH MOTOR EXPRESS, INC., 1607 S. Rogers St., P.O. Box 817, Bloomington, IN 47402. Representative: Robert Griffith, President (address same as applicant). Government Agency involved: Department of Defense.

GT-285-80 (Special Certificate—Government Traffic), filed April 17, 1980. Applicant: CARL SCHAEFER JR. TRUCK LINE, INC., 2600 Willowburn Ave., Dayton, OH 45427. Representative: Carl Schaefer Jr., President, 321 Stuckhardt Ave., Trotwood, OH 45426. Government Agency involved: Department of Defense.

GT-286-80 (Special Certificate—Government Traffic), filed April 18, 1980. Applicant: IMPORT DEALERS SERVICE CORPORATION, P.O. Box 16136, Long Beach, CA 90806. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22201. Government Agency involved: U.S. Government Manual (1979-80 edition).

GT-287-80 (Special Certificate—Government Traffic), filed April 18, 1980. Applicant: J & D TRUCKING, INC., 2985 Meadow Ave., P.O. Box 1610, Fort Myers, FL 33902. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22201. Government Agency involved: U.S. Government Manual (1979-80 edition).

GT-288-80 (Special Certificate—Government Traffic), filed April 18, 1980. Applicant: VICTORY FREIGHTWAY SYSTEM, INC., P.O. Box Drawer P, Sellersburg, IN 47172. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22201. Government Agency involved: U.S. Government Manual (1979-80 edition).

GT-289-80 (Special Certificate—Government Traffic), filed April 18, 1980. Applicant: DELTA LINES, INC., 333 Hegenberger Rd., Oakland, CA 94621. Representative: Kirk Wm. Horton (address same as applicant). Government Agency involved: Department of Defense.

GT-290-80 (Special Certificate—Government Traffic), filed April 18, 1980. Applicant: KENOSHA AUTO TRANSPORT CORPORATION, 4314 39th Ave., Kenosha, WI 53140. Representative: Paul F. Sullivan, 711 Washington Bldg., Washington, DC 20005. Government Agency involved: Departments of Defense, and Agriculture; U.S. Postal Service, and General Services Administration.

GT-291-80 (Special Certificate—Government Traffic), filed April 18, 1980. Applicant: ANDREWS VAN LINES, INC., 7th St. and Park Ave., Norfolk, NE 68701. Representative: Clayton L. Andrews (address same as applicant). Government Agency involved: Department of Defense, and General Services Administration.

GT-292-80 (Special Certificate—Government Traffic), filed April 18, 1980. Applicant: HENRY ANDERSEN, INC., P.O. Box 75, King George, VA 22485. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St. NW., Washington, DC 20005. Government Agency involved: Departments of Defense, Energy, Interior, and Agriculture; General Services Administration, Tennessee Valley Authority, National Aeronautics and Space Administration, U.S. Postal Service and U.S. Government Printing Office.

GT-293-80 (Special Certificate—Government Traffic), filed April 18, 1980. Applicant: RDL, INC., P.O. Box 286, Gambrills, MD 21054. Representative:

Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., NW., Washington, DC 20005. Government Agency involved: Departments of Defense, Agriculture, Energy, and Interior, General Services Administration, Tennessee Valley Authority, National Aeronautics and Space Administration, U.S. Postal Service, and U.S. Government Printing Office.

GT-294-80 (Special certificate—Government Traffic), filed April 18, 1980. Applicant: LILE INTERNATIONAL COMPANIES, 15606 SW. 72nd Ave., Tigard, OR 97223. Representative: Robert J. Gallagher, 1000 Connecticut Ave. NW., Suite 1112, Washington, DC 20036. Government Agency involved: Departments of Defense, and Transportation, and General Services Administration.

GT-295-80 (Special Certificate—Government Traffic), filed April 21, 1980. Applicant: INDIANHEAD TRUCK LINE, INC., 1947 W. County Rd. C, St. Paul, MN 55113. Representative: W. A. Myllenbeck, Vice President, Traffic (address same as applicant). Government Agency involved: Department of Defense and General Services Administration.

GT-296-80 (Special Certificate—Government Traffic), filed April 21, 1980. Applicant: BOAT TRANSIT, INC., P.O. Box 1403, Newport Beach, CA 92663. Representative: Steven K. Kuhlmann, 717 17th St., Suite 2600, Denver, CO 80202. Government Agency involved: Department of Defense.

GT-297-80 (Special Certificate—Government Traffic), filed April 21, 1980. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666 S, Shreveport, LA 71107. Representative: Wilburn L. Williamson, Suite 615 E, The Oil Center, 2601 NW. Expressway, Oklahoma City, OK 73112. Government Agency involved: General Services Administration, Departments of Agriculture, Transportation, Defense, Energy, and Interior, National Railroad Passenger Service Corporation, Tennessee Valley Authority, National Aeronautics and Space Administration, U.S. Postal Service, and U.S. Government Printing Office.

GT-298-80 (Special Certificate—Government Traffic), filed April 21, 1980. Applicant: RICE TRUCK LINES, P.O. Box 395, Black Eagle, MT 59414. Representative: Ray F. Koby, P.O. Box 2567, Great Falls, MT 59403. Government Agency involved: Department of Defense.

GT-299-80 (Special Certificate—Government Traffic), filed April 22, 1980. Applicant: B & R DRAYAGE, INC., P.O. Box 8534, Battlefield Station, Jackson, MS 39204. Representative: Douglas C. Wynn, Wynn, Bogen & Mitchell, P.O. Box 1295, Greenville, MS 38701. Government Agency involved: U.S. Government Manual (1979-80 edition).

GT-300-80 (Special Certificate—Government Traffic), filed April 17, 1980. Applicant: HORNADY TRUCK LINE, INC., P.O. Box 846, Monroeville, AL 36460. Representative: Gerald D. Corvin, Jr., 603 Frank Nelson Bldg., Birmingham, AL 35203. Government Agency involved: Departments of Defense and Interior, and General Services Administration.

GT-301-80 (Special Certificate—Government Traffic), filed April 21, 1980. Applicant: MITCHELL BROS. TRUCK LINES, 3841 N. Columbia Blvd., Portland, OR 97217. Representative: David J. Lister, P.O. Box 17039, Portland, OR 97217. Government Agency involved: U.S. Government Manual (1979-80 edition).

GT-302-80 (Special Certificate—Government Traffic), filed April 8, 1980. Applicant: 44 TRANSPORT CORP., 69 Route 17 So., Hasbrouck Heights, NJ 07604. Representative: Joseph Catalano, President (address same as applicant). Government Agency involved: Departments of Labor, Housing and Urban Development, Defense, and Health, Education, and Welfare, Internal Revenue Service.

GT-303-80 (Special Certificate—Government Traffic), filed April 18, 1980. Applicant: McLEAN TRUCKING COMPANY, 1920 W. 1st St., Winston-Salem, NC 27104. Representative: Daniel R. Simmons, P.O. Box 213, Winston-Salem, NC 27102.

By the Commission.

Agatha L. Mergenovich,

*Secretary.*

[FR Doc. 80-14303 Filed 5-8-80; 8:45 am]

BILLING CODE 7035-01-M

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[Finance Docket No. 29332]

## Western Railroad Properities, Inc.—Trackage Rights Over Union Pacific Railroad Co.

Western Railroad Properities, Incorporated (WRPI), 400 West Madison Street, Chicago, IL 60606, represented by Mr. Christopher A. Mills, Senior Commerce Counsel, 400 West Madison Street, Chicago, IL 60606, hereby gives notice that on the 18th day of April, 1980, it filed with the Interstate Commerce Commission at Washington, DC, an application pursuant to 49 U.S.C. 11343 for approval of operations over tracks of Union Pacific Railroad Company (Union Pacific) for a distance of approximately seven miles between M.P. 164.2 and M.P. 157.26 of Union Pacific's North Platte Branch between Joyce, NE, and a point east of South Morrill, NE.

WRPI is a wholly owned subsidiary of Chicago and North Western Transportation Company (North Western). The transaction involved herein is part of a larger transaction involving a project by North Western to implement rail transportation service as an origin carrier transporting coal from the Southern Powder River Basin in WY. Other applications involving this project are pending in Finance Dockets No. 29066, 28934 and 29169. As part of this project, union coal trains would move across a connecting line between Crandall, WY, on North Western's line to Union Pacific's North Platte Branch at Joyce, NE. Acquisiton of the proposed trackage rights will facilitate the expeditious interchange of unit train coal traffic at South Morrill, NE, between WRPI's parent, North Western and Union Pacific.

In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte 55 (Sub-4), *Implementation—Nat'l Environmental Policy Act, 1969,* 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—Nat'l Environmental Policy Act, 1969, supra,* at p. 487.

Interested persons may participate formally in a proceeding by submitting written comments regarding the application. Such submissions shall indicate the proceeding designation Finance Docket No. 29332 and the original and two copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20424, not later than 45 days after the date notice of the filing of the application is published in the Federal Register. Such written comments shall include the following: the person's position, e.g., party protestant or party in support, regarding the proposed transaction; specific reasons why approval would or would not be in the public interest; and a request for oral hearing if one is desired. Additionally, interested persons who do not intend to formally participate in a proceeding but who desire to comment thereon, may file such statements and information as they may desire, subject to the filing and service requirements specified herein. Persons submitting written comments to

the Commission shall, at the same time, serve copies of such written comments upon the applicant, the Secretary of Transportation and the Attorney General.

Agatha L. Mergenovich,

*Secretary.*

[FR Doc. 80-14301 Filed 5-8-80; 8:45 am]
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[Volume No. 12]

## Petitions, Applications, Finance Matters (Including Temporary Authorities), Alternate Route Deviations, Intrastate Applications, Gateways, and Pack and Crate

## Petitions for Modification, Interpretation or Reinstatement of Motor Carrier Operating Rights Authority

The following petitions seek modification or interpretation of existing motor carrier operating rights authority, or reinstatement of terminated motor carrier operating rights authority.

All pleadings and documents must clearly specify the suffix numbers (e.g., M1 F, M2 F) where the docket is so identified in this notice.

The following petitions, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a *petition to intervene either with or without leave* must be filed with the Commission within 30 days after the date of publication in the Federal Register with a copy being furnished the applicant. Protests to these applications will be *rejected.*

A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that if (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l). In deciding whether to grant leave to intervene, the Commission considers, among other things, whether petitioner has (a) solicited the traffic or business of those persons supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. Another factor considered is the effects of any decision on petitioner's interests.

Samples of petitions and the text and explanation of the intervention rules can be found at 43 FR 50908, as modified at 43 FR 60277.

Petitions not in reasonable compliance with these rules may be rejected. Note that Rule 247(e), where not inconsistent with the intervention rules, still applies. Especially refer to Rule 247(e) for requirements as to supplying a copy of conflicting authority, serving the petition on applicant's representative, and oral hearing requests.

MC 3281 (M1F) (notice of filing of petition to modify certificate), filed September 17, 1979. Petitioner: POWELL TRUCK LINE, INC., 800 S. Main, Searcy, AR 72143. Representative: A. Doyle Cloud, Jr., 2008 Clark Tower, 5100 Poplar Ave., Memphis, TN 38137. Petitioner holds a motor *common carrier* certificate in MC 3281 issued May 3, 1963, authorizing transportation, over regular and irregular routes, (A) Over Regular Routes, (1) of *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, livestock, and commodities requiring special equipment), (a) between Little Rock and Searcy, AR, serving all intermediate points and all off-route points within five miles of the described route; from Little Rock over AR Hwy 5 to junction US Hwy 64, then over US Hwy 64 to junction AR Hwy 36, then over AR Hwy 36 to Searcy, and return over the same route, (b) between Beebe, and Heber Springs, AR, serving all intermediate points and all off-route points within five miles of the described route, from Beebe over AR Hwy 31 to junction AR Hwy 5, then over AR Hwy 5 to junction AR Hwy 25 to Heber Springs, and return over the same route, (c) between Judsonia and Plainview (White County), AR, serving all intermediate points and all off-route points within five miles of the described route, over AR Hwy 157, (d) between Beebe, AR, and junction US Hwy 64 and AR Hwy 5, serving all intermediate points and all off-route points within five miles of the described route, over US Hwy 64, (e) between Searcy and Heber Springs, AR serving all intermediate points, over AR Hwy 16, (f) between Memphis, TN, and Little Rock, AR, serving all intermediate points, except Wynne, AR, and points on US Hwy 64 between Wynne and Memphis, from Memphis over US Hwy 64 to Bald Knob, AR, then over US Hwy 67 via Judsonia, AR, to junction AR Hwy 36, then over AR Hwy 36 to Searcy, AR, then over AR Hwy 16 to junction US Hwy 67 (also from Judsonia, AR, over US Hwy 67, to junction AR Hwy 16), and then over US Hwy 67 to Little Rock, and return over the same route, *Restriction: The service authorized hereinabove shall be restricted against handling traffic originating at or destined to Little Rock, AR, and points beyond, on the one hand, and Memphis, TN, and points beyond, on the other. Serving all points within 10 miles of Heber Springs, AR as off-route points in connection with carrier's regular route operations, (2) *general commodities,* (except articles of unusual value, explosives (not including small-arms ammunition), loose bulk commodities), between Memphis, TN, and Heber Springs, AR, serving the intermediate points of Bald Knob, Judsonia, Searcy, and Pangburn, AR, from Memphis over US Hwy 70 to junction US Hwy 64, then over US Hwy 64 via Judsonia, AR, to junction AR Hwy 36, then over AR Hwy 36 to Searcy, AR, and then over AR Hwy 16 to Heber Springs, and return over the same route, and (3) *general commodities,* (except high explosives, livestock, loose bulk commodities, commodities requiring special equipment) between Memphis, TN, and Searcy, AR, serving all intermediate points, from Memphis over US Hwy 64 via Judsonia, AR, to junction AR Hwy 36, then over AR Hwy 36 to Searcy, and return over the same route, (B) Over irregular routes: (1) *frozen vegetables,* from Searcy, AR, to Memphis, TN, and Little Rock, AR, (2)(a) *frozen strawberries,* from McRae, AR, to Memphis, TN, and (b) from Searcy, AR, to St. Louis, MO, and (3) *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, livestock, and commodities requiring special equipment), between Heber Springs, AR, and Greers Ferry Dam Site, AR, *Restriction: The service authorized herein is restricted on all the authorized routes so as to preclude the joinder of any of these routes with those of Holt Truck Line, Inc. under MC 67692 Sub 1 (which embraces MC 67692 Sub 3), at any common point or points for the transportation of any traffic originating at or destined to Little Rock, AR, and points beyond, on the one hand, and, on the other, Memphis, TN, and points beyond, over any combination of highways so long as Holt Truck Line, Inc., is affiliated with Powell Truck Line,

Inc., or its controlling stockholders, or if and when the rights of Holt Truck Line, Inc., are acquired by Powell Truck Line, Inc., through purchase. By the instant petition, petitioner seeks to modify the above authority by (I) changing the intermediate point service language in section (A)(1)(a)-(d) from serving all intermediate points and all off-route points within five miles of the described route" to "serving all intermediate points and all off-route points within five miles of the described route, and their commercial zones, and (II) delete the restrictions marked with the asterisk (*).

MC 19157 (Sub-50) (M1F) (notice of filing of petition to modify certificate), filed March 3, 1980. Petitioner: McCORMACK'S HIGHWAY TRANSPORTATION, INC., RD #3, Box 4, Campbell Rd., Schnectady, NY 12306. Representative: Diane Price, Route 6, Box 15, North Little Rock, AR 72118. Petitioner holds motor common carrier authority in MC 19157 Sub 50, issued June 29, 1979, authorizing transportation, over irregular routes, of *such commodities* as are dealt in by wholesale, retail and discount stores (except foodstuffs, alcoholic and malt beverages, commodities in bulk, those which because of size or weight require the use of special equipment, paper and paper products, metal containers, plastic products, cellulose materials, iron and steel articles, lumber, chemicals, and auto parts), between Golden, MS, on the one hand, and, on the other, points in the U.S. in and east of MS, TN, KY, IL, and WI (except Syracuse, NY, Clifton, Mays Landing, and Carlstadt, NJ), restricted (a) against the transportation of traffic originating at or destined to Jersey City, NJ, and (b) against the transportation of traffic destined to Bentonville, Little Rock and Harrison, AR, and Monroe, LA. By the instant petition, petitioner seeks to modify the above authority so as to read: "such commodities as are dealt in by wholesale, retail and discount stores (except commodities in bulk, and those which because of size or weight require the use of special equipment), between Golden, MS, on the one hand, and, on the other, points in the U.S. in and east of MS, TN, KY, IL, and WI".

MC 19260 (Sub-3)(M1F) (notice of filing of petition to modify certificate), filed October 11, 1979. Petitioner: SHALLCROSS EXPRESS, INC., 527 Springfield Rd., Kenilworth, NJ 07033. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. Petitioner holds a motor *common carrier* certificate in MC 19260 Sub 3, issued November 24, 1959, authorizing transportation, over irregular routes, of *general commodities,* except those of unusual value, livestock, high explosives, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between New York, NY, and Paterson, NJ, on the one hand, and, on the other, points within 25 miles of New York, NY. By the instant petition, petitioner seeks to modify the above authority by modifying the territorial description to read: between New York, NY, and Paterson, NJ, on the one hand, and, on the other, points within 25 miles of New York, NY, and those in Rockland, Westchester, Orange and Suffolk Counties, NY.

MC 22593 (M1F) (Notice of filing of petition to modify certificate), filed April 16, 1980. Petitioner: RICO TRANSPORTATION CO., INC., 125 Hillside Avenue, South River, NJ 08882. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. Petitioner holds a motor *common carrier* Certificate in MC 22593, issued September 15, 1970, to transport in interstate or foreign commerce, over irregular routes, *General commodities,* except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between points in Sussex, Passaic, Bergen, Essex, Morris, Warren, Union, Hunterdon, Somerset, Middlesex, Mercer, and Monmouth Counties, NJ, and those points in Burlington County, NJ, on and north of NJ Hwy 70, on the one hand, and, on the other, New York, NY, points in Nassau and Westchester Counties, NY, those points in NJ within 5 miles of New York, NY, and all of any municipality any part of which is within 5 miles of New York, NY. By the instant petition, petitioner seeks to modify the authority as follows: add points in Suffolk County, NY as origin and destination points.

MC 41706 (Sub-24) (M1F) (notice of filing of petition to remove restrictions), filed March 11, 1980. Petitioner: TOSE, INC., 424 West Fourth St., Bridgeport, PA 19405. Representative: Anthony C. Vance, 1307 Dolley Madison Blvd., McLean, VA 22101. Petitioner holds a motor *common carrier* certificate in MC 41706 Sub 24, issued March 5, 1980, authorizing, as pertinent, transportation over irregular routes, of (2) *such merchandise* as is ordinarily dealt in by retail stores, premium redemption companies, and mail-order houses, (a) from Camden, NJ, to Washington, DC, Albany, Columbia, Dutchess, Fulton, Greene, Montgomery, Rensselaer, Schenectady, Schoharie, Sullivan, and Ulster Counties, NY, and points in Delaware, Maryland, Cape May, Cumberland, Salem and Gloucester Counties, NJ, and Pennsylvania (except Bucks, Montgomery, Delaware and Philadelphia Counties, PA) Restriction: Restricted in (2)(a) above to retail store delivery service (including deliveries for premium redemption companies and mail-order houses) and no service shall be rendered in the transportation of any shipment weighing in excess of 50 pounds. For the purpose of this restriction, a package or group of packages from a single consignor to a single consignee at a single destination shall be considered a shipment; (b) between Washington, DC, points in Dutchess, Schoharie, Putnam, Sullivan and Ulster Counties, NY, and points in Delaware, Maryland, Cape May, Cumberland, Salem, and Gloucester Counties, NJ, and Pennsylvania (except Bucks, Montgomery, Delaware and Philadelphia Counties, PA), Restriction: Restricted in (2)(b) to the following conditions: No traffic shall be transported between Washington, DC, on the hand, and, on the other, points in Maryland. No traffic shall be transported from Newark, DE, and points within the commercial zone of Newark, DE (except Wilmington, DE), to Washington, DC, and points in Maryland. No traffic shall be transported between points in Albany, Columbia, Fulton, Greene, Montgomery, Rensselaer, and Schenectady Counties, NY. The service authorized shall be restricted against the transportation of shipment weighing more than 250 pounds. For the purpose of this restriction a package or group of packages from a single consignor to a single consignee at a single destination shall be considered a shipment. By instant petition, petitioner seeks to modify the authority by deleting the Restriction: The service authorized in (2)(a) above shall be limited to retail store delivery service including deliveries for premium redemption companies and mail-order houses and no service shall be rendered in the transportation of any shipment weighing in excess of 50 pounds. For the purpose of this restriction, a package or group of packages from a single consignor to a single consignee at a single destination shall be considered a shipment. (2)(b) Restriction: No traffic shall be transported between points in Albany, Columbia, Fulton, Greene, Montgomery, Rensselaer, and Schenectady Counties, NY. The service authorized shall be

restricted against the transportation of shipment weighing more than 250 pounds. For the purpose of this restriction a package or group of packages from a single consignor to a single consignee at a single destination shall be considered a shipment.

MC 57778 (Sub-21) (M1F) (notice of filing of petition to remove restrictions), filed March 3, 1980. Petitioner: MICHIGAN REFRIGERATED TRUCKING SERVICE, INC., 6134 W. Jefferson Ave., Detroit, MI 48209. Representative: William B. Elmer, 21635 East Nine Mile Rd., St. Clair Shores, MI 48080. Petitioner holds a motor *common carrier* Certificate in MC 57778 Sub 21F issued November 16, 1979, authorizing transportation over irregular routes, of *foodstuffs, and food-handling equipment and supplies* when moving with foodstuffs, (except commodities in bulk), in vehicles equipped with mechanical refrigeration, from Chicago, IL, to Detroit, MI, restricted to the transportation of traffic originating at Chicago, IL, and destined to Detroit, MI, with the exception that the restriction does not preclude provision of interline service at Detroit on traffic moving in foreign commerce to points in Canada. By the instant petition, petitioner seeks to delete the following restrictions from the above authority: (1) "in vehicles equipped with mechanical refrigeration" and (2) "restricted to the transportation of traffic originating at Chicago, IL, and destined to Detroit, MI, with the exception that the restriction does not preclude provision of interline service at Detroit on traffic moving in foreign commerce to points in Canada."

MC 105120 (Sub-13) (M1F) (notice of filing of petition to modify certificate), filed December 3, 1979. Petitioner: FREIGHTWAYS EXPRESS, INC., 2700 Sterick Bldg., Memphis, TN 38103. Representative: James N. Clay III (same address as petitioner). Petitioner holds motor *common carrier* certificate in MC-105120 Sub 13, issued April 18, 1979, authorizing transportation, over regular routes, as pertinent, of *general commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between El Dorado, AR and Memphis, TN, from El Dorado over U.S. Hwy 167 to Little Rock, AR, then over Interstate Hwy 40 to Memphis, and return over the same route, serving Little Rock, AR and points between Ivan and El Dorado, AR, as intermediate points, and Springhill, LA, and points in Columbia, Union, Outachita and Calhoun Counties, AR, as off-route points with service at Little Rock, AR, and points in its Commercial Zone restricted against the transportation of shipments originating at, destined to, or interchanged in Memphis, TN or St. Louis, MO, and points in their Commercial Zones. By the instant petition, petitioner seeks to modify the above authority by deleting the restriction reading: "with service at Little Rock, AR, and points in its Commercial Zone restricted against the transportation of shipment originating at, destined to, or interchanged in Memphis, TN or St. Louis, MO and points in their Commercial Zones."

MC 115891 (M1F), Sub-1 (M2F), Sub-4 (M3F) (notice of filing of petition to modify certificates), filed November 20, 1979. Petitioner: INTER-COUNTY MOTOR COACH, INC., 243 Deer Park Ave., Babylon, NY 11702. Representative: Edward L. Nehez, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. Petitioner holds motor *common carrier* certificate in MC-115891 and Subs 1 and 4 issued September 16, 1958, February 6, 1962, and October 25, 1972, respectively. MC-115891 authorizes transportation, over irregular routes, of *passengers and their baggage,* in round-trip charter operations, beginning and ending at points in Nassau and Suffolk Counties, NY, and extending to points in CT, DE, FL, GA, ME, MD, MA, NH, NJ, NY, NC, PA, RI, SC, VT, VA, and DC. MC-115891 Sub 1 authorizes transportation, over irregular routes, of *passengers and their baggage,* in the same vehicle with passengers, in round-trip charter operations, beginning and ending at points in Nassau and Suffolk Counties, NY, and extending to points in the United States (except AK, HI, CT, DE, FL, GA, ME, MD, MA, NH, NJ, NY, NC, PA, RI, SC, VT, VA, and DC. MC-115891 Sub 4 authorizes transportation, over irregular routes, of *passengers and their baggage,* in round-trip special operations, beginning and ending in Nassau and Suffolk Counties, NY, and extending to points in AL, CT, DE, FL, GA, IL, IN, KY, LA, ME, MD, MA, MI, MS, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, WV, WI, VA, and DC. By the instant petition, petitioner seeks to consolidate and modify the authority above to read as follows: *passengers and their baggage,* in special and charter operations, beginning and ending at points in Nassau, Suffolk and Westchester Counties, NY, and New York, NY and extending to points in the United States (except AK and HI). Note: Service at New York, NY and Westchester County, NY, may be rendered only in connection with operations beginning and ending in Nassau and Suffolk Counties, NY.

MC 118159 (Sub-284) (M1F) (notice of filing of petition to modify certificate) filed November 19, 1979. Petitioner: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366, Dawson Station, Tulsa, OK 74151. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. Petitioner holds a motor *common carrier* certificate in MC-118159 Sub 284F, issued August 28, 1979, authorizing transportation over irregular routes, of *such commodities as are dealt in by grocery and food business houses and drug stores* (except frozen commodities and commodities in bulk), (1) from Atlanta, GA to points in AL, AR, KY, LA, and TN; and (2) from Houston, TX to points in AR, LA, MS, and OK, restricted in (1) and (2) to the transportation of traffic originating at or destined to the facilities of The Clorox Company. By the instant petition, petitioner seeks to modify the above authority to include Houston, TX as an additional destination point in part (1), and Atlanta, GA as an additional destination point in part (2).

MC 119789 (Sub-168) (M1F) (notice of petition to modify certificate), filed October 26, 1979. Petitioner: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr. (same address as applicant). Petitioner holds a motor *common carrier* Certificate in MC 119789 Sub 168, issued June 11, 1975, authorizing transportation over irregular routes of *confectionery,* (except in bulk), in vehicles equipped with mechanical refrigeration, from the plantsite and storage facilities of M&M/Mars, a division of Mars, Incorporated, at Albany, Atlanta, Decatur, and Doraville, GA, to points in AZ, AR, CA, CO, IL, IN, KY, LA, MI, MN, NV, NJ, NM, NY, OH, OK, OR, TX, UT, WA, and WI, restricted to shipments originating at the above-named facilities. By the instant petition, petitioner seeks to modify the commodity description to read "foodstuffs", and also to add MO as an additional destination state.

MC 119789 (Sub-445)(M1F) (notice of filing of petition to modify certificate), filed September 20, 1979. Petitioner: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr. (same address as petitioner). Petitioner holds motor common carrier certificate in MC-119789 Sub 445F, issued February 22, 1979, authorizing transportation, over irregular routes, of (1) electrical appliances and electrical equipment and (2) parts for the commodities in (1) above between Columbia and Moberly, MO, on the one hand, and, on the other,

points in TX, LA, AR, and IA and those points in the United States in and East of WI, IL, KY, TN, and MS, restricted to the transportation of traffic originating at or destined to the facilities of McGraw-Edison Company at Columbia and Moberly, MO. By the instant petition, petitioner seeks to modify the authority as follows: (1) electrical appliances, equipment and parts from Columbia, Moberly, Booneville, Clarence, Jefferson City, Kirksville and Macon, MO, to points in TX, LA, AR, and IA, and those points in the United States in and east of WI, IL, KY, TN, and MS, and (2) materials and supplies used in the manufacture and distribution of electrical appliances, equipment and parts (except commodities in bulk), from points in TX, LA, AR, and IA, and those points in the United States in and east of WI, IL, KY, TN, and MS to Columbia, Moberly, Booneville, Clarence, Jefferson City, Kirksville and Macon, MO, restricted in (1) and (2) above to the traffic originating at or destined to the facilities of McGraw-Edison Company in MO.

MC 121060 (Sub-21) (M1F) (notice of fining of petition to modify certificate), filed October 29, 1979. Petitioner: ARROW TRUCK LINES, INC., P.O. Box 1416, Birmingham, AL 35201. Representative: Ronald F. Harris (same address as petitioner). Petitioner holds a motor *common carrier* certificate in MC–121060 Sub 21 issued March 12, 1974, authorizing transportation, over irregular routes, of *roofing and roofing materials, gypsum and gypsum products, compostion boards, insulation materials, urethane and urethane products,* and *related materials, accessories and supplies* (except commodities in bulk) useful in the installation of the above-described commodities, from the facilities of the Celotex Corporation located at Port Clinton, OH, to points in IL, IN, KY, MD, PA, TN, VA, and WV. By the instant petition, petitioner seeks to modify the above authority by deleting the facility reference from the territorial description.

MC 128279 (Sub-1)(M1F)(notice of filing of petition to remove restriction), filed October 8, 1979. Petitioner: ARROW FREIGHTWAYS, INC., 150 Woodward Rd. S.E., Albuquerque, NM 87125. Representative: Olif Q. Boyd, P.O. Box 25125, Albuquerque, NM 87125. Petitioner holds a motor *common carrier* Certificate in MC 128279 Sub 1 issued July 26, 1967, authorizing transportation, as pertinent, over irregular routes, of *construction materials, supplies, and equipment* (except lumber and except commodities the transportation of which because of size or weight requires the use of special equipment), between Albuquerque, and Bernalillo, NM, on the one hand, and, on the other, points in NM (except points in Rio Arriba, Taos, and San Juan Counties), restricted to the transportation of traffic having an immediately prior or subsequent movement by rail. By the instant petition, petitioner seeks to modify the above authority by deleting the restriction "restricted to the transportation of traffic having an immediately prior or subsequent movement by rail".

MC 130393 (M1F) (notice of filing of petition to modify license), filed March 20, 1980. Petitioner: JOHN R. BENN TRAVEL SERVICE, INC., 111 Kroger Building, 1014 Vine Street, Cincinnati, OH 45202. Representative: Lewis S. Witherspoon, 88 East Broad Street, Columbus, OH 43215. Petitioner holds license in MC–130393, issued December 15, 1977, authorizing operations as a broker, at Cincinnati, OH, of *passengers and their baggage,* in round-trip sightseeing and pleasure tours, beginning and ending at points in Hamilton County, OH, and extending to points in the United States including AK and HI. By the instant petition, petitioner seeks to modify the territorial description to read "between points in the United States, including AK and HI."

MC 136888 (Sub-6) (M1F) and (Sub-14F M1F) (notice of filing of petition to modify certificates), filed February 26, 1980. Petitioner: NORMAN & SON, INC., 1525 North 75th St., Houston, TX 77011. Representative: Timothy Mashburn, P.O. Box 2207, Austin, TX 78768. Petitioner holds motor *common carrier* Certificates in (1) MC–136888 Sub 6 issued March 8, 1977, authorizing transportation over irregular routes, of *metals and alloys* (except scrap metals), in bulk, in dump vehicles, between points in TX, on the one hand, and, on the other, points in AL, AZ, AR, CO, KS, LA, MS, MO, NM, OK, TN, and TX; and (2) in MC–136888 Sub 14F issued May 29, 1979, authorizing transportation over irregular routes, of *pig iron, metals, and alloys* (except scrap metals), in bulk, in dump vehicles, (a) between points in TX, on the one hand, and, on the other, those points in the U.S. in and west of MN, IA, MO, AR, and LA (except AK and HI), and (b) between points in TX, on the one hand, and, on the other, points in IL, IN, KY, GA, FL, NC, SC, VA, WV, MD, and MI. By the instant petition, petitioner seeks to modify the commodity descriptions in both certificates to include transportation "in containers."

MC 136898 (Sub-2) (M1F) (notice of filing of petition to modify permit), filed December 7, 1979. Petitioner: BAKER TRANSPORT, INC., P.O. Box 870, Hartselle, AL 35640. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. Petitioner holds a motor *contract carrier* permit in MC 136898 Sub 2 issued July 21, 1975, authorizing transportation over irregular routes, of (1) *wire, cable, rod, conduit, reels, aluminum and aluminum products, copper and copper products, and plastic compounds* (except in bulk), from Carrollton, GA, and Hawesville, KY, to points in that part of the United States in and east of ND, SD, NE, KS, OK, and TX; and (2) *materials and supplies* used in the manufacture of the commodities in (1) above (except commodities in bulk), from points in that part of the United States in and east of ND, SD, NE, KS, OK, and TX, to Carrollton, GA, and Hawesville, KY, under continuing contract(s) with Southwire Company of Carrollton, GA. By the instant petition, petitioner seeks to modify part (1) of the above authority by adding "iron and steel articles" to the commodity description, and to add "Flora, IL, and Osceola, AR" as additional origin points; and to modify part (2) of the above authority by adding "Flora, IL, and Osceola, AR" as additional destination points.

MC 140361 (Sub-4) (M1F) (Sub-5 M2F) (notice of filing of petition to modify certificates), filed July 6, 1979. Petitioner: COLUMBUS PARCEL SERVICE, INC., 1009 Joyce Ave., Columbus, OH 43219. Representative: E. H. van Deusen, P.O. Box 97, 220 West Bridge St., Dublin, OH 43017. Petitioner holds motor *common carrier* certificate in MC–140361 Subs 4 and 5, issued August 24, 1977 and August 31, 1977, respectively. MC–140361 Sub 4 authorizes transportation, over irregular routes, of *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (a) between points in OH, (b) between points in OH, on the one hand, and, on the other, points in Dearborn, Franklin, Randolph, Union and Wayne Counties, IN, Boone, Boyd, Bracken, Campbell, Greenup, Kenton, Lewis, Mason, and Pendleton Counties, KY, and Brooke, Cabell, Hancock, Jackson, Marshall, Mason, Ohio, Pleasants, Tyler, Wayne, Wetzel, and Wood Counties, WV, and (c) between points in Dearborn, Franklin, Randolph, Union and Wayne Counties, IN, Boone, Boyd, Bracken, Campbell, Greenup, Kenton, Lewis, Mason, and Pendleton Counties, KY, and Brooke, Cabell, Hancock, Jackson, Marshall, Mason, Ohio, Pleasants, Tyler,

Wayne, Wetzel, and Wood Counties, WV, restricted against the transportation of articles or packages weighing in the aggregate more than 200 pounds from one consignor to one consignee in any one day. MC-140361 Sub 5 authorizes transportation, over irregular routes, of *general commodities* (except classes A and B explosives), (a) between points in OH, on the one hand, and, on the other, points in Dearborn, Franklin, Randolph, Union, and Wayne Counties, IN, Boone, Boyd, Bracken, Campbell, Greenup, Kenton, Lewis, Mason, and Pendleton Counties, KY, Brooke, Cabell, Hancock, Jackson, Marshall, Mason, Ohio, Pleasants, Tyler, Wayne, Wetzel, and Wood Counties, WV, and (b) between points in Dearborn, Franklin, Randolph, Union, and Wayne Counties, IN, Boone, Boyd, Bracken, Campbell, Greenup, Kenton, Lewis, Mason, and Pendleton Counties, KY, Brooke, Cabell, Hancock, Jackson, Marshall, Mason, Ohio, Pleasants, Tyler, Wayne, Wetzel, and Wood Counties, WV, restricted to the transportation of individual articles not exceeding 100 pounds in weight, moving as shipments not exceeding 500 pounds in weight, from one consignor to one consignee in a single day, and further restricted to the transportation of shipments moving on bills of lading issued by freight forwarders. By the instant petition, petitioner seeks to consolidate and modify the authority to read: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (a) between points in OH, (b) between points in OH, on the one hand, and, on the other, points in Dearborn, Franklin, Randolph, Union, and Wayne Counties, IN, Boone, Boyd, Bracken, Campbell, Greenup, Kenton, Lewis, Mason and Pendleton Counties, KY, and Brooke, Cabell, Hancock, Jackson, Marshall, Mason, Ohio, Pleasants, Tyler, Wayne, Wetzel, and Wood Counties, WV, and (c) between points in Dearborn, Franklin, Randolph, Union, and Wayne Counties, IN, Boone, Boyd, Bracken, Campbell, Greenup, Kenton, Lewis, Mason, and Pendleton Counties, KY, and Brooke, Cabell, Hancock, Jackson, Marshall, Mason, Ohio, Pleasants, Tyler, Wayne, Wetzel, and Wood Counties, WV, restricted to the transportation of individual articles not exceeding 200 pounds in weight, moving as shipments not exceeding 700 pounds in weight, from one consignor to one consignee in a single day.

MC 142361 (Sub-2) (M1F) (notice of filing of petition to modify permit), filed October 25, 1979. Petitioner: RISBERG TRUCK SERVICE, INC., 2339 SE. Grand Ave., Portland, OR 97214. Representative: Lawrence V. Smart, Jr., 419 NW. 23rd Ave., Portland, OR 97210. Petitioner holds a motor *contract carrier* permit in MC-142361 Sub 2, issued February 22, 1979, authorizing transportation, over irregular routes, of *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in CA, ID, NV, OR, UT, and WA, under continuing contract(s) with Pay Less Drug Stores Northwest, Inc. By the instant petition, petitioner seeks to modify the above authority by adding Nissan Motor Corp. of USA as a contracting shipper.

MC 144041 (Sub-10) (M1F) (notice of filing of petition to modify certificate), filed September 14, 1979. Petitioner: DOWNS TRANSPORTATION CO., INC., 2705 Canna Ridge Circle NE., Atlanta, GA 30345. Representative: K. Edward Wolcott, P.O. Box 56387, Atlanta, GA 30343. Petitioner holds a motor *common carrier* certificate in MC-144041 Sub 10, issued March 9, 1979, authorizing transportation, over irregular routes, of (1) *containers, container accessories, and sprayers,* from Homerville, GA, to points in the United States (except AK, HI, and GA), and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above, (except commodities in bulk), from points in the United States (except AK, HI, and GA), to Homerville, GA, restricted in (1) and (2) above to the transportation of traffic originating at or destined to the facilities of Standard Container Company, at or near Homerville, GA. By the instant petition, petitioner seeks to modify the above authority by adding "facilities of Standard Container Company at or near Morris, GA and Picayune, MS, as origins in part (1) and destinations in Part (2).

MC 145064 (Sub-10) (M1F), filed February 4, 1980. Applicant: HUNTER TRUCKING, INC., Council Bluffs, IA. Representative: Greg A. Dickinson, Suite 610, 7171 Mercy Rd., Omaha, NE 68106. Petitioner holds motor *contract* carrier Permit in MC-145064 Sub-10, issued November 27, 1979. MC-145064 Sub-10, authorizes transportation, over irregular routes, of *lumber and wood products,* from ports of entry on the international boundary line between the United States and Canada in MN and ND, to points in ND, SD, MN, WI, IA, NE, KS, IL, IN, OH, MO, KY, and TN, restricted to the transportation of traffic having a prior movement in foreign commerce and originating a the Province of Manitoba, Canada, under continuing contract(s) with Northwood Building Materials, of Winnipeg, Manitoba, Canada. By the instant petition, petitioner seeks to modify the Permit by adding P. H. Barnett Lumber (Alberta) LTD., of Winnipeg, Manitoba, Canada, as an additional shipper to the existing permit.

## Republications of Grants of Operating Rights Authority Prior to Certification; Notice

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the Federal Register.

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this Federal Register notice. Such pleading shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 110012 (Sub-50F) (republication), filed November 21, 1978, published in the Federal Register issue of February 1, 1979, and republished, this issue. Applicant: ROY WIDENER MOTOR LINES, INC., 707 N. Liberty Hill Road, Morristown, TN 37814. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th St. NW., Washington, DC 20004. A Decision of the Commission, *Review Board No. 1,* decided January 7, 1980, and served January 10, 1980, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce, over irregular routes, as a *common carrier,* by motor vehicle, transporting, *new furniture,* between the plant sites of Residential Wood Furniture Group, at or near Kenbridge and Richmond, VA, on the one hand, and, on the other, Morristown, TN, for the purpose of tacking at Morristown with applicant's existing authority in Certificate No. MC 110012 and sub-numbers 7, 18, 23, and 24 thereunder, in order to provide through service; that applicant is fit, willing, and able

properly to perform the granted service and to conform to the requirements of Title 49, Subtitle IV, U.S. Code, and the Commission's regulations. The purpose of this republication is to include the grant of authority to tack No. MC 110012 (Sub-No. 50F), with No. MC 110012 and sub-numbers 7, 18, 23, and 24.

MC 141532 (Sub-32F) (republication), filed July 24, 1978, published in the Federal Register issue of October 12, 1978, and republished, this issue. Applicant: PACIFIC STATES TRANSPORT, INC., 35433 16th Avenue South, Federal Way, WA 98003. Representative: Miles L. Kavaller, 315 South Beverly Drive, Suite 315, Beverly Hills, CA 90212. A Decision of the Commission, *Review Board No. 2*, decided June 22, 1979, and served July 11, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce, over irregular routes, as a *common carrier*, by motor vehicle, transporting *asbestos cement, plastic pipe, asphalt roofing, asphalt shingles, and asphalt rolls*, from the facilities of Johns-Manville Sales Corporation in California to points in Idaho and Montana; that applicant is fit, willing, and able properly to perform the granted service and to conform to the requirements of Title 49, Subtitle IV, U.S. Code, and the Commission's regulations. The purpose of this republication is to broaden the scope of authority.

## Motor Carrier Operating Rights Applications; Notice

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a *petition to intervene either with or without leave* must be filed with the Commission within 30 days after the date of publication in the Federal Register with a copy being furnished the applicant. Protests to these applications *will be rejected.*

A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l). In deciding whether to grant leave to intervene, the Commission considers, among other things, whether petitioner has (a) solicited the traffic or business of those persons supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. Another factor considered is the effects of any decision on petitioner's interests.

Samples of petitions and the text and explanation of the intervention rules can be found at 43 Fed. Reg. 50908, as modified at 43 Fed. Reg. 60277. Petitions not in reasonable compliance with these rules may be rejected. Note that Rule 247(e), where not inconsistent with the intervention rules, still applies. Especially refer to Rule 247(e) for requirements as to supplying a copy of conflicting authority, serving the petition on applicant's representative, and oral hearing requests.

MC 105269 (Sub-77F), filed May 8, 1979, previously noticed in Federal Register issue of September 27, 1979. Applicant: GRAFF TRUCKING COMPANY, INC., 2110 Lake Street, P.O. Box 986, Kalamazoo, MI 49005. Representative: Edward Malinzak, 900 Old Kent Building, Grand Rapids, MI 49503. Authority sought to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* between points in IL, IN, IA, KY, MI, MN, MO, OH, PA, WV, and WI. (Hearing site: Lansing, MI, or Chicago, IL.)

Note.—This republication broadens the commodity description.

## Permanent Authority Decisions Volume; Decision-Notice

Decided: April 21, 1980.

The following broker, freight forwarder or water carrier applications are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR § 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the Federal Register. Failure to file a protest within 30 days will be considered as a waiver of opposition to the application. A protest under these rules shall comply with Rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, as specifically noted below, and specify with particularity the facts, matters, and things relied upon. The protestants shall not include issues or allegations phrased generally. A protestant shall include a copy of the specific portion of its authority which it believes to be in conflict with that wought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use this authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission. A copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, the request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

*Findings*

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service is either (a) required by the public convenience and necessity, or, (b) will be consistent with the public interest and the transportation policy of 49 U.S.C. § 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is

neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 2, Members Liberman, Eaton, and Jenson. Member Eaton not participating.

MC 130650F, filed October 31, 1979. Applicant's name and address are COMMERCIAL FREIGHT BUREAU, P.O. Box 3518, El Paso, TX 79923. The name under which operations will be performed is COMMERCIAL FREIGHT BUREAU. Applicant is represented in this proceeding by itself. Following are the names and business addresses for all persons who are officer and directors, partners (including limited or "silent" partners), and first five principal shareholders, and their appropriate titles: Don Retynski, Partner, and Delmar A. Kirby, Partner (same address as applicant). The daily operations will be managed by Don Retynski and Delmar A. Kirby, whose business address is 4509 Trowbridge, P.O. Box 3518, El Paso, TX 79923. Applicant is affiliated with the following shipper or warehouse: None.

MC 130676F, filed November 20, 1979. Applicant's name and address are J. A. R. FREIGHT FORWARDING COMPANY, INC., 13843 Redskin Dr., Herndon, VA, 22079. The name under which operations will be performed is J. A. R. FREIGHT FORWARDING COMPANY, INC. Applicant is represented by Robert J. Gallagher, whose business address is Suite 1200, 1000 Connecticut Ave., N.W., Washington, DC 20036. Following are the names and businesses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: James A. Riley, President & Treasurer/Shareholder/Director, Thomas J. Riley, Vice-President & Secretary/Shareholder/Director, both have the same address as applicant. The daily operations will be managed by James A. Riley whose business address is the same as applicant. Applicant is affiliated with the following shipper or warehouse: None.

MC 130757F, filed January 8, 1980. Applicant's name and address are SPRINGFIELD TRACTOR TRAILER SERVICE, INC., d.b.a. 48 FREIGHT SYSTEMS, 419 Taylor St., Springfield, MA 01103. The name under which operations will be performed is SPRINGFIELD TRACTOR TRAILER SERVICE, INC., d.b.a. 48 FREIGHT SYSTEMS. Applicant is represented by James M. Burns in this proceeding whose address is 1383 Main St., Suite 413, Springfield, MA 01103. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Irwin S. Soforenko, President, Treasurer, Director and shareholder, and Joel Soforenko, Vice-President, Secretary, Director and shareholder, addresses same as applicant. The daily operations will be managed by Joel Soforenko whose business address is same as applicant. Applicant is affiliated with the following shipper or warehouse: None.

MC 130766F, filed December 21, 1979. Applicant's name and address are CAMPBELL'S MOVING COMPANY, INC., Trevose and Summerton Rd., Trevose, PA 19047. The name under which operations will be performed is CAMPBELL'S MOVING COMPANY, INC. Applicant is represented by Robert J. Gallagher, in this proceeding whose address is Robert J. Gallagher, Suite 1200, 1000 Connecticut Ave., NW, Washington, DC 20036. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Catherine Campbell, President and shareholder, 565 Mallard Rd., Feasterville, PA, Joseph P. Campbell, Vice-President and shareholder, RD #2, Bergstrom Rd., Doyleston, PA, Jack P. Campbell, Vice-President and shareholder, Box 451, Montgomeryville, PA, James F. Campbell, Vice President/Treasurer and shareholder, 148 S. Eastview Dr., Feasterville, PA, May C. Campbell, Secretary, 565 Mallard Rd., Feasterville, PA. The daily operations will be managed by James F. Campbell, whose business address is 148 S. Eastview Dr., Feasterville, PA. Applicant is affiliated with the following shipper or warehouse: None.

MC 130767F, filed January 21, 1980. Applicant's name and address are FREIGHT TRANSPORTATION SERVICES, INC., 900 First National Bank Bldg., Light and Redwood Sts., Baltimore, MD 21202. The name under which operations will be performed is FREIGHT TRANSPORTATION SERVICES, INC. Applicant is represented by Frank J. Weiner, in this proceeding whose address is 15 Court Square, Boston, MA 02108. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Rolf Graage, President Shareholder, and Director and Frances K. Graage, Secretary-Treasurer and Director, addresses are the same as applicant. The daily operations will be managed by Rolf Graage, whose business address is the same as applicant. Applicant is affiliated with the following shipper or warehouse: None.

MC 130786F, filed February 1, 1980. Applicant's name and address are CARGO PROCUREMENT SYSTEMS, INC., Rt 208, Wallkill, NY 12589. The name under which operations will be performed is CARGO PROCUREMENT SYSTEMS, INC. Applicant is represented by Michael R. Werner, in this proceeding whose address is P.O. Box 1409, 167 Fairfield Rd., Fairfield, NJ 07006. Following are the names and business address for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Joseph A. Carfizzi, Sr., President and Director, and Wesley J. Styles, Secretary, Treasurer, and Director, both same address as applicant. The daily operations will be managed by Mr. Carfizzi and Mr. Styles, whose business address is both of Rt. 208, Wallkill, NY 12589. Applicant is affiliated with the following shipper or warehouse: None. However, Mr. Carfizzi and Mr. Styles are affiliated with Carrier Development Corporation, a duly authorized motor contract carrier under Permit MC-144545F. (Mr. Carfizzi is Secretary, Treasurer, and Director, and Mr. Styles is President and Director of Carrier Development Corporation, with each individual holding 50% of said carrier's issued and outstanding shares of common stock.

MC 130787F, filed February 11, 1980. Applicant's name and address are RAYMOND ELLSWORTH, 11657 Chandellay Dr., Creve Coeur, MO 63141. The name under which operations will be performed is RAYMOND ELLSWORTH, d.b.a. RARU BROKERAGE. Applicant is represented by Raymond Ellsworth in this proceeding whose address is 11657 Chandellay Dr., Creve Coeur, MO 63141. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders with their appropriate titles: Raymond Ellsworth, General Manager, 11657 Chandellay Dr., Creve Coeur, MO 63141. The daily operations will be managed by Raymond Ellsworth whose business address is same. Applicant is affiliated with the following shipper or warehouse: None.

MC 130791 (Sub-1F), filed February 19, 1980. Applicant's name and address are UNITED FREIGHT BROKERAGE, INC., 6600 South River Rd., Hodgkins, IL. The name under which operations will be performed is UNITED FREIGHT BROKERAGE. Applicant is represented by Michael D. Danly in this proceeding whose address is Suite 5000, One First National Plaza, Chicago, IL. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Lawrence M. Silver, Board President, Treasurer and shareholder, Gary P. Ratner, Vice President, Secretary and shareholder and Michael D. Danley, Assistant Secretary (Suite 5000, One First National Plaza, Chicago, IL). The daily operations will be managed by Lawrence M. Silver whose business address is 6600 South River Rd., Hodgkins, IL. Applicant is affiliated with the following shipper or warehouse: Couzens Warehouse and Distributors, Inc.

MC 130796F, filed February 29, 1980. Applicant's name and address are NEW ENGLAND HOUSEHOLD INTERNATIONAL, P.O. Box 1062, Framingham, MA 01701. The name under which operations will be performed is NEW ENGLAND HOUSEHOLD INTERNATIONAL. Applicant is represented by Robert J. Gallagher, in this proceeding whose address is Suite 1200, 1000 Connecticut Ave., N.W., Washington, DC 20036. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: John P. Kelly, President/Treasurer/Shareholder, and Barbara M. Kelly, Secretary/Shareholder, both have the same address as applicant. The daily operations will be managed by John P. Kelly, whose business address is the same as applicant's. Applicant is affiliated with the following shipper or warehouse: None.

MC 130797F, filed February 12, 1980. Applicant's name and address are: COOK MOVING SYSTEMS, INC., 1845 Dale Rd., Buffalo, NY 14225. The name under which operations will be performed is COOK MOVING SYSTEMS, INC. Applicant is represented by Robert J. Gallagher, in this proceeding whose address is Suite 1200, 1000 Connecticut Ave., NW, Washington, DC 20036. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Richard G. Reagan, President and Treasurer/sole shareholder, Joseph H. Conley, Jr., Executive Vice President, Sidney W. Binks, Vice President, and Barbara L. Reagan, Secretary, all of the above names are located at the applicant's address. The daily operations will be managed by Joseph H. Conley, Jr. whose business address is same as applicant. Applicant is affiliated with the following shipper or warehouse: None.

MC 130801F, filed March 17, 1980. Applicant: CARROLL TRAVEL BUREAU, INC., 1383 Main St., Box 2130, Springfield, MA 01101. Representative: Albert G. Burati (same address as applicant). To operate as a broker in interstate or foreign commerce, at Springfield and Westfield, MA, in arranging for the transportation by motor vehicle, of *passengers and their baggage,* between points in Hampden County, MA, on the one hand, and, on the other, points in the United States (including AK and HI). (Hearing site: Springfield, MA.)

Note.—Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in *Tauck Tours, Inc., Extension—New York, N.Y.,* 54 M.C.C. 291 (1952).

MC 130803F, filed February 12, 1980. Applicant's name and address are TAMPA BAY MOVING SYSTEMS, INC., 5100 Tampa West Boulevard, Tampa, FL 33614. The name under which operations will be performed is TAMPA BAY MOVING SYSTEMS, INC. Applicant is represented by Robert J. Gallagher in this proceeding whose address is Suite 1200, 1000 Connecticut Avenue, N.W., Washington, D.C. 20036, Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Richard G. Reagan, President and sole stockholder, 1845 Dale Road, Buffalo, NY; Robert J. Glenn, Vice-President, 511 Tampa W. Boulevard, Tampa, FL; Robert J. Glenn, Asst. Secretary (same address as above); Joseph H. Conley, Jr., Treasurer, and Barbara L. Reagan, Secretary, both of 1845 Dale Road, Buffalo, NY. The daily operations will be managed by Robert J. Glenn, whose business address is 5100 Tampa West Boulevard, Tampa, FL 33614. Applicant is affiliated with the following shipper or warehouse: None.

MC 130807F, filed February 22, 1980. Applicant's name and address are GEO. W. NOFFS MOVING & STORAGE, INC., 1735 E. Davis St., Arlington Heights, IL 60005. The name under which operations will be performed in GEO. W. NOFFS MOVING & STORAGE. Applicant is represented by Ronald B. Rudolph, in this proceeding, whose address is the same as applicant's. Following are the names and business address for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Geo. W. Noffs, President and sole Shareholder, Jeannine Noffs, Secretary, and Robert L. Noffs, Vice-President, all have the same address as applicant. The daily operations will be managed by William Westwood, whose business address is the same as applicant's. Applicant is affiliated with the following shipper or warehouse: None.

W-336 (Sub-20F), filed January 29, 1980. Applicant: POPE & TALBOT, INC., 600 Montgomery St., San Francisco, CA 94105. Representative: Joseph H. Delehant, 1776 F St., NW., Suite 500, Washington, DC 20006. To operate as a *common carrier,* by water, by non-self-propelled vessels with the use of separate towing vesels, in the transporation of *lumber,* from Port Gamble, WA, to the ports of Boston, MA, Providence, RI, New Haven, CT, New York, NY, Philadelphia, PA, and Baltimore, MD. (Hearing site: Washington, DC, or San Francisco, CA.)

**Permanent Authority Notices**
**Substitution Applications: Single-Line Service for Existing Joint-Line Service**

The following applications, filed on or after April 1, 1979, are governed by the special procedures set forth in Part

1062.2 of Title 49 of the Code of Federal Regulations (49 CFR 1062.2). These proposals are published as "service sought" (as opposed to decision-notices), because in each case it appears questionable as to whether all or part of the authority sought should be issued, weighing applicant's evidence under 49 CFR 1062.2. (For example, questions may be raised relating to applicant's contentions concerning why the involved joint-line service has been cancelled or is in a state of deterioration which warrant a decision on the merits, regardless of whether the application is opposed.)

The rules provide, in part, that carriers may file petitions with this Commission for the purpose of seeking intervention in these proceedings. Such petitions may seek intervention either with or without leave as discussed below. However, all such petitions must be filed in the form of verified statements, and contain all of the information offered by the submitting party in opposition. Petitions must be filed with the Commission within 30 days of publication of this decision-notice.

Petitions for intervention without leave (i.e., automatic intervention), may be filed only by carriers which are, or have been, participating in the joint-line service sought to be replaced by applicant's single-line proposal, and then only if such participation has occurred within the one-year period immediately proceeding the application's filing. Only carriers which fall within this filing category can base their opposition upon the issue of the public need for the proposed service.

Petitions for intervention with leave may be filed by any carrier. The nature of the opposition, however, must be limited to issues other than the public need for the proposed service. The appropriate basis for opposition, i.e., applicant's fitness, may include challenges concerning the varacity of the applicant's supporting information, and the bona-fides of the joint-line service sought to be replaced (including the issue of its substantiality). Petitions containing only unsupported and undocumented allegations will be rejected.

Petitions not in reasonable compliance with the requirement of the rules may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

MC 31879 (Sub-41F), filed December 13, 1979. Applicant: EXHIBITORS FILM DELIVERY & SERVICE, INC., 101 W. 10th Avenue, North Kansas City, MO 64116. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. Authority sought to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between points in Rock Island County, IL, and IA, and (2) between points in Rock Island County, IL, and IA, on the one hand, and, on the other, points in Boone and Carroll Counties, AR, Lee County, IA, Weld, Adams, Denver, Jefferson, Douglas, El Paso, Fremont, Pueblo, Huerfano, Las Animas, Logan, Sedgwick, Phillips, Morgan, Washington, Yuma, Arapahoe, Albert, Lincoln, Kit Carson, Cheyenne, Crowley, Kiowa, Otero, Bent, Prowers, and Baca Counties, CO, Laramie and Goshen Counties, WY, Cook, Kane, Du Page, Rock Island, and Will Counties, IL, those points in IL in the St. Louis, MO-East St. Louis, IL, commercial zone, those points in IL in an area and on a line beginning at Chester, and extending over IL Hwy 150, to junction IL Hwy 154, then over IL Hwy 154 to junction U.S. Hwy 51, then over U.S. Hwy 51 to junction IL Hwy 15, then over IL Hwy 15 to junction IL Hwy 127, then over IL Hwy 127 to junction U.S. Hwy 50, then over U.S. Hwy 50 to junction U.S. Hwy 51, then over U.S. Hwy 51 to Decatur, then over U.S. Hwy 36 to the Mississippi River, and those points in NM in an area bounded by and on a line beginning at the CO–NM State line, and extending over the western boundary of Colfax County to Mora county, then along the western boundary of Mora County to Santa Fe County, then in a northerly and westerly direction along the Santa Fe County boundary to Los Alamos County, then in a northerly and westerly direction along the Los Alamos County boundary until the boundary meets the Santa Fe County boundary meets the Southern tip of Los Alamos County, then over the Santa Fe County boundary to junction combined U.S. Hwy 85 and Interstate Hwy 25, then over combined U.S. Hwy 85 and Interstate Hwy 25 to junction U.S. Hwy 60, then onver U.S. Hwy 60 to the NM–TX State line, restricted in (1) and (2) above against the transportation of parcels, packages, or articles weighing in the aggregate more than 200 pounds from any one consignor, at any one location, to any one consignee, at any one location, on any one day, and further restricted in (1) (2) above against the transportation of any single parcel, package, or article weighing more than 100 pounds. (Hearing site: Kansas City, MO, or Des Moines, IA.)

Note.—The sole purpose of this application is to substitute single-line for joint-line operations.

MC 51018 (Sub-13F), filed December 17, 1979. applicant: THE DESL TRANSFER CO., a corporation, 5550 Este Avenue, Cincinnati, OH 45232. Representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *commodities* which because of size or weight require the use of special equipment, from those points in OH on and south of U.S. Hwy 40 to points in FL, MD, TX, VA, and WI. (Hearing site: Cincinnati, OH.)

Note.—the sole purpose of this application is to substitute single-line for joint-line operations.

## Permanent Ex-Water Authority Decision-Notices

Decided: April 22, 1980.

The following applications are governed by 49 CFR 1062.3. Applicants seek to obtain motor common carrier authority to perform service within the commercial zone of port cities where the shipment has a prior or subsequent movement by maritime carrier. The full text and explanation of the rules are contained at 44 FR 7965, as corrected at 44 FR 37230.

The sole issue upon which these applications can be protested is the applicant's fitness to perform the service. Protests (an original and one copy) must be filed with the Commission within 30 days of the Federal Register publication. The protest must contain the *specific facts* being relied upon to challenge fitness, and must contain a certification that it has been served concurrently upon applicant's representative, or, if none is listed, upon the applicant. Applicant may file a reply statement to any protest. The filing of these statements will complete the record, unless it is later determined that more evidence must be supplied.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not*

*be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

*Findings*

With the exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity.

Each applicant is fit, willing, and able to properly perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) (formerly section 210 of the Interstate Commerce Act).

In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 2, Members Liberman, Eaton, and Jensen. Member Eaton not participating.

MC 141136 (Sub-3F), filed February 8, 1980. Applicant: TRIANGLE TRANSPORTATION & WAREHOUSING SYSTEMS, INC., 5051 Still Creek Ave., Burnaby, BC, Canada V5C 4H6. Representative: Henry C. Winters, 525 Evergreen Bldg., Renton, WA 98055. Transporting *general commodities* (except classes A and B explosives), between points in the commercial zone of Seattle, WA, restricted to traffic having a prior or subsequent movement by water. (Hearing site: Seattle, WA.)

MC 142401 (Sub-6F), filed January 4, 1980. Applicant: OCEAN TERMINALS, INC., 410 Park Place Bldg., Seattle, WA 98101. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. Transporting *general commodities* (except classes A and B explosives), between points in the commercial zone of Anchorage, AK, restricted to traffic having a prior or subsequent movement by water. (Hearing site: Seattle, WA, or Anchorage, AK.)

**Irregular-Route Motor Common Carriers of Property—Elimination of Gateway Letter Notices**

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's *Gateway Elimination Rules* (49 CFR 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission *within 10 days* from the date of this publication. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will *not* operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

The following applicants seek to operate as a *common carrier*, by motor vehicles, over irregular routes.

MC 46219 (Sub-E33) (correction), filed May 14, 1974, published in the Federal Register July 18, 1974. Applicant: STERNBERGER MOTOR CORPORATION, 46–55 Pearson St., Long Island City, NY 11101. Representative: Lawrence E. Lindeman, Suite 1032 Pennsylvania Blg., Pennsylvania Ave. & 13th St., NW., Washington, DC 20004. *New furniture*, from points in VA to points in VT, NH, MA, CT, RI, points in Bergen, Passaic, Hudson, Essex and Union Counties, NJ, and points in Westchester, Rockland, Putnam, Dutchess, Columbia, Greene, Schoharie, Albany, Rensselear, Montgomery, Fulton, Saratoga, Washington, Warren, Hamilton, Schenectady, Essex, Clinton, Franklin, St. Lawrence, Ulster, Nassau and Suffolk Counties, NY. (Gateways eliminated: Philadelphia, PA, and New York, NY) Purpose of republication—clarify destination points.

MC 117574 (Sub-E121), filed July 15, 1975. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, PA 17013. Representative: E. S. Moore, Jr. (same as applicant). (1) *Agricultural implements, agricultural machinery, tractors,* with or without attachments, *cranes, industrial and processing machinery,* and *attachments, accessories,* and *parts* of all of the above described commodities, which are also heavy machinery or contractors equipment, (1) between points in Buchanan, Dickenson, Russell and Washington Counties, VA, on the one hand, and, on the other, points in Clatsop and Columbia Counties, OR, points in WA on and west of a line commencing at the OR/WA state line along I Hwy 5 in a northerly direction to its junction with US Hwy 12, then in an easterly direction along US Hwy 12 to its juction with US Hwy 97, then in a northerly direction along US Hwy 97 to its termination at the US–CD border. (2) between points in Grason, Smyth, and Wythe Counties, VA, on the one hand, and, on the other, points in OR, WA, and points in CA on and north of I Hwy 80; points in ID on and northwest of a line commencing at the NV/ID state line in a northerly direction along US Hwy 93 to its junction with US Hwy 20, then in an easterly direction along US Hwy 20 to the MT/ID state line; MT on and west of a line commencing at the WY/MT state line along US Hwy 310 in a northerly direction to its juction with US Hwy 10, then in a northeasterly direction along US Hwy 10 to the MT/ND state line; points in NV on and north of a line commencing at the NV/CA state line along US Hwy 40 in an easterly direction to its junction with US Hwy 93, then in a northerly direction along US Hwy 93 to the ID/NV state line; points in ND on and west of a line

commencing at MT/ND state line along US Hwy 10 in an easterly direction to its junction with US Hwy 85, then in a northerly direction along US Hwy 85 to its termination at the ND/CD border; points in WY on and north of a line commencing at the MT/WY state line along US Hwy 20 in an easterly direction along to its junction with US Hwy 310, then in a northerly direction along US Hwy 310 to the WY state line. (3) between points in Bland and Tazewell Counties, VA, on the one hand, and, on the other, points in ID, OR, WA, and points in CA on and north of a line commencing at San Diego along US Hwy 395 in a northerly direction to its junction with I Hwy 15, then in a northeasterly direction along I Hwy 15 to the CA/NV state line; points in MT on and west of a line commencing at the WY/MT state line along US Hwy 191 in a northerly direction to its junction with MT County Hwy 242, then in a northerly direction to its termination at the MT/CD border; points in NV on and northwest of US Hwy 91; points in UT on and west of US Hwy 91. (4) between points in Carroll, Floyd, Giles, Montgomery and Pulaski Counties, VA, on the one hand, and, on the other, points in CA, ID, MT, NV, OR, UT, and WA, and points in AZ on and west of a line commencing at the AZ/MX border along US Hwy 89 in a northerly direction to its junction with US Hwy 160, then in an easterly direction along US Hwy 160 to the AZ/UT state line, points in CO on and west of a line commencing at the CO/UT state line along US Hwy 6 in an easterly direction to its junction with CO Hwy 13, then in a northerly direction along CO Hwy 13 to the CO/WY state line, points in MN on and west of a line commencing at the ND/MN state line along US Hwy 2 in an easterly direction to its junction with US Hwy 59, then in a northerly direction along US Hwy 59 to its termination at the MN/CD border; points in ND on and northwest of a line commencing at the ND/SD state line along US Hwy 83 in a northerly direction to its junction with I Hwy 94, then in an easterly direction along I Hwy 94 to its junction with ND Hwy 1, then in a northerly direction along ND Hwy 1 to its junction with US Hwy 2, then in an easterly direction along US Hwy 2 to the ND/MN state line; points in SD on and west of a line commencing at the WY/SD state line along US Hwy 18, then in an easterly direction to its junction with US Hwy 83, then in a northerly direction along US 834 to the ND/SD state line; points in WY on and northwest of a line commencing at the CO/WY state line along US Hwy 87 in a westerly direction to its junction with US Hwy 18, then in an easterly direction along US Hwy 18 to the WY/SD state line. (5) between points in Pittsylvania County, VA, on the one hand, and, on the other, points in AZ, CA, ID, MT, NV, ND, OR, UT, WA, and WY, and points in CO on and west of a line commencing at the CO/NM state line along US Hwy 85 in a northerly direction to its junction with US Hwy 138, then in an easterly direction along US Hwy 138 to the CO/NE state line; points in MN on and west of a line commencing at the SD/MN state line along US Hwy 212 in an easterly direction to its junction with MN Hwy 23, then in a northerly direction along MN Hwy 23 to Duluth; points in NB on and west of a line commencing at the CO/NE state line along US Hwy 138 in a northerly direction to its junction with US Hwy 30, then in an easterly direction along US Hwy 30 to its junction with US Hwy 83, then in a northerly direction along US Hwy 83 to the NE/SD state line; points in NM on and west of a line commencing at the AZ/NM state line along US Hwy 60 in an easterly direction to its junction with US Hwy 85, then in a northerly direction along US Hwy 85 to the NM/CO state line; points in SD on and northwest of a line commencing at the NE/SD state line along US Hwy 83 in a northerly direction to its junction with US Hwy 212, then in an easterly direction along US Hwy 212 to the SD/MN state line. (6) between points in Halifax County, VA, on the one hand, and, on the other, points in AZ, CA, ID, MN, MT, NV, ND, OR, SD, UT, WA, WI, and WY, and points in the following described states: points in CO on and northwest of a line commencing at the NM/CO state line along US Hwy 85 in a northerly direction to its junction with US Hwy 50, then in an easterly direction along US Hwy 50 to the CO/KS state line; points in I on and northwest of a line commencing at the IA/NE state line along IA Hwy 80 in an easterly direction to its junction with US Hwy 65, then in a northerly direction along US Hwy 65 to its junction with US Hwy 20, then in an easterly direction along US Hwy 20 to the IA/IL state line; points in KS on and west of a line commencing at the CO/KS state line along US Hwy 50 in an easterly direction to its junction with US Hwy 83, then in a northerly direction along US Hwy 83 to its junction with US Hwy 24, then in an easterly direction along US Hwy 24 to its junction with US Hwy 81, then in a northerly direction along US Hwy 81 to the KS/NE state line; points in MI on and north of I Hwy 96; points in NE on and northwest of a line commencing at the KS/NE state line along US Hwy 81 in a northerly direction to its junction with I Hwy 80, then in an easterly direction along I Hwy 80 to the IA/NE state line; points in NM on and west of US Hwy 85, points in OH on and north of a line commencing at Sandusky along US Hwy 250 in a southerly direction to its junction with US Hwy 30, then in an easterly direction along US Hwy 30 to the OH/WV state line. (7) between points in Charlotte and Prince Edwards Counties, VA, on the one hand, and, on the other, points in AZ, CA, CO, ID, IA, KS, MI, MN, MT, NE, NV, NM, ND, OR, SD, UT, WA, WI, and WY, and points in AR on and west of a line commencing at the OK/AR state line along US Hwy 62 in an easterly direction to junction with AR Hwy 59, then along AR Hwy 59 in a northerly direction to junction with AR Hwy 12, then along AR Hwy 12 in an easterly direction to junction with US Hwy 62, then along US Hwy 62 in a northeasterly direction to junction with AR Hwy 23, then along AR Hwy 23 in a northerly direction to the AR/MO state line; points in IL on and north of a line commencing at the MO/IL state line along US Hwy 40 in a northeasterly direction to junction with IL Hwy 33, then along IL Hwy 33 in an easterly direction to the IL/IN state line; points in IN on and north of a line commencing at the IL/IN state line along IN Hwy 154 in an easterly direction to junction with US Hwy 150, then along US 150 in a northerly direction to junction with IN Hwy 246, then along IN Hwy 246 in an easterly direction to junction with IN Hwy 59, then along IN Hwy 59 in a northerly direction to junction with I Hwy 70, then along I Hwy 70 in a northeasterly direction to the IN/OH state line; points in MO on and west of a line commencing at the AR/MO state line along MO Hwy 86 in a northerly direction to junction with MO Hwy 76, then along MO Hwy 76 in a northeasterly direction to junction with MO Hwy 5, then along MO Hwy 5 in a northerly direction to junction with MO Hwy 38, then along MO Hwy 38 in a northeasterly direction to junction with US Hwy 63, then along US Hwy 63 in a northerly direction to junction with MO Hwy 32, then along MO Hwy 32 in a northeasterly direction to junction with MO Hwy 21, then along MO Hwy 21 in a northeasterly direction to IL/MO state line; points in OH on and north of US Hwy 40; points in OK on and north of a line commencing at the TX/OK state line along US Hwy 183 in a northerly direction to junction with US Hwy 70, then along US Hwy 70 in an easterly direction to junction with US Hwy 81,

then along US Hwy 81 in a northerly direction to junction with OK Hwy 39, in an easterly direction to junction with OK Hwy 99 along OK Hwy 99 in a northerly direction to junction with I Hwy 40, then along I Hwy 40 in an easterly direction to junction with US Hwy 69, then along US Hwy 69 in a northerly direction to junction with US Hwy 62, then along US Hwy 62 in a northeasterly direction to the OK/AR state line; points in TX on and west of a line commencing at the MX/TX border along TX Hwy 170 in a westerly direction to junction with US Hwy 385, then along US Hwy 385 in a northeasterly direction to junction with I Hwy 20, then along I Hwy 20 in a northeasterly direction to junction with TX Hwy 669, then along TX Hwy 669 in a northerly direction to junction with US Hwy 380, then along US Hwy 380 in an easterly direction to junction with US Hwy 183, then along US Hwy 183 in a northeasterly direction to the TX/OK state line; points in WV on and north of US Hwy 40. (8) between points in Lunenburg and Mecklenburg Counties, VA, on the one hand, and, on the other, points in AR, CA, CO, ID, IA, MI, MN, MT, NE, NV, ND, OR, SD, UT, WA, WI, and WY, and points in IL on and north of a line commencing at the IA/IL state line along US Hwy 136 in an easterly direction to its junction with US Hwy 66, then in a northeasterly direction along US Hwy 66 to its junction with US Hwy 6, then in an easterly direction along US Hwy 6 to the IL/IN state line; points in IN on and north of a line commencing at the IL/IN state line along US Hwy 6 in an easterly direction to its junction with US Hwy 421, then in a southerly direction along US Hwy 421, then in a southerly direction along US Hwy 421 to its junction with US Hwy 30, then in an easterly direction along US Hwy 30 to its junction with IN Hwy 14, then in an easterly direction along IN Hwy 14 to the IN/OH state line; points in KS on and west of a line commencing at the KS/OK state line along US Hwy 54 in a northeasterly direction to its junction with I Hwy 35, then in a northeasterly direction along I Hwy 35 to its junction with US Hwy 59, then in a northeasterly direction along US Hwy 59 to the KS/MO state line; points in MO on and north of a line commencing at the KS/MO state line along US Hwy 59 in a northwesterly direction to its junction with US Hwy 136, then in an easterly direction along US Hwy 136 to the IA/MO state line; points in NM on and northwest of a line commencing at the NM/TX state line along US Hwy 285 in a northerly direction to its junction with US Hwy 54, then in a northeasterly direction along US Hwy 54 to the NM/OK state line; points in OH on and north of a line commencing at the OH/IN state line along OH Hwy 613 in an easterly direction to its junction with OH Hwy 18, then in a southeasterly direction along OH Hwy 18 to its junction with US Hwy 224, then in an easterly direction along US Hwy 224 to its junction with OH Hwy 45, then in a southerly direction along OH Hwy 45 to the OH/WV state line; points in OK on and west of US Hwy 54; points in TX in El Paso and Hudspeth Counties, and points on and north of US Hwy 54. (9) between points in Brunswick and Greensville Counties, VA, on the one hand, and, on the other, points in AZ, CA, CO, ID, IA, KS, MI, MN, MT, NE, NV, NM, ND, OR, SD, UT, WA, WI, and WY, and points in AR on and north of a line commencing at the AR/OK state line along I Hwy 40 in an easterly direction to its junction with US Hwy 71, then in a northerly direction along US Hwy 71 to its junction with US Hwy 62, then in a northeasterly direction along US Hwy 65, then in a northerly direction along US Hwy 65 to the AR/MO state line; points in IL on and north of a line commencing at the MO/IL state line along IL Hwy 150 in a northeasterly direction to its junction with IL Hwy 154, then in an easterly direction along IL Hwy 154 to its junction with US Hwy 51, then in a northerly direction along US Hwy 51 to its junction with IL Hwy 15, then in an easterly direction along US Hwy 15 to the IL/IN state line; points in IN on and north of US Hwy 50; points in MO on, north, and west of a line commencing at the AR/MO state line along US Hwy 65 in a northerly direction to its junction with US Hwy 60, then in an easterly direction along US Hwy 60 to its junction with MO Hwy 34, then in a northeasterly direction along MO Hwy 34 to its junction with MO Hwy 51, then in a northeasterly direction along MO Hwy 51 to the IL/MO state line; points in OH on and north of a line commencing at the IN/OH state line along US Hwy 50, then in an easterly direction to its junction with US Hwy 50 Bypass, then in an easterly direction along US Hwy 50 Bypass to its junction with US Hwy 22, then in an easterly direction along US Hwy 22 to its junction with OH Hwy 37, then in an easterly direction along OH Hwy 37 to its junction with OH Hwy 60, then in a southeasterly direction along OH Hwy 60 to the OH/WV state line; points in OK on and northwest of a line commencing at the OK/TX state line along US Hwy 69 in a northerly direction to its junction with I Hwy 40, then in an easterly direction along I Hwy 40 to the AR/OK state line; points in TX on and west of a line commencing at the Gulf of Mexico along US Hwy 77 in a northerly direction to its junction with TX Hwy 44, then in a westerly direction along TX Hwy 44 to its junction with US Hwy 83, then in a northerly direction along US Hwy 83 to its junction with US Hwy 377, then in an easterly direction along US Hwy 377 to its junction with US Hwy 281, then in a northerly direction along US Hwy 281 to the OK/TX state line; points in WV on and west of a line commencing at the OH/WV state line along US Hwy 250 in an easterly direction along US Hwy 119, then in a northerly direction along US Hwy 119 to the PA/WV state line.

(10) between points in Amelia, Dinwiddie, and Nottoway Counties, VA, on the one hand, and, on the other, points in AZ, CA, CO, ID, IA, KS, MI, MN, MT, NE, NV, NM, ND, OR, SD, UT, WA, WI, and WY, and points in IN on and north of a line commencing at the IL/IN state line along IN Hwy 67 in a northeasterly direction to its junction with IN Hwy 54, then in an easterly direction along IN Hwy 54 to its junction with IN Hwy 45, then in a northeasterly direction along IN Hwy 45 to its junction with IN Hwy 37, then in a northeasterly direction along IN Hwy 37 to its junction with IN Hwy 465, then in a northeasterly direction along I Hwy 465 to its junction with US Hwy 36, then in a northeasterly direction along US Hwy 36 to the OH/IN state line; points in MO on and north of a line commencing at the OK/MO state line along US Hwy 60 in an easterly direction to its junction with US Hwy 63, then in a northerly direction along US Hwy 63 to its junction with US Hwy 63, then in a northerly direction along US Hwy 63 to its junction with I Hwy 44, then in a northeasterly direction along I Hwy 44 to the MO/IL state line; points in OH on and north of a line commencing at the IN/OH State line along US Hwy 36 in an easterly direction to its junction with US Hwy 250 then along US Hwy 250 to its junction with I Hwy 70, then in an easterly direction along I Hwy 70 to the WV/OH state line; points in OK on and west of US Hwy 69; points in TX on and west of a line commencing at the Gulf of Mexico at Corpus Christi along US Hwy 181 in a northwesterly direction to its junction with US Hwy 281, then in a northerly direction along US Hwy 281 to its junction with I Hwy 20, then in a northeasterly direction along I Hwy 20 to its junction with TX Farm Hwy 51, then in an northerly direction along TX Farm Hwy 51 to its junction with US Hwy 82, then in an easterly direction along US Hwy 82 to its junction with US

Hwy 69, then in a northerly direction along US Hwy 69 to the TX/OK state line; points in WV on and north of I Hwy 70. (11) between points in Chesterfield, Coochland, Hanover, Henrioco, Louisa, and Powhatan Counties, VA, on the one hand, and, on the other, points in AZ, CA, CO, ID, IL, IN, IA, KS, MI, MN, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, and WY, and points in AR north and west of a line commencing at AR/LA state line along US Hwy 71, then in a northerly direction to its junction with I Hwy 30, then along I Hwy 30 in a northeasterly direction to its junction with US Hwy 67, then along US Hwy 67 in a northerly direction to its junction with AR Hwy 25, then along AR Hwy 25 in an easterly direction to MO/AR state line; points in KY north of a line commencing at KY/IL state line along US Hwy 60 east and northeasterly to its junction with US Hwy 42, then along US Hwy 42 in a northeasterly direction to OH/KY state line; points in LA west of a line commencing at LA/Gulf of Mexico near Cameror along LA Hwy 27, then in a northerly direction along LA Hwy 27 to its junction with US Hwy 171, then in a northerly direction along US Hwy 171 to its junction with US Hwy 71, then in a northerly direction along US Hwy 171 to its junction with US Hwy 71, then in a northerly direction along US Hwy 71 to AR/LA state line; points in MO west and north of a line commencing at AR/MO state line along US Hwy 25, then along US Hwy 25 in a northerly direction to its junction with US Hwy 60, then along US Hwy 60 in an easterly direction to MO/KY state line; points in OH west and north of a line commencing at OH/KY state line along US Hwy 42, then in a northeasterly direction to its junction with US Hwy 50, then in an easterly direction along US Hwy 50 to its junction with OH Hwy 159, then along OH Hwy 159 in a northeasterly direction to its junction with US Hwy 22, then along US Hwy 22 in a northeasterly direction to its junction with I Hwy 70, then along I Hwy 70 in an easterly direction to OH/WV state line; points in WV north of a line commencing at OH line along I Hwy 70, then to PA/WV state line. (12) between points in Caroline and King George Counties, VA, on the one hand, and, on the other, points in AZ, AR, CA, CO, ID, IL, IN, IA, KS, MI, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, and WY and points in KY, on and north of a line commencing at the KY/TN state line along KY Hwy 139 in a northerly direction to its junction with KY Hwy 164, then in a northeasterly direction along KY Hwy 164 to its junction with US Hwy 41, then in a northerly direction along US Hwy 41 to its junction with US Hwy 62, then in a northeasterly direction along US Hwy 62 to its junction with KY Hwy 19, then in a northerly direction along KY Hwy 19 to the OH/KY state line; points in LA on and west of a line commencing at the Gulf of Mexico along LA Hwy 23 in a northwesterly direction to its junction with I Hwy 10; then in a westerly direction along I Hwy 10 to its junction with US Hwy 51, then in a northerly direction along US Hwy 51 to the LA/MS state line; points in MS on and west of I Hwy 55; points in OH on the west of a line commencing at the KY/OH state line along OH Hwy 41 in a northeasterly direction to its junction with US Hwy 50, then in an easterly directon along US Hwy 50 to its junction with US Hwy 23, then in a northerly direction along US Hwy 23 to its junction with US Hwy 22, then in a northeasterly direction along US Hwy 22 to its junction with I Hwy 70, then in an easterly direction along I Hwy 760 to the OH/WV state line; points in TN, on and west of a line commencing at the MS/TN state line along I Hwy 55 in a northerly direction to its junction with US Hwy 79, then in a northeasterly direction along US Hwy 79 to its junction with TN Hwy 120, then in a northerly direction along TN Hwy 120 to the TN/KY state line; points in WV on and north of I Hwy 70. (13) between points in Spotsylvania County, VA, on the one hand, and, on the other, points in AZ, AR, CA, CO, ID, IL, IN, IA, KS, LA, MI, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, WY, and DC, and points in the following described states: Key West, FL; points in KY north and west of a line commencing at the KY/TN state line along US Hwy 51 in a northeasterly direction, then to its junction with US Hwy 62, then along US Hwy 62 in a northeasterly direction to its junction with US Hwy 60; then along US Hwy 60 in a northerly direction to its junction with KY Hwy 10, then along KY Hwy 10 in an easterly direction to the KY/OH state line; points in MS west of a line commencing at Gulfport, MS, on the Gulf of Mexico along US Hwy 49 in a northerly direction, then to its junction with I Hwy 55, then along I Hwy 55 in a northerly direction to its junction with US Hwy 51, then in a northerly direction along US Hwy 51 to its junction with I Hwy 55, then along I Hwy 55 to the TN/MS state line; points in OH west and north of a line commencing at the OH/KY state line along OH Hwy 41, then along OH Hwy 41 in a northeasterly direction to its junction with US Hwy 50, then along US Hwy 50 in a northeasterly direction to its junction points in TN, on and west of a line commencing at the MS/TN state line along I Hwy 55 in a northerly direction to its junction with US Hwy 79, then in a northeasterly direction along US Hwy 79 to its junction with TN Hwy 120, then in a northerly direction along TN Hwy 120 to the TN/KY state line; points in WV on and North of I Hwy 70. (13) between points in Spotsylvania County, VA, on the one hand, and, on the other, points in AZ, AR, CA, CO, ID, IL, IN, IA, KS, LA, MI, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, WY, and DC, and points in the following described states: Key West, FL; points in KY north and west of a line commencing at the KY/TN state line along US Hwy 51 in a northeasterly direction, then to its junction with US Hwy 62, then along US Hwy 62 in a northeasterly direction to its junction with US Hwy 60; then along US Hwy 60 in a northerly direction to its junction with KY Hwy 10, then along KY Hwy 10 in an easterly direction to the KY/OH state line; points in MS west of a line commencing at Gulfport, MS, on the Gulf of Mexico along US Hwy 49 in a northerly direction, then to its junction with I Hwy 55, then along I Hwy 55 in a northerly direction to its junction with US Hwy 51, then in a northerly direction along US Hwy 51 to its junction with I Hwy 55, then along I Hwy 55 to the TN/MS state line; points in OH west and north of a line commencing at the OH/KY state line along OH Hwy 41, then along OH Hwy 41 in a northeasterly direction to its junction with US Hwy 50, then along US Hwy 50 in a northeasterly direction to its junction with OH Hwy 159, then along OH Hwy 159 in a northeasterly direction to its junction with US Hwy 22, the along US Hwy 22 in a northeasterly direction to its junction with I Hwy 70, then along I Hwy 70 in an easterly direction to the WV/OH state line; points in TN west of a line commencing at the TN/MS state line along US Hwy 51, then along US Hwy 51 in a northeasterly direction to its junction with US Hwy 45, then along US Hwy 45 in a westerly direction to the TN/KY state line; points in WV north of a line commencing at the WV/OH state line along I Hwy 70, then along I Hwy 70 to the PA/WV state line. (14) between points in Arlington, Fairfax, Fauquier, Loudoun, Prince William, Stafford Counties, VA, on the one hand, and, on the other, points in AZ, AR, CA, CO, ID, IL, IN, IA, KS, MA, MI, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, and WY, and points in AL on, south, and west of a line commencing at Mobile, AL, along US Hwy 45 to AL/MS state line; points in FL on and south of a

line commencing at the Atlantic Ocean at West Palm Beach, then in a westerly direction along US Hwy 441 to its junction with FL Hwy 80, then in a westerly direction along FL Hwy 80 to its termination at the Gulf of Mexico; points in KY on, north and west of a line commencing at the TN/KY state line along KY Hwy 58 in a northeasterly direction to its junction with US Hwy 62, then in a northeasterly direction along US Hwy 62 to its junction with KY Hwy 19, then in a northeasterly direction along KY Hwy 19 to the KY/OH state line; points in MS on and west of a line commencing at the AL/MS state line along US Hwy 45 in a northerly direction to its junction with MS Hwy 19, then in a northerly direction along MS Hwy 19 to its junction with MS Hwy 16 then along MS Hwy 16 to its junction with US Hwy 51, then in a northerly direction along US Hwy 51 to its junction with I Hwy 55, then in a northerly direction along I Hwy 55 to the TN/MS state line; points in OH on and north of a line commencing at the OH/KY state line along US Hwy 62 in a northerly direction to its junction with US Hwy 22, then in an easterly direction along US Hwy 22 to the OH/PA state line; points in TN on and west of a line commencing at the TN/MS state line along US Hwy 51 in a northerly direction to the KY/TN state line; points in WV on and north of a line commencing at the OH/WV state line along US Hwy 22 in an easterly direction to the WV/PA state line. (15) between points in Essex, Gloucester, King and Queen, Lancaster, Mathews, Middlesex, Northumberland, Richmond and Westmoreland Counties, VA, on the one hand, and, on the other, points in AZ, CA, CO, ID, IL, IN, IA, KS, MI, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, and WY, and points in AR on and west of a line commencing at the AR/LA state line along US Hwy 167 in a northerly direction to its junction with US Hwy 79, then in a northeasterly direction along US Hwy 79 to its junction with I Hwy 55, then in a northwesterly direction along I Hwy 55 to its junction with US Hwy 63, then in a northwesterly direction along US Hwy 63 to its junction with AR Hwy 1, then a northerly direction along AR Hwy 1 to its junction with AR Hwy 25, then in a easterly direction along AR Hwy 25 to the AR/MO state line; points in KY on and north or a line commencing at the KY/TN state line along US Hwy 45 in a northeasterly direction to its junction with KY Hwy 80, then in an easterly direction along KY Hwy 80 to its junction with US Hwy 641, then in a northerly direction along US Hwy 641 to its junction with US Hwy 60, then in a northeasterly direction along US Hwy 60 to its junction with US Hwy 231, then in a northerly direction along US Hwy 231 to the KY/OH state line; points in LA on and west of a line commencing at the LA/Gulf of Mexico Coast along LA Hwy 333 in a northerly direction to its junction with LA Hwy 82, then in a northerly direction along LA Hwy 82 to its junction with US Hwy 167, then in a northerly direction along US Hwy 167 to the AR/LA state line; points in OH on and north of a line commencing at the KY/OH state line along OH Hwy 41 in a northeasterly direction along US Hwy 50 to the OH/WV state line; points in WV on and north of a line commencing at the OH/WV state line along US Hwy 50 in a northeasterly direction to its junction with US Hwy 19, then in an northeasterly direction along US Hwy 19 to its junction with US Hwy 110, then in a northeasterly direction along US Hwy 119 to the PA/WV state line.

(16) between points in Culpeper, Greene, Madison, Orange, and Rappahannock Counties, VA, on the one hand, and, on the other, points in AZ, CA, CO, ID, OA, KS, MI, MN, MT, NE, NV, NM, ND, OR, SD, TU, WA, WI, and WY, and points in AR on and west of a line commencing at the OK/AR state line along US Hwy 271 in a northerly direction to its junction with US Hwy 71, then in a northerly direction along US Hwy 71 to the AR/MO state line; points in IL on and northwest of a line commencing at the MO/IL state line along US Hwy 66 in a northerly direction to its junction with US Hwy 24, then in an easterly direction along US Hwy 24 to the IL/IN state line; points in IN on and north of a line commencing at the IL/IN state line along US Hwy 24 in an easterly direction to its junction with US Hwy 224, then in an easterly direction along US Hwy 224 to the IN/OH state line; points in MO on and northwest of a line commencing at the AR/MO state line along US Hwy 71 in a northerly direction to its junction with US Hwy 66, then in a northeasterly direction along US Hwy 66 to the MO/IL state line; points in OH on and north of US Hwy 271; points in TX on and west of a line commencing at the Port Arthur along US Hwy 69 in a northerly direction to its junction with US Hwy 271, then in a northerly direction along US Hwy 271 to the TX/OK state line.

(17) between points in Accomack and Northampton Counties, VA, on the one hand, and, on the other, points in AZ, CA, CO, ID, IL, IN, IA, KS, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TX, UT, WA, WI, and WY, and points in AR on and west of a line commencing at the AR/LA state line along US Hwy 165 in a northerly direction to its junction with US Hwy 65, then in a northwesterly direction along US Hwy 65 to its junction with AR Hwy 1, then along AR Hwy 1 in a northerly direction to its junction with US Hwy 79, then in a northeasterly direction along US Hwy 79 to its junction with US Hwy 70, then in an easterly direction along US Hwy 70 to the AR/TN state line; points in KY north and west of a line commencing at the TN/KY state line; points in KY north and west of a line commencing at the TN/KY state line along US Hwy 41A in a northerly direction to its junction with US Hwy 68, then in an easterly direction along US Hwy 68 to its junction with I Hwy 65, then in a northerly direction along I Hwy 65 to its junction with the Blue Grass Parkway to its junction with I Hwy 64, then in an easterly direction along I Hwy 64 to its junction with KY Hwy 1, then in a northerly direction along KY Hwy 1 to the KY/WV state line; points in LA south and west of a line commencing at the Morgan City along US Hwy 90 in an easterly direction to its junction with LA Hwy 20, then in a northeasterly direction along LA Hwy 20 to its junction with LA Hwy 18, then in a northwesterly direction along LA Hwy 18 to its junction with LA Hwy 3089, then in an easterly direction along LA Hwy 3089 to its junction with LA Hwy 44, then in a northerly direction along LA Hwy 44 to its junction with US Hwy 61, then in a northwesterly direction along US Hwy 61 to the LA/MS state line; continuing the line at the LA/MS state line along US Hwy 84 in a westerly direction to its junction with US Hwy 165, then in a northerly direction along US Hwy 165 to the AR/LA state line; points in ME north of a line commencing at the NH/ME state line along US Hwy 2, in an easterly direction to its junction with US Hwy Alternate 1, then in an easterly direction along US Hwy Alternate 1 to its junction with ME Hwy 3, then in a southerly direction along ME Hwy 3 to its termination at Acodia National Park; points in MD west of US Hwy 522; points in MS south and west of a line commencing at the LA/MS state line along US Hwy 61 in a northerly direction to its junction with US Hwy 84, then in a westerly direction along US Hwy 84 to the LA/MS state line; points in NH north of US Hwy 2; points in NY on and west of a line commencing at the PA/NY state line along I Hwy 81 in a northerly direction to its junction with New York Hwy 12, then in a northerly direction along NY Hwy 12 to its junction with NY Hwy 28, then in a northeasterly direction along NY Hwy 28 to its junction with NY Hwy 30, then

in a northerly direction along NY Hwy 30 to its termination at the NY/Canadian border; points in PA on and west of a line commencing at the PA/MD state line along I Hwy 81 in a northeasterly direction to its junction with US Hwy 11, then in a northerly direction along US Hwy 11 to its junction with US Hwy 15, then in a northerly direction along US Hwy 15 to its junction with US Hwy 200, then in a northerly direction along US Hwy 200 to the PA/NY state line; points in TN, north and west of a line commencing at the AR/TN state line along US Hwy 70 in an easterly direction to its junction with US Hwy 51, then in a northeasterly direction along US Hwy 51 to its junction with TN Hwy 104, then in a southeasterly direction along TN Hwy 104 to its junction with US Hwy 79, then in a northeasterly direction along US Hwy 79 to its junction with US Hwy 41A, then in a northerly direction along US Hwy 41A to the KY/TN state line; points in WV north and west of a line commencing at the KY/WV state line along I Hwy 64 in an easterly direction to its junction with US Hwy 119, then in a northeasterly direction along US Hwy 119 to its junction with US Hwy 50, then in an easterly direction along US Hwy 50 to its junction with WV Hwy 45, then in a northeasterly direction along WV Hwy 45 to its junction with WV Hwy 29, then in a northeasterly direction along WV Hwy 29 to its junction with WV Hwy 9, then in a northeasterly direction along WV Hwy 9 to its junction with US Hwy 522, then in a northeasterly direction along US Hwy 522 to the MD/WV state line. (18) between points in Washington, D.C., on the one hand, and, on the other, points in AL, AZ, CA, AR, CO, FL, ID, IL, IN, IA, KS, KY, IA, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TX, UT, WA, WI, and WY, and points in GA on, south, and west of a line commencing at Brunswick GA along US Hwy 341 in a northwesterly direction to its junction with US Hwy 441, then in a northerly direction along US Hwy 441 to the GA/NC state line; points in NC on and west of a line commencing at the GA/NC state line along US Hwy 441 in a northerly direction to its junction with US Hwy 19, then in a northerly direction along US Hwy 19W to the TN/NC state line; points in TN on and west of US Hwy 19 or US Hwy 19W; points in VA on and west of US Hwy 19; points in WV on and west of US Hwy 19. (Gateways eliminated; Wheaton, MD, and Waynesboro, PA.)

By the Commission.
Agatha L. Mergenovich,
*Secretary.*

[FR Doc. 80-14302 Filed 5-8-80; 8:45 am]
BILLING CODE 7035-01-M

## Finance Matters; Decision-Notice

*Correction*

In FR Doc. 80-7933, published at page 16586, on Friday, March 14, 1980, on page 16633, in the second column, in the second full paragraph "MC 119777 (Sub-421F)" in the thirteenth line "MJ" should be corrected to read "NJ".

BILLING CODE 1505-01-M

## Permanent Authority Decisions; Decision-Notice

*Correction*

In FR Doc. 80-6793, published at page 14270, on Wednesday, March 5, 1980, on page 14275, in the third column, in the first paragraph "MC 136818, (Sub-93F)", in the twelfth line "TM" should be corrected to read "NM".

BILLING CODE 1505-01-M

## Permanent Authority Decisions; Decision-Notice

*Correction*

In FR Doc. 80-7430, published at page 15689, on Tuesday, March 11, 1980, on page 15716, in the first column, in the second full paragraph "MC 136818 (Sub-98F)", in the last line "MN" should be corrected to read "NM".

BILLING CODE 1505-01-M

## Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR § 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the Federal Register. Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected.* A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner, (b) the effect of the decision which may be rendered upon petitioner's interest, (c) the availability of other means by which the petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed

below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. § 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulation. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. § 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. § 10930(a) [formerly section 210 of the Interstate Commerce Act]

In the absence of legally sufficient petitions for intervention, filed on or before June 11, 1980 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices on or before June 11, 1980, or the application shall stand denied.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce over irregular routes, except as otherwise noted.

Volume No. 154

Decided: April 16, 1980.

By the Commission, Review Board Number 2, Members Eaton, Liberman and Jensen. Member Jensen not participating.

MC 57992 (Sub-7F), filed January 7, 1980. Applicant: SEWELL MOTOR EXPRESS, INC., 149 South Mulberry Street, Wilmington, OH 45177. Representative: Joe F. Asher, 88 East Broad Street, Columbus, OH 43215. Transporting *general commodities* (except those of unusual value, and classes A and B explosives), between points in Clinton County, OH, on the one hand, and, on the other, points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, PA, RI, SC, TN, VT, VA, WV, WI, and DC. (Hearing site: Columbus or Dayton, OH.)

MC 71652 (Sub-40F), filed December 10, 1979. Applicant: BYRNE TRUCKING, INC., P.O. Box 1124, Medford, OR 97501. Representative: William D. Taylor, 100 Pine St., Suite 2550, San Francisco, CA 94111. Transporting *aluminum and aluminum products,* from the facilities of Reynolds Metals Company at (a) Troutdale, OR, and (b) Longview, WA, to points in CA. (Hearing site: Portland, OR, San Francisco, CA.)

MC 75543 (Sub-7F), filed February 11, 1980. Applicant: VALLERIE'S TRANSPORTATION SERVICE, INC., P.O. Box 880, Norwalk, CT 06852. Representative: Raymond R. Vallerie (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in CT, MA, RI, NY, and NJ. (Hearing site: Hartford, CT or Washington, DC.)

MC 81592 (Sub-8F), filed December 4, 1979. Applicant: WISCONSIN NORTHERN TRANSPORTATION CO., INC., Vernon Street, Washington Heights, Eau Claire, WI 54701. Representative: Frederick A. Zank (same address as applicant). Transporting *passengers and their baggage,* in charter and special operations, beginning and ending at points in Burnett, Polk, St. Croix, Clark, Wood, Pierce, Buffalo, Trempeleau, LaCrosse, Vernon, Monroe, Juneau, Portage, Rock, LaFayette, Dane, Marathon, Shawano and Brown Counties, WI, and extending to points in the United States (including AK, but excluding HI). (Hearing site: Eau Claire, WI or Menomonie, WI.)

MC 114273 (Sub-495F), filed December 18, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Robert E. Konchar, 2720 First Ave. NE., P.O. Box 1943, Cedar Rapids, IA 52406. Transporting (1) *farm machinery* (except commodities the transportation of which because of size or weight requires the use of special equipment), from Vinton, IA, to Louisville, KY, and points in IN; (2) *canned goods, and canning factory machinery and supplies,* between Vinton IA, and points within 15 miles of Vinton, and La Porte City, Sac City, and Storm Lake, IA, on the one hand, and, on the other, Louisville, KY, and points in IN; (3)(a) *iron and steel articles,* and (b) *non-ferrous metals,* moving in mixed loads with iron and steel articles, from Louisville, KY, and points in IN, to points in IA within 100 miles of Cedar Rapids, IA; (4) *such commodities* as are dealt in by grocery stores (except commodities in bulk, in tank vehicles), between Louisville, KY, and points in IN, on the one hand, and, on the other, Fargo, ND, Aurora, Bolivar, Carthage, Clinton, Joplin, Neosho, St. Louis, Springfield, and Webb City, MO points in MN, those points in MO, on, north, and west of a line beginning at the IA-MO State line and extending along U.S. Hwy 63 to junction U.S. Hwy 50, then along U.S. Hwy 50 to the MO-KS State line, and those in KS on and east of U.S. Hwy 81; (5) *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, in tank vehicles, and those requiring special equipment), between Louisville, KY, and points in IN, on the one hand, and, on the other, Ashton, Aurora, Chicago, Como, Cortland, Creston, DeKalb, Dixon, Elburn, Franklin Grove, Fulton, Kaneville, Malta, Maple Park, Morrison, N. Aurora, Rochelle, Rock Falls, St. Charles, Sterling, Union Grove, and Unionville, IL, Adair, Adel, Altoona, Ames, Ankeny, Arcadia, Aspinwall, Atlantic, Bagley, Bayard, Beaver, Belle Plaine, Bondurant, Boone, Cambridge, Carlisle, Carroll, Casey, Cedar Falls, Cedar Rapids, Clinton, Collins, Colo, Coon Rapids, Council Bluffs, Dawson, Dedham, Denision, Des Moines, De Witt, Dewar, Dexter, Dow City, Dunlap, Eagle Center, Evansdale, Ferguson, Gardiner, Gilbertville, Gladstone, Glidden, Grand Junction, Grimes, Haverhill, Hudson, Huxley, Jamaica, Jefferson, Johnston, Kellogg, Le Grand, Lewis, Lisbon, Logan, Lowden, Madrid, Manning,

Marshalltown, Maxwell, Mechanicsville, Melbourne, Menlo, Missouri Valley, Mitchellville, Mt. Vernon, Nevada, Norwalk, Norwood, Oakland, Ogden, Ortonville, Perry, Quick, Redfield, Rhodes, Scotch Ridge, Scranton, Slater, Stanwood, State Center, Stuart, Tama, Templeton, Toledo, Urbandale, Vail, Van Clevel, Washburn, Waterloo, Waukee, West Branch, West Side, Woodbine, and Woodward, IA, and Alda, Ames, Arlington, Ashland, Blair, Central City, Chapman, Clarks, Columbus, Duncan, Emerald, Exeter, Fairmount, Fremont, Friend, Gibbon, Grafton, Grand Island, Gretna, Hansen, Hastings, Kearney, Kennard, Lincoln, Milford, North Bend, Omah, Richland, Rogers, Schuyler, Shelton, Silver Creek, Sutton, Valley, Waverly, and Wood River, NE; and (6) *general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment), from Louisville, KY, and points in IN to points in IA within 100 miles of Cedar Rapids, IA. (Hearing site: Chicago, IL or Indianapolis, IN.)*

Note.—The purpose of this application is in part to substitute a single-line service for a previously existing joint-line service, as well as to eliminate various IL gateways.

MC 115162 (Sub-502F), filed August 30, 1979. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). Transporting (1) *scrap wire, scrap cable, scrap telephone equipment, and scrap metals* (except commodities in bulk), from those points in the United States in and east of MT, WY, CO, and NM to the facilities of the Lissner Corporation at Chicago, IL, and (2) *processed scrap and aluminum ingot,* in the reverse direction. (Hearing site: Chicago, IL or Washington, DC.)

MC 116763 (Sub-635F), filed December 26, 1979. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: Gary J. Jira (same address as applicant). Transporting (1) *charcoal, and barbecue accessories and supplies,* (except commodities in bulk, in tank vehicles), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, (except commodities in bulk, in tank vehicles), between those points in the United States in and east of MN, IA, MO, OK, and TX, restricted to the transportation of traffic originating at or destined to the facilities used by Husky Industries, Inc. (Hearing site: Atlanta, GA.)

MC 123872 (Sub-112F), filed August 28, 1979. Applicant: W & L MOTOR LINES, INC., P.O. Box 3467, Hickory, NC 28601. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. Transporting (1) *carpets and rugs,* and (2) *materials and supplies* used in the installation and manufacture of the commodities in (1) above (except commodities in bulk, in tank vehicles), between points in Bartow, Catoosa, Chattooga, Floyd, Gilmer, Gordon, Murray, Rabun, Troup, Walker, and Whitfield Counties, GA, and Alexander, Burke, Caldwell, Catawba, Cleveland, Iredell, Lincoln, McDowell, Rutherford, and Wilkes Counties, NC. (Hearing site: Charlotte, NC or Washington, DC.)

Note.—Dual operations may be involved.

MC 124263 (Sub-4F), filed November 19, 1979. Applicant: SUN MOTOR LINE, INC., P.O. Box 32546, Oklahoma City, OK 73123. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. Transporting *frozen foodstuffs,* in vehicles equipped with mechanical refrigeration, from points in CA, ID, OR, and WA, to points in AL, GA, IL, IN, IA, KS, KY, LA, MI, MO, NE, OH, OK, TN, TX, and VA. (Hearing site: Oklahoma City, OK or Dallas, TX.)

MC 124692 (Sub-311F), filed October 15, 1979. Applicant: SAMMONS TRUCKING, a Montana corporation, P.O. 4347, Missoula, MT 59806. Representative: J. David Douglas (same address as applicant). Transporting *concrete products,* from Elk River, Shakopee, and Olivia, MN to points in ND, restricted to traffic originating at the facilities of Elk River Concrete at the named origins. (Hearing site: St. Paul, MN.)

MC 141533 (Sub-14F), filed February 4, 1980. Applicant: LYN TRANSPORT, INC., 37 North Central Avenue, Elmsford, NY 10532. Representative: Bruce J. Robbins 118–21 Queens Boulevard, Forest Hills, NY 11375. Transporting *frozen meats,* from (a) Newark, NJ, and (b) Philadelphia, PA, to Louisville, KY, and points in IL, IN, WI and MI, restricted to traffic having a prior movement by water. (Hearing site: New York, NY.)

MC 143383 (Sub-5F), filed November 27, 1979. Applicant: DALE E. NICHOLSON P.O. Box 97, Potosi, MO 63664. Representative: Dale E. Nicholson (same address as applicant). Transporting (1) *float tail screenings,* in bulk, in dump vehicles, from Galena, IL, to points in Jasper County, MO, and (2) *silage preservative and vehicle traction material,* in dump vehicles, from points in Jasper County, MO, to points in WI, IL, IN, MI, IA, SD, NE, KS, OK, OH, TX, PA, AR, MS, KY, MN, and CO. (Hearing sites: St. Louis or Jefferson City, MO.)

MC 144622 (Sub-147F), filed February 13, 1980. Applicant: GLENN BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: Phillip G. Glenn (same address as applicant). Transporting *copper fittings and solder,* between Miami, FL, on the one hand, and, on the other, Los Angeles, CA. (Hearing site: Little Rock, AR.)

Note.—Dual operations may be involved.

MC 144883 (Sub-6F), filed November 14, 1979. Applicant: EARL MOORE, d.b.a. S & M MARKETING, 1133 Chess Drive, P.O. Box 4020, Foster City, CA 94404. Representative: James H. Gulseth, 100 Bush St., 21st Floor, San Francisco, CA 94104. Transporting (1) *paints, protective coatings, pigments, and paint thinners,* and (2) *materials, equipment, and supplies* used in the application of the commodities in (1) above, (a) from South San Francisco, CA, to Portland and Durham, OR, and Phoenix, AZ, and (b) from Brisbane, CA, to Phoenix, Mesa, and Tempe, AZ. (Hearing site: San Francisco, CA.)

MC 145113 (Sub-1F), filed January 21, 1980. Applicant: PLANTATION FOODS, INCORPORATED, 3130 Gholson Road, Waco, TX 76703. Representative: Nelson M. Davidson, Jr., P.O. Box 1148, Austin, TX 78767. *Contract carrier,* transporting *industrial adhesives,* from Lyons, IL, Vernon, CA, and points in Kings County, NY to Lewisville, TX, under continuing contract(s) with United Resin Adhesives of Texas, Inc., of Lewisville, TX. (Hearing site: Dallas, TX.)

MC 14152 (Sub-167), filed January 11, 1980. Applicant: BIG THREE TRANSPORTATION, INC., P.O. Box 706, Springdale, AR 72764. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. Transporting (1) *such commodities* as are dealt in or used by manufacturers and distributors of foodstuffs, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between points in the United States (except AK and HI), restricted to traffic originating at or destined to the facilities of R. T. French Company. (Hearing site: Rochester, NY or Fayettville, AR.)

MC 146563 (Sub-2F), filed June 12, 1980. Applicant: DAV-EL SERVICES, INC., d.b.a. DAVE-EL LIVERY, 219 West 77th St., New York, NY 10024. Representative: Sidney J. Leshin, 575 Madison Ave., New York, NY 10022. *Contract carrier,* transporting *passengers and their baggage,* between

points in Bergen, Morris, Essex, Hudson, Union, Passaic, Somerset and Middlesex Counties, NJ, Rockland County, NY, and Fairfield County, CT, on the one hand, and, on the other, the terminal facilities of New York Port Authority at New York, NY, restricted to nonscheduled door-to-door service in vehicles carrying not more than six passengers (excluding the driver), under continuing contract(s) with Holland American Tours. (Hearing site: New York, NY.)

MC 146782 (Sub-16F), filed September 4, 1979. Applicant: ROBERT CONTRACT CARRIER CORPORATION; 300 First Avenue South, Nashville, TN 37201. Representative: Stephen L. Edwards, 806 Nashville Bank and Trust Building, Nashville, TN 37201. Transporting *iron and steel articles,* from Schaumburg and Chicago, IL, Detroit, MI, Pittsburgh, PA, and the facilities of Parker Steel Company at or near Andrews, SC, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX, restricted to traffic originating at the named origins. (Hearing site: Nashville, TN, or Toledo, OH.)

MC 148683 (Sub-3F), filed February 8, 1980. Applicant: ROGER RYE, d.b.a. BUCK RYE TRUCKING, Route 1, Wallace, MI 49893. Representative: William R. Ralls, 427 South Capitol Ave., Lansing, MI 48933. *Contract carrier,* transporting *woodchips, sawdust, bark, slabs, and compressed pellets,* between points in the Upper Peninsula of MI, on the one hand, and, on the other points in WI, under continuing contract(s) with Woodex of Michigan, Incorporated of Menominee, MI. (Hearing site: Lansing, MI.)

**Volume No. 155**

Decided: April 16, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 5623 (Sub-53F), filed February 29, 1980. Applicant: ARROW TRUCKING CO., a corporation, P.O. Box 7280, Tulsa, OK 74105. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. Transporting (1) *metal buildings and parts and accessories* for metal buildings, (2) *off-highway vehicles and parts and accessories* for off-highway vehicles, (3) *power plant components and accessories,* (4) *fabricated steel structures,* and (5) *materials, equipment, and supplies* used in the manufacture, distribution, installation, and maintenance of the commodities in (1), (2), (3), and (4) above, (except commodities in bulk), between the facilities of Braden Steel Corporation, at or near Tulsa, OK, on the one hand, and, on the other, points in the US (except AK and HI), restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: Tulsa, OK.)

MC 44913 (Sub-20F), filed March 10, 1980. Applicant: E. ROSCOE WILLEY, INC., a DE corporation, P.O. Box 116, Secretary, MD 21664. Representative: Walter T. Evans, 7961 Eastern Ave., Silver Springs, MD 20910. Transporting *foodstuffs* (except frozen) from the facilities used by RJR Foods, Inc., at or near Cambridge and Secretary, MD, to Tampa, FL, Atlanta, GA, Kansas City, MS, Kennery, LA, Jackson, OH, and Garland and Houston, TX. (Hearing site: Washington, DC.)

MC 69052 (Sub-41F), filed February 26, 1980. Applicant: REED TRUCKING COMPANY, a corporation, P.O. Box 216, Milton, DE 19968. Representative: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania Avenue and 13th Street NW., Washington, DC 20004. Transporting *flour* (except in bulk), from Buffalo, NY, to points in Wicomico and Worcester Counties, MD. (Hearing site: Cambridge, MD.)

MC 71593 (Sub-61F), filed February 21, 1980. Applicant: FORWARDERS TRANSPORT, INC., 1608 E. Second St., Scotch Plains, NJ 07076. Representative: David W. Swenson (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk; and those requiring special equipment), in containers or in trailers, from points in AR, IL, IN, IA, KY, MI, MN, MS, OH, TN, TX, and WI, to Los Angeles, San Francisco, and San Diego, CA, Jacksonville and Miami, FL, New Orleans, LA, Baltimore, MD, Boston, MA, New York, NY, Houston, TX, and Norfolk, VA, having a prior or subsequent movement by water. (Hearing site: Newark, NJ, or Washington, DC.)

MC 87103 (Sub-48F), filed March 3, 1980. Applicant: MILLER TRANSFER AND RIGGING CO., a DE corporation, P.O. Box 322, Cuyahoga Falls, OH 44222. Representative: Edward P. Bocko (same address as applicant). Transporting (1) *conveying, dredging, dumping and hoisting buckets,* (2) *parts and accessories* for the commodities in (1), and (3) *equipment, materials, and supplies* used in the manufacture or distribution of the commodities in (1) and (2) (except commodities in bulk) between the facilities of Esco Corporation, at Danville, IL, on the one hand, and, on the other, points in the US (except AK and HI), restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: Indianapolis, IN, or Washington, DC.)

Note.—Dual operations may be involved.

MC 87103 (Sub-48F), filed March 3, 1980. Applicant: MILLER TRANSFER AND RIGGING CO., a DE corporation, P.O. Box 322, Cuyahoga Falls, OH 44222. Representative: Edward P. Bocko (same address as applicant). Transporting (1) *iron and steel and iron and steel fabrication,* and (2) *equipment, materials, and supplies* used in the manufacture or distribution of the commodities in (1) above (except commodities in bulk) between the facilities of Roanoke Iron and Bridge Works, Inc., at Roanoke, VA, on the one hand, and, on the other, points in the US (except AK and HI), restricted to the transportation of traffic originating at or destined to the above facilities. (Hearing site: Washington, DC, or Richmond, VA.)

Note.—Dual operations may be involved.

MC 99493 (Sub-9F), filed March 6, 1980. Applicant: CENTRAL STORAGE & TRANSFER CO. OF HARRISBURG, P.O. Box 2821, Harrisburg, PA 17105. Representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and motor vehicles), between Baltimore, MD, on the one hand, and, on the other, points in Adams, Berks, Blair, Bucks, Carbon, Centre, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Franklin, Huntingdon, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Schuylkill, Snyder, Union, Wyoming and York Counties, PA. (Hearing site: Harrisburg, PA or Washington, DC.)

MC 106603 (Sub-216F), filed: March 4, 1980. Applicant: DIRECT TRANSIT LINES, INC., 200 Colrain St. SW., P.O. Box 8099, Grand Rapids, MI 49508. Representative: Edwin M. Snyder, 22375 Haggerty Rd., P.O. Box 400, Northville, MI 48167. Transporting (1) *composition board, plywood, and asbestos board,* from Dowagiac, MI, to those points in the US in and east of ND, SD, NE, KS, OK, and TX; and (2) *materials and supplies,* (except commodities in bulk) used in the manufacturing and distribution of the commodities in (1) above, in the reverse direction. (Hearing site: Washington, DC, or Chicago, IL.)

MC 107403 (Sub-1323F), filed February 29, 1980. Applicant: MATLACK, INC.,

Ten W. Baltimore Ave., Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (address same as applicant). Transporting (1) *aluminum sulphate,* from Baltimore, MD, to Washington, DC, (2) *salt,* from Detroit, MI, to points in IN and OH, (3) *wheat flour,* from Columbus, OH, to Jackson, TN, and points in IL, and (4) *ground limestone,* from points in Talladega County, AL, to points in IN, restricted in 1 thru 4 to transportation of traffic in bulk, in tank vehicles. (Hearing site: Washington, DC.)

MC 107403 (Sub-1324F), filed March 3, 1980. Applicant: MATLACK, INC., Ten West Baltimore Ave., Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr., (address same as applicant). Transporting (1) *liquid calcium chloride solution,* (except in bulk, in tank vehicles), from Germantown, WI, to Wapakoneta, OH, (2) *petroleum oil* (except in bulk, in tank vehicles) from Santa Fe Springs, CA, to Belle Chasse, LA, and points in TX, (3) *gasoline* (except in bulk, in tank vehicles) from Fall Rock, KY, to Lyle, IN, and (4) *asphalt,* (except in bulk, in tank vehicles) from Pryor, OK, to Ennis, TX. (Hearing site: Washington, DC.)

MC 107403 (Sub-1325F), filed March 3, 1980. Applicant: MATLACK, INC., Ten West Baltimore Avenue., Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr., (address same as applicant). Transporting *chemicals,* in bulk, in tank vehicles, from Bauxite, El Dorado and Little Rock, AR, to points in LA, TX, TN, MS, AL, NJ, and OH. (Hearing site: Washington, DC.)

MC 108053 (Sub-175F), filed March 3, 1980. Applicant: LITTLE AUDREY'S TRANSPORTATION CO., INC., P.O. Box 129, Fremont, NE 68025. Representative: Arnold L. Burke, 180 N. LaSalle Street, Chicago, IL 60601. Transporting (1) *foodstuffs* (except commodities in bulk) from Fairmont, MN, to points in the US in and west of MT, WY, CO, and AZ (except AK and HI) and (2) *foodstuffs* (except meats and packinghouse products as described in sections A and C of Appendix I to the report in Description in Motor Carrier Certificates, 61 M.C.C. 209 and 766, and except commodities in bulk) from Mason City and Britt, IA, to points in the US in and west of MT, WY, CO, and AZ (except AK and HI), restricted in (1) and (2) to transportation of traffic originating at the named points and destined to the indicated destinations. (Hearing site: Omaha, NE.)

MC 111812 (Sub-662F), filed July 23, 1979. Applicant: MIDWEST COAST TRANSPORT, INC., 1600 East Benson Road, P.O. Box 1233, Sioux Falls, SD 57104. Representative: Lamoyne Brandsma (same address as applicant). Transporting *confectionery,* from the facilities of Switzer Candy Co., Division of Beatrice Foods, Inc., at or near St. Louis, MO, to points in AZ, CA, CO, ID, MT, NV, OR, UT and WA, restricted to transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: St. Louis, MO.)

MC 114273 (Sub-708F), filed March 4, 1980. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Transporting *general commodities,* (except commodities in bulk, in tank vehicles), (1) between Kansas City and St. Louis, MO, Cedar Rapids, IA, and Minneapolis, MN, and (2) between points in (1) above, on the one hand, and, on the other, points in IL, IN, IA, GA, MN, MD, MO, NJ, NY, OH, OK, PA, TN, and TX, restricted to the transportation of traffic originating at or destined to the facilities of Apache Hose & Rubber of Cedar Rapids, IA. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114273 (Sub-709F), filed March 4, 1980. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Transporting *general commodities,* (except commodities in bulk, in tank vehicles), from points in PA, and NY to points in IL and MO. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114273 (Sub-711F), filed March 4, 1980. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Transporting *general commodities,* (except commodities in bulk, in tank vehicles), between the facilities of Outboard Marine Corporation, at or near Galesburg and Peoria, IL, on the one hand, and, on the other, Kenosha, Milwaukee, and Racine, WI, and points in KY, MN, and TN. (Hearing site: Chicago, IL, or Washington, DC.)

MC 128633 (Sub-25F), filed February 19, 1980. Applicant: LAUREL HILL TRUCKING CO., a corporation, 614 New County Rd., Secaucus, NJ 07094. Representative: William J. Augello, 120 Main St., P.O. Box Z, Huntington, NY 11743. *Contract carrier,* transporting (1) *drugs, toilet preparations, cleaning compounds, scouring compounds, disinfectants, disposable towels, chemicals, dyes, paints, stains, varnishes, pigments, plastics, glass bottles, and synthetic fibre,* (except commodities in bulk, in tank vehicles), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of drugs and toilet preparations, (except commodities in bulk, in tank vehicles), between the facilities used by Sterling Drug, Inc., its divisions, (a) Glenbrook Laboratories, (b) The Hilton-Davis Chemicals Co., (c) Lehn & Fink Products Co., (d) Sterling Organics, (e) Sterling-Winthrop Research Institute, and (f) Winthrop Laboratories, and its subsidiaries (a) Breon Laboratories, Inc., (b) Cook-Waite Laboratories, Inc., (c) The d-Con Company, Inc., (d) Dorothy Gray, Ltd., (e) Minwax Company, Inc., (f) Sterling Products International, Incorporated, (g) Sterwin Chemicals, Inc., (h) Sterwin Laboratories, Inc., (i) The Sydney Ross Co., (j) Tussy Cosmetics, Inc., (k) Valmont, Inc., (l) Winthrop Products, Inc., and (m) Zimpro, Inc., at points in GA, NC, and SC, on the one hand, and, on the other, the named facilities, at points in NJ and PA, under continuing contract(s) with Sterling Drug, Inc., of New York, NY. (Hearing site: New York, NY, or Washington, DC.)

Note.—Dual operations may be involved.

MC 129613 (Sub-31F), filed: February 29, 1980. Applicant: ARTHUR H. FULTON, INC., P.O. Box 86, Stephens City, VA 22655. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. *Contract carrier,* transporting *plastic articles,* from Norfolk, VA, Scranton, PA, and Lebanon, IN, to those points in the U.S. in and east of WI, IL, KY, TN, and MS, under continuing contract(s) with the General Foam Plastics Corp., of Norfolk, VA. (Hearing site: Norfolk, VA.)

Note.—Dual operations may be involved.

MC 134142 (Sub-17F), filed February 26, 1980. Applicant: BROWN REFRIGERATED EXPRESS, INC., P.O. Box 603, Fort Scott, KS 66701. Representative: Wilburn L. Williamson, Suite 616—East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. *Contract carrier,* transporting *meats, packing-house products, and commodities used by packing houses,* as described in Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except dairy products, hides, and commodities in bulk, in tank vehicles), between the facilities of R. B. Rice Company, Inc., at St. Louis, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with R. B. Rice Company, Inc., of Lee's Summit, MO. (Hearing site: Kansas City, MO.)

Note.—Dual operations may be involved.

MC 135382 (Sub-3F), filed February 22, 1980. Applicant: S & S RENTAL, INC., d.b.a. MIDWAY CHARTER COACH, 2601 Baker St., Baltimore, MD 21216.

Representative: Jeremy Kahn, Suite 733, Investment Bldg., 1511 K St. NW., Washington, DC 20005. Transporting *passengers and their baggage,* (a) in round-trip charter operations, beginning and ending at Baltimore and Essex, MD, and extending to points in the U.S. (except AK, CT, DE, FL, GA, HI, IL, ME, MA, NC, NH, NJ, NY, OH, PA, RI, SC, VT, VA, WV, and DC), and (b) in round-trip special operations, in sightseeing and pleasure tours, beginning and ending at Baltimore and Essex, MD, and extending to points in the U.S. (except AK and HI). (Hearing site: Baltimore, MD.)

MC 140713 (Sub-1F), filed February 29, 1980. Applicant: BEATTIE & SANGER, INC., Rt. 10, Box 361, Yakima, WA 98903. Representative: Richard L. Wiehl, 415 N. Third St., P.O. Box 526, Yakima, WA 98907. *Contract carrier,* transporting *heavy machinery,* between Yakima, Pasco, and Walla Walla, WA, on the one hand, and, on the other, points in Umatilla, Wheeler, Gilliam, and Morrow Counties, OR, under continuing contract(s) with Inland Machinery Co. of Yakima, WA. (Hearing site: Yakima or Seattle, WA.)

MC 141443 (Sub-60F), filed February 25, 1980. Applicant: JOHN LONG TRUCKING, INC., 1030 East Denton, Sapulpa, OK 74066. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Transporting (1) *malt beverages,* from points in Jefferson County, CO, to points in AR, and (2) *materials, equipment, and supplies* used in the manufacture or distribution of the commodities in (1) in the reverse direction. (Hearing site: Tulsa, OK, or Dallas, TX.)

Note.—Dual operations may be involved.

MC 143103 (Sub-8F), filed March 3, 1980. Applicant: CHEROKEE LINES, INC., P.O. Box 152, Cushing, OK 74023. Representative: Donald L. Stern, Suite 610, 7171 Mercy Rd., Omaha, NE 68106. *Contract carrier,* transporting *confectionery* (except commodities in bulk), from the facilities of E. J. Brach & Sons, at Chicago, IL, to points in GA, MD, MO, NJ, NY, OH, OK, PA, TX, and WV, under continuing contract(s) with E. J. Brach and Sons, of Chicago, IL. (Hearing site: Chicago, IL.)

Note.—Dual operations may be involved.

MC 143383 (Sub-7F), filed February 28, 1980. Applicant: DALE E. NICHOLSON, P.O. Box 97, Potosi, MO 63664. Transporting *mine props and timbers,* from points in Washington County, MO, to points in IL on and south of U.S. Hwy 36. (Hearing site: St. Louis or Jefferson City, MO.)

MC 144303 (Sub-16F), filed February 27, 1980. Applicant: YOUNGBLOOD TRUCKS LINE, INC., U.S. Hwy 25S, P.O. Box 1048, Fletcher, NC 28732. Representative: Charles Ephraim, Suite 600, 1250 Connecticut Ave., NW., Washington, DC 20036. *Contract carrier,* transporting (1) *copper rods, and copper wire,* and (2) *copper scrap,* between the facilities of the Essex Group, Inc., at or near Three Rivers, MI, and Fort Wayne, Marion, and Vincennes, IN, on the one hand, and, on the other, points in GA, NC, and SC, under continuing contract(s) with the Essex Group, Inc., of Fort Wayne, IN. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 144572 (Sub-36F), filed February 21, 1980. Applicant: MONFORT TRANSPORTATION COMPANY, a corporation, P.O. Box G, Greeley, CO 80631. Representative: John T. Wirth, 717 17th St., Suite 2600, Denver, CO 80202. Transporting (1) *rolled steel,* from Chicago, IL, and Columbus, OH, to the facilities of Dana Corporation, at Colorado Springs, CO; and (2) *clutches, parts for clutches, iron castings, and steel castings,* from St. Peters, MO, to the facilities of Dana Corporaion, at Colorado Springs, CO. (Hearing site: Denver, CO.)

MC 144702 (Sub-3F), filed February 21, 1980. Applicant: ASHEVILLE-NEW YORK MOTOR EXPRESS, INC., P.O. Box 9907, Asheville, NC 28805. Representative: Eric Meierhoefer, Suite 423, 1511 K St. NW., Washington, DC 20005. Transporting *heat transfer print paper,* from New York, NY, to Mountain City, TN, and points in SC. (Hearing site: New York, NY.)

MC 146402 (Sub-18F), filed February 28, 1980. Applicant: CONALCO CONTRACT CARRIER, INC., P.O. Box 968, Jackson, TN 38301. Representative: Charles W. Teske (same address as applicant). Transporting *canned and preserved foodstuffs, beverage preparations, chocolate coating, dessert preparations, sauces, and syrups,* (except commodities in bulk, in tank vehicles), from the facilities of J. Hungerford Smith, Division of Hunt-Wesson Foods, Inc., at Humboldt, TN, to points in the US (except AK and HI). (Hearing site: Atlanta, GA, or Washington, DC.)

MC 149152 (Sub-2F), filed February 29, 1980. Applicant: L & L MOTOR FREIGHT, INC., P.O. Box 26767, Oklahoma City, OK 73126. Representative: Greg E. Summy, P.O. Box 1540, Edmond, OK 73034. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Oklahoma City and Tulsa, OK, over U.S. Hwy 66, serving all intermediate points, (2) between Oklahoma City and Checotah, OK, over Interstate Hwy 40, serving no intermediate points, and serving Checotah for purposes of joinder only, (3) between Tulsa and McAlester, OK: from Tulsa over U.S. Hwy 75 to junction Indian Nation Turnpike, then over Indian Nation Turnpike to McAlester, and return over the same route, serving no intermediate points, (4) between Pryor and Muskogee, OK, over U.S. Hwy 69, serving all intermediate points, and serving Tallahassee, Porter, Redbird, and Coweta, OK as off-route points, (5) between Muskogee and McAlester, OK, over U.S. Hwy 69, serving no intermediate points, (6) between Tulsa, OK and junction OK Hwy 33 and U.S. Hwy 69, over OK Hwy 33, serving all intermediate points, (7) between Tulsa and Muskogee, OK, over U.S. Hwy 64, serving all intermediate points (except Bixby), and serving Jamesville. Yahola, and Taft, OK as offroute points, (8) between Oklahoma City and Tulsa, OK, over Interstate Hwy 44, as an alternate route for operating convenience only, (9) between Tulsa and Muskogee, OK, over the Muskogee turnpike, as an alternate route for operating convenience only, serving no intermediate points, (10) between Pryor, OK and junction OK Hwy 82 and U.S. Hwy 66: from Pryor over OK Hwy 20 to Salina, then over OK Hwy 82 to junction U.S. Hwy 66, an return over the same route, serving all intermediate points, and serving Cleora, Ketchum, Disney, and Strang, OK as off-route points, (11) between Pryor, OK and junction U.S. Hwys 66 and 69, over U.S. Hwy 69, serving all intermediate points, (12) between Adair and Langley, OK, over OK Hwy 28, serving all intermediate points, (13) between Tulsa, OK and junction U.S. Hwy 66 and OK Hwy 82, over U.S. Hwy 66, as an alternate route for operating convenience only, serving no intermediate points, (14) between Tulsa and Vinita, OK, over Interstate Hwy 44, as an alternate route for operating convenience only, serving no intermediate points, and serving Vinita for purposes of joinder only, and (15) between Pryor and Claremore, OK, over OK Hwy 20, as an alternate route for operating convenience only, serving no intermediate points, and serving Claremore for purposes of joinder only. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either

file an application under 49 U.S.C. § 11343(a) or submit an affidavit indicating why such approval is unnecessary. (Hearing site: Tulsa, OK.)

Note.—Dual operations may be involved.

MC 150053 (Sub-1F), filed February 28, 1980. Applicant: JERRY BELL, R.R. No. 2, P.O. Box 6, Columbus Junction, IA 52738. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *meats, meat products, and meat by-products,* (except commodities in bulk), from the facilities used by the Rath Packing Company, at Burlington and Columbus Junction, IA, to points in AR, CO, IN, IL, KS, KY, LA, MI, MN, MO, MS, NE, OH, OK, TN, TX, SD, and WI, restricted to the transportation of traffic originating at the named origin facilities. (Hearing site: Des Moines, IA.)

MC 150103 (Sub-1F), filed February 28, 1980. Applicant: SCHWEIGER INDUSTRIES, INC., 116 West Washington St., Jefferson, WI 53549. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703. *Contract carrier,* transporting *plastic foam,* (a) from Carlstadt, NJ. to Chicago, IL, and (b) from Hanging Rock, OH, to points in IN, IL, IA, KY, MI, MN, and WI, under continuing contract(s) with Republic Packaging Corporation, of Chicago, IL. Conditions: (1) Applicant shall conduct separately its for-hire carriage and other business operations; (2) shall maintain separate accounts and records for each operation; and (3) shall not transport property as both a private and for-hire carrier in the same vehicle at the same time. (Hearing site: Madison, WI or Chicago, IL.)

MC 150103 (Sub-2F), filed February 28, 1980. Applicant: SCHWEIGER INDUSTRIES, INC., 116 West Washington St., Jefferson, WI 53549. Representative: Michael J. Wyngaard, 150 East Gilman St., Madison, WI 53703. *Contract carrier,* transporting *expanded cellular plastic products,* from the facilities of Tenneco Chemicals, Inc., at or near (a) Hazelton, PA, and (b) East Rutherford, Rockaway, and Carlstadt, NJ, to points in IL, IN, KY, MI, MN, OH, and WI, under continuing contract(s) with Tenneco Chemicals, Inc., of Paramus, NJ, Foam Division of Tenneco, Inc. Conditions: (1) Applicant shall conduct separately its for-hire carriage and other business operations; (2) shall maintain separate accounts and records for each operation; and (3) shall not transport property as both a private and for-hire carrier in the same vehicle at the same time. (Hearing site: Madison or Milwaukee, WI.)

MC 150103 (Sub-3F), filed February 29, 1980. Applicant: SCHWEIGER INDUSTRIES, INC., 116 West Washington St., Jefferson, WI 53549. Representative: Michael J. Wyngaard, 150 East Gilman St., Madison, WI 53703. *Contract carrier,* transporting *synthetic staple fiber and synthetic yarn,* from Rossville, GA to Jefferson, WI, under continuing contract(s) with Borg Textile Corporation of Chattanooga, TN, a division of Bunker-Ramo. Conditions: (1) Applicant shall conduct separately its for-hire carriage and other business operations; (2) shall maintain separate accounts and records for each operation; and (3) shall not transport property as both a private and for-hire carrier in the same vehicle at the same time. (Hearing site: Madison, WI or Chicago, IL.)

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Decided: April 25, 1980.

By the Commission, Review Board Number 2, Members Eaton, Liberman and Jensen.

MC 23618 (Sub-62F), filed February 25, 1980. Applicant: McALISTER TRUCKING COMPANY, d.b.a. MATCO, 2041 S. Treadaway Blvd., Abilene, TX 79604. Representative: E. Larry Wells, P.O. Box 45538, Dallas TX 75245. Transporting (1)(a) *commodities* the transportation of which, because of size or weight, require the use of special equipment, and (b) *contractors' materials and supplies,* in mixed loads with the commodities in (1)(a) above, (2)(a) *self-propelled articles,* each weighing 15,000 pounds or more, and (b) *equipment, parts, and supplies* for the commodities in (2)(a) above, and (3) *metal and metal articles* between points in AZ, CA, CO, ID, IL, IN, KY, KS, LA, MI, MO, MT, NE, NV, NM, ND, OK, SD, TX, UT, and WY. (Hearing site: Dallas, TX.)

MC 29079 (Sub-111F), filed May 24, 1979, previously noticed in Federal Register issue of November 23, 1979. Applicant: BRADA MILLER FREIGHT SYSTEM, INC., P.O. Box 935, 1210 S. Union St., Kokomo, IN 46901. Representative: Chandler Van Orman, 1729 H St. NW., Washington, DC 20006. Transporting (1) *pipe, cable, wire, sheet steel, and strip steel,* from the facilities of Triangle PWC, Inc., at Glendale, WV, to points in DE, IL, IN, KY, MD, MI, MO, NY, NJ, NC, OH, PA, SC, VA, WI, and DC, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, in the reverse direction. (Hearing site: Washington, DC.)

Note.—This republication changes the facilities location to Glendale, WV, and adds NJ to the territory description.

MC 31389 (Sub-287F), filed November 29, 1979. Applicant: McLEAN TRUCKING COMPANY, a corporation, 1920 West First Street, Winston-Salem, NC 27104. Representative: David F. Eshelman, P.O. Box 213, Winston-Salem, NC 27102. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities, in bulk and those requiring special equipment), (1) between Chicago, IL, and Madison, WI, over U.S. Hwy 14, (2) between Chicago, IL, and Manitowoc, WI: from Chicago over U.S. Hwy 41 to Milwaukee, WI, then over U.S. Hwy 141 to Manitowoc, and return over the same route, (3) between Milwaukee, and Fond du Lac, WI, over U.S. Hwy 41, (4) between Madison, WI, and St. Paul, MN: from Madison over U.S. Hwy 14 to junction U.S. Hwy 61, then over U.S. Hwy 61 to St. Paul, and return over the same route, (5) between Madison and Manitowoc, WI, over U.S. Hwy 151, (6) between Milwaukee and Madison, WI, over U.S. Hwy 18, (7) between junction U.S. Hwys 14 and 61 and Davenport, IA, over U.S. Hwy 61, (8) between Chilton and Grafton, WI, over WI Hwy 57, (9) between Milwaukee, WI, and junction U.S. Hwys 16 and 12, near Wisconsin Dells, WI, over U.S. Hwy 16, (10) between junction U.S. Hwy 151 and WI Hwy 26, near Waupun, WI, and Janesville, WI, over WI Hwy 26, (11) between Prairie du Sac, and Grafton, WI, over WI Hwy 60, (12) between Milwaukee and Beloit, WI, over WI Hwy 15, (13) between Chicago, IL, and St. Paul, MN, over U.S. Hwy 12, (14) between Portage and Waupun, WI: from Portage over WI Hwy 33 to Fox Lake, then over WI Hwy 68 to Waupun, and return over the same route, (15) between Racine, WI, and junction WI Hwy 11 and U.S. Hwy 61, over WI Hwy 11, (16) between Madison, WI, and junction WI Hwys 11 and 69, near Monroe, WI: from Madison over U.S. Hwy 18 to junction WI Hwy 69 at Verona, WI, then over WI Hwy 69 to junction WI Hwy 11, and return over the same route, (17) between Sheboygan and Fond du Lac, WI, over WI Hwy 23, (18) between Manitowoc and Peebles, WI: from Manitowoc over WI Hwy 42 to junction WI Hwy 149, then over WI Hwy 149 to Peebles, and return over the same route, (19) between Plymouth and Beaver Dam, WI: from Plymouth over WI Hwy 67 to junction WI Hwy 28, then over WI Hwy 28 to Horicon, then over WI Hwy 33 to Beaver Dam, and return over the same route, (20) between Theresa and Port Washington, WI: from Theresa over WI Hwy 28 to Boltonville, WI, then over WI Hwy 84 to Port Washington, and return over the same route, (21) between Fond du Lac, WI, and junction U.S. Hwys 41 and 45, near Richfield, WI, over U.S.

Hwy 45, (22) between Horicon and Port Washington, WI, over WI Hwy 33, (23) between Hartford and New Munster, WI, over WI Hwy 83, (24) between Kenosha and Delavan, WI, over WI Hwy 50, (25) between Portage, WI, and Rochelle, IL, over U.S. Hwy 51, (26) between Milwaukee and Waterford, WI, over WI Hwy 36, (27) between Watertown and Springfield Corners, WI, over WI Hwy 19, (28) between junction WI Hwys 33 and 73, near Randolph, WI, and junction WI Hwy 89 and U.S. Hwy 18, near Jefferson, WI; from junction WI Hwys 33 and 73, over WI Hwy 73 to Columbus, then over WI Hwy 89 to junction U.S. Hwy 18, and return over the same route; serving in connection with routes (1) to (28) above, South Beloit, IL, and points in Rock, Dane, Walworth, Racine, Kenosha, Waukesha, Jefferson, Columbia, Dodge, Washington, Ozakee, Sheboygan, and Manitowoc Counties, WI, as intermediate and off-route points, and serving all other intermediate points for purposes of joinder only. (Hearing site: Milwaukee, WI, or Chicago, IL.)

Note.—(1) Applicant intends to tack this authority with existing regular-route authority. (2) Dual operations may be involved.

MC 108119 (Sub-151F), filed April; 27, 1979. Applicant: E. L. MURPHY TRUCKING COMPANY., P.O. Box 43010, St. Paul, MN 55164. Representative: James L. Nelson, 1241 Pierce Butler Route, St. Paul, MN 55104. Transporting (1) *cranes, and contractors' and construction equipment,* and (2) *attachments, parts, and accessories* for the commodities in (1) above, between points in the United States, restricted to traffic originating at or destined to the facilities of Essex Crane Rental Corp. (Hearing site: Birmingham, AL, or Atlanta, GA.)

MC 108119 (Sub-243), filed February 26, 1980. Applicant: E. L. MURPHY TRUCKING COMPANY, a corporation, P.O. Box 43010, St. Paul, MN 55164. Representative: James L. Nelson, 1241 Pierce Butler Route, St. Paul, MN 55164 55104. Transporting *iron and steel posts, and iron and steel pipe,* from Bossier City, LA, to the facilities of Hurricane Steel Industries, Co., in FL, NM, TX, NC, GA, AL, and OK. (Hearing site: Houston or Dallas, TX.)

MC 108119 (Sub-244F), filed February 27, 1980. Applicant: E. L. MURPHY COMPANY, a corporation, P.O. Box 43010, St. Paul, MN 55164. Representative: James L. Nelson, 1241 Pierce Butler Route, St. Paul, MN 55104. Transporting *electrical switchgears and circuit breakers,* from the facilities of Siemens-Allis, Inc., at Wendell, NC, to points in the United States (except AK and HI). (Hearing site: Milwaukee, WI, or Chicago, IL.)

MC 109818 (Sub-82F), filed February 28, 1980. Applicant: WENGER TRUCK LINE, INC., P.O. Box 3427, Davenport, IA 52804. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *flour,* in bags, (1) from Omaha, NE, to Moline and Chicago, IL, and (2) from Fergus Falls, MN, to points in IL. (Hearing site: Omaha, NE.)

MC 116229 (Sub-8F), filed February 28, 1980. Applicant: MONROE TRANSPORT, INC., P.O. Box 172, Union, WV 24983. Representative: John M. Friedman, 2930 Putnam Ave., Hurricane, WV 25526. Transporting *animal and poultry feed,* and *animal and poultry health products,* from Circleville, OH, and Louisville, KY, to points in WV. (Hearing site: Charleston, WV.)

MC 116519 (Sub-84F), filed February 26, 1980. Applicant: FREDERICK TRANSPORT LIMITED, R.R. #6, Chatham, Ontario, Canada N7M 5J6. Representative: Jeremy Kahn, Suite 733 Investment Bldg., 1511 K St., NW, Washington DC 20005. In foreign commerce only, transporting *such commodities* as are dealt in or used by manufacturers and distributors of marine engines, from Stillwater, OK, to ports of entry on the international boundary line between the US and Canada in MI and NY. (Hearing site: Washington, DC.)

MC 118468 (Sub-63F), filed February 21, 1980. Applicant: UMTHUN TRUCKING CO., a corporation, 910 South Jackson St., Eagle Grove, IA 50533. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Contract carrier,* transporting (1) *building materials,* and *materials, equipment, and supplies* used in the manufacture and distribution of building materials, between points in CO, IA, IL, KS, MI, MN, MO, NE, ND, SD, WI, and WY, and (2)(a) *pipe and pipe fittings,* and (b) *materials, equipment, and supplies* used in the manufacture, distribution, or installation of the commodities in (2)(a), between points in CO, KS, MN, ND, SD, and WY, under continuing contract(s) in (1) and (2) with CertainTeed Corporation, of Valley Forge, PA. (Hearing site: Chicago, IL, or St. Paul, MN.)

Note.—Dual operations may be involved.

MC 118899 (Sub-10F), filed February 28, 1980. Applicant: BALTIMORE TANK LINES, INC., 180 Eighth Ave., Glen Burnie, MD 21061. Representative: Lawrence E. Lindeman, 425 13th St., Suite 1032, Washington, DC 20004. Transporting *liquid fertilizer,* between Baltimore, MD, on the one hand, and, on the other points in DE. (Hearing site: Washington, DC.)

MC 119988 (Sub-226F), filed November 4, 1979. Applicant: GREAT WESTERN TRUCKING CO., INC., P.O. Box 1384, Lufkin, TX 75901. Representative: Hugh T. Matthews, 2340 Fidelity Union Tower, Dallas, TX 75201. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between points in the United States (except AK and HI), restricted to traffic originating at or destined to the facilities of Phillips Petroleum Company, Phillips Fibers Corporation, and Phillips Chemical Company, and (2) between the facilities of Phillips Products Company at Houston, TX, on the one hand, and on the other, points in the United States (except AK and HI), restricted to traffic originating at or destined to the named facilities. (Hearing site: Dallas, TX.)

MC 121598 (Sub-4F), filed October 9, 1979. Applicant: SHELBYVILLE EXPRESS, INC., Deery St., P.O. Box 187, Shelbyville, TN 37160. Representative: Walter Harwood, P.O. Box 15214, Nashville, TN 37215. Over regular routes, transporting *general commodities,* (except household goods as defined by the Commission, classes A and B explosives, commodities in bulk, and those requiring special equipment), (1) between Nashville and Shelbyville, TN, over U.S. Hwy 41–A, serving all intermediate points, and points within 5 miles of Shelbyville as off-route points, (2) between Shelbyville and Memphis, TN, (a) from Shelbyville over U.S. Hwy 231 to Fayetteville, then over U.S. Hwy 64 to Memphis, and return over the same route, serving no intermediate points, and (b) from Shelbyville over U.S. Hwy 231 to junction Interstate Hwy 24, then over Interstate Hwy 24 to Nashville, then over Interstate Hwy 40 to Memphis, and return over the same route, serving Nashville as an intermediate point, restricted in routes (2) (a) and (b) against the transportation of traffic originating at or destined to points in Davidson County, TN, on the one hand, and, on the other, originating at or destined to Memphis, TN, and points in its commerical zone; (3) between Memphis, TN and Greenville, MS, from Memphis over U.S. Hwy 61 to Clarksdale, MS, then over MS Hwy 322 to junction MS Hwy 1, then over MS Hwy 1 to Greenville, and return over the same route, serving all intermediate points between Clarksdale (including Clarksdale) and Greenville, and serving off-route points in MS within an area

bounded by the above described route between Clarksdale and Greenville, and then from Greenville over U.S. Hwy 82 to Greenwood, then over MS Hwy 7 to junction MS Hwy 35, then over MS Hwy 35 to junction MS Hwy 32, at or near Charleston, then over MS Hwy 32 to junction U.S. Hwy 49–E, then over U.S. Hwy 49–E to junction U.S. Hwy 49 and then over U.S. Hwy 49 to Clarksdale; (3) between Memphis, TN, and Greenwood, MS, from Memphis over Interstate Hwy 55 to junction U.S. Hwy 82, then over U.S. Hwy 82 to Greenwood, and return over the same route, serving no intermediate points, and (5) between Greenville, MS, and Monroe, LA, from Greenville over U.S. Hwy 82 to junction U.S. Hwy 165, then over U.S. Hwy 165 to Monroe, and return over the same route, serving all intermediate points. Condition: Issuance of a certificate of public convenience and necessity is subject to either (a) the prior or coincidental cancellation, at applicant's written request, of the outstanding certificates of registration in MC 121598 and MC 121598 Sub 1, or (b) the successful conversion of those certificates of registration to certificates of public convenience and necessity via appropriate applications.

Note.—Applicant proposes to tack this authority with its otherwise authorized regular-route operations.

MC 126118 (Sub-227F), filed February 27, 1980. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: David R. Parker, P.O. Box 81228, Lincoln, NE 68501. Transporting *such commodities* as are dealt in by manufacturers and distributors of pet food and zoo animal food (except commodities in bulk, in tank vehicles), between points in the United States (except AK and HI).

Note.—Dual operations may be involved.

MC 134349 (Sub-35F), filed December 17, 1979. Applicant: B.L.T. CORPORATION, 405 Third Ave., Brooklyn, NY 11215. Representative: Eugene M. Malkin, Suite 1832, 2 World Trade Center, New York, NY 10048. Contract carrier, transporting (1) *bakery goods,* and (2) *Materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk and those which because of size or weight require the use of special equipment), between the facilities used by Stella D' oro Biscuit Co., Inc., at or near (a) New York, NY, and (b) St. Elmo, IL, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Stella D' oro Biscuit Co., Inc., of Bronx, NY. (Hearing site: New York, NY.)

MC 134689 (Sub-5F), filed March 14, 1979. Applicant: LA ROSA DEL MONTE EXPRESS, INC., 133–135 Tiffany St., Bronx, NY 10459. Representative: Larsh B. Mewhinney, 555 Madison Ave., New York, NY 10022. Transporting *used household goods,* between points in Ashtabula, Cuyahoga, Lake, Lorain, Medina, Portage, Summit, and Trumbull Counties, OH, restricted to traffic having a prior or subsequent movement by rail. (Hearing site: New York, NY.)

MC 138198 (Sub-12F), filed October 9, 1979 (republication). Applicant: SPD TRUCK LINE, INC., 401 Cottage Street, Abilene, KS 67401. Representative: William B. Barker, 641 Harrison, Topeka, KS 66603. Contract carrier transporting *such commodities* as are used or dealt in by school supply houses, between the facilities of School Specialty Supply, Inc., at or near Salina, KS on the one hand, and, on the other points in AR, CO, IL, IA, KS, MN, MO, NE, NM, OK, SD, TX, and WY, under continuing contract(s) with School Specialty Supply, Inc. (Hearing site: Kansas City, MO.)

Note.—This republication shows the origin as Salina, KS in lieu of Salina, MO as published March 6, 1980.

MC 140349 (Sub-3F), filed February 26, 1980. Applicant: COPE/BESTWAY EXPRESS, INC., 2024 Harvey Rd., Grand Island, NY 14072. Representative: D. Thomas Cope (same as applicant). Contract carrier, transporting (1) *abrasives and insulating materials,* (2) *materials* used in the manufacture of the commodities in (1) above, and (3) *refractory products,* between the facilities of The Carborundum Company, in Niagara County, NY, on the one hand, and, on the other, points in CT, IL, IN, MA, MI, NH, NJ, OH, PA, and RI, under continuing contract(s) with The Carborundum Company, of Niagara Falls, NY. (Hearing site: Buffalo, NY, or Washington, DC.)

MC 140289 (Sub-355F), filed February 28, 1980. Applicant: CARGO, INC., P.O. Box 206, U.S. Hwy 20, Sioux City, IA 51102. Representative: David L. King (same address as applicant). Transporting *foodstuffs* (except commodities in bulk, in tank vehicles), between those points in the United States in and east of MT, WY, CO, and NM, restricted to traffic originating at or destined to the facilities of Wilco Trading Company. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 142059 (Sub-127F), filed February 27, 1980. Applicant: CARDINAL TRANSPORT, INC., a DE corporation, 1830 Mound Rd., Joliet, IL 60436. Representative: Jack Riley (same address as applicant). Transporting *Foodstuffs* (except commodities in bulk), from the facilities of Doric Foods Corporation, at or near Findlay, OH, to points in IL, IN, IA, KS, KY, MI, MO, NE, TN, and WI. (Hearing site: Tampa, FL.)

MC 142248 (Sub-1F), filed June 11, 1979. Applicant: SPEEDY STORAGE & CARTAGE, a corporation, 2345 2nd Ave., North Leathbridge, Alberta, Canada T1J 321. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. In foreign commerce only, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between the port of entry on the international boundary line between the United States and Canada at or near Sweet Grass, MT, and Sweet Grass, MT. (Hearing site: Great Falls, MT.)

MC 142508 (Sub-144F), filed February 21, 1980. Applicant: NATIONAL TRANSPORTATION, INC., 10810 South 144th St., P.O. Box 37465, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. Transporting *meats, meat products, and meat by-products,* between points in CO, IL, IN, IA, KY, MI, MN, MO, NE, NJ, NY, OK, OH, PA, TN, and WI, on the one hand, and, on the other, Wilmington, DE, Jacksonville, Miami, and Tampa, FL, Savannah, GA, New Orleans, LA, Boston, MA, Newark, NJ, New York, NY, Charleston, SC, Houston, TX, Philadelphia, PA, Norfolk, VA, and Kenosha, WI, restricted to traffic having a prior or subsequent movement by water. (Hearing site: Boston, MA, or Washington, DC.)

MC 142508 (Sub-146F), filed February 28, 1980. Applicant: NATIONAL TRANSPORTATION, INC., 10810 South 144th St., P.O. Box 37465, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. Transporting *frozen foods,* from the facilities of (a) Louisville Freezer Center at Louisville, KY, and (b) Delaware Freezer Center, at Newark, DE, to points in the United States (except AK and HI). (Hearing site: Louisville, KY, or Philadelphia, PA.)

MC 142508 (Sub-147F), filed February 28, 1980. Applicant: NATIONAL TRANSPORTATION, INC., 10810 South 144th St., P.O. Box 37465, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. Transporting *drugs, toilet preparations, health care products, alunina and magnesium hydroxide,* from Philadelphia, PA, and Lewes, DE, to

points in the United States (except AK, ME, NH, TV, NY, PA, VA, NJ, MD, MA, RI, CT, DE, WV, DC, and HI). (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 145978 (Sub-7F), filed February 27, 1980. Applicant: R & S TRUCKING, INC., 1101 West Russell, Suite 102, Sioux Falls, SD 57104. Representative: A. J. Swanson, P.O. Box 1103, 226 N. Phillips Avenue, Sioux Falls, SD 57101. Transporting (1)(a) *industrial and contractors' equipment,* and (b) *parts, accessories, and supplies* for the commodities in (1)(a) above, between points in SD, on the one hand, and, on the other, points in the United States (except AK and HI), (2) *material handling equipment,* from Fresno, CA, to Sioux Falls, SD, (3) *heating equipment and supplies,* from points in the United States (except AK and HI), to points in SD, (4) *lumber and lumber mill products,* (a) from points in OR, WA, ID, MT, WY, AR, TX, and LA, to points in SD, ND, and MN, (b) from points in OR, WA, MT, ID, and CA, to those points in IA on, north, and west of a line beginning at the Missouri River and extending along U.S. Hwy 20 to junction U.S. Hwy 169, and then along U.S. Hwy 169 to the IA-MN State line, (c) from points in CA to points in SD and MN, and (d) from Sioux Falls, SD, to points in IA, MN, and ND, and (5) fencing and fencing supplies, from points in the United States (except AK, HI, and SD) to Sioux Falls, SD. (Hearing site: Sioux Falls, SD.)

Note.—Dual operations may be involved.

MC 146008 (Sub-2F), filed June 25, 1979. Applicant: JOHN E. AND SHAROON KINNE, Rte. 1 Box 57EE Surface Creek Road, Cedaredge CO 81413. Representative: John E. Kinne (same address as applicant). Transporting *coal,* in bulk, in dump vehicles, between points in Delta and Gunnison Counties, CO, restricted to the traffic having a subsequent movement by rail. (Hearing site: Denver, CO.)

MC 146128 (Sub-9F), filed February 28, 1980. Applicant: MERRITT FOODS COMPANY, a corporation, d.b.a. MERRITT REFRIGERATED SERVICE, 2840 Guinotte, Kansas City, MO 64120. Representative: Arthur J. Cerra, 2100 Ten Main Center, P.O. Box 19251, Kansas City, MO 64141. Transporting *malt beverages,* from Belleville, IL, to Kansas City, MO. Conditions: (1) Applicant shall maintain separate accounts and records for its for-hire carrier operations as distinct from its other business activities, and (2) it shall not at the same time and in the same vehicle transport property both as a private carrier and as a for-hire carrier. (3) The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application for approval of common control under 49 U.S.C. § 11343, or submit an affidavit indicating why such approval is unnecessary.

Note.—Dual operations may be involved.

MC 146149 (Sub-8F), filed June 11, 1979. (republication). Applicant: KENNEDY FREIGHT LINES, INC, 7401 Fremont Pike, Perrysburg, OH 43551. Representative: Paul F. Berry, 275 E. State Street, Columbus, OH 43215. Transporting (1) *glass containers and fibreboard boxes,* and (2) *accessories* for the commodities in (1) above, and (3) *equipment, materials, and supplies* used in the manufacture of the commodities in (1) and (2) above, between Charlotte, MI, South Volney, NY, and points in VA, NC, and GA. (Hearing site: Columbus, OH.)

Note.—Dual operations may be involved. This republication adds GA to the territorial description as published January 15, 1980.

MC 148139F filed August 23, 1979. (repubication). Applicant: SHOPTRUCK, INC., 319 S. Coteau Street, Pierre, SD 57501. Representative: Stanley C. Olsen, Jr., 4601 Excelsior Boulevard, Minneapolis, MN 55416. Transporting *such commodities* as are dealt in by department stores (except commodities in bulk) between the facilities of Shopko Stores, Inc., at Mitchell, SD and points in WI. (Hearing site: Minneapolis, MN.)

Note.—This republication broadens the territorial description as published February 20, 1980.

MC 148488 (Sub-2F), filed December 18, 1979 (republication). Applicant: ROBERT J. FUTCH, d.b.a. BAMBI'S, 206 Clifton Drive, Port Wentworth, GA 31407. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. *Contract carrier* transporting (1) *lumber,* from Port Wentworth, GA, to Greenville, SC, and (2) *molding and materials, supplies and equipment* used in the manufacture of molding, from Greenville, SC, to points in GA, under continuing contract(s) with Lawton Lumber Company, Inc. (Hearing site: Jacksonville, FL or Atlanta, GA.)

Note.—This republication corrects the docket number published as MC 148788 on March 27, 1980.

MC 148737 (Sub-2F), filed March 3, 1980. Applicant: SUNSET EXPRESS CORPORATION, 3665 West 1987 South, Salt Lake City, UT 84104. Representative: Marvin L. Friedland, 376 East 400 South, Suite 300, Salt Lake City, UT 84111. Transporting (1) *ore and mill products,* and (2) *equipment, materials, and supplies* used in mining and milling operations, between points in ID, NV, and UT, on the one hand, and, on the other points in CA, CO, ID, MT, ND, NV, OK TX, UT, and WY. (Hearing site: Salt Lake City, UT, or Denver, CO.)

MC 149369 (Sub-1F), filed February 19, 1980. Applicant: CRAMBLETT TRUCKING, INC., 2232 Avalon Road NW., Carrollton, OH 44615. Representative: James M. Burtch, Jr., 100 East Broad Street, Columbus, OH 43215. Transporting *coal,* from the facilities of Consolidated Coal Company in Allegheny County, PA, to points in OH. (Hearing site: Columbus, OH.)

MC 150099 (Sub-1F), filed February 28, 1980. Applicant: ALL STATE TRUCKING CO., INC., 3400 Mesa Dr., Houston, TX 77013. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. Transporting *iron and steel articles* (1) from Houston, TX, to points in TX, (2) from Houston and Dallas, TX, to points in OK, and (3) from Port of Muskogee, Kingfisher, Oklahoma City, and Port of Catoosa, OK, to Dallas, TX, restricted in (1) above to traffic having a prior movement by water. (Hearing site: Dallas, or Houston, TX.)

Agatha L. Mergenovich,

*Secretary.*

[FR Doc. 80-14162 Filed 5-8-80; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Controlled Substances in Schedules I and II; Final 1980 Revised Aggregate Production Quotas

Section 306 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On March 31, 1980, a notice of the proposed revised aggregate production quotas for 1980 was published in the Federal Register (45 FR 21063-4). All interested parties were invited to comment on or object to the proposed aggregate production quotas on or before April 28, 1980. One comment was received from Knoll Pharmaceutical Company of Whippany, New Jersey.

Regarding hydromorphone, Knoll commented that the proposed revised quota for this substance was insufficient. Knoll further stated that they are preparing data to support their belief and requested that DEA not

finalize the hydromorphone quota until this data was reviewed. DEA has not yet received this data and is therefore allowing Knoll until (15 days after publication of this notice) to submit this information.

No other comments and no requests for hearings were received. Therefore, under the authority vested in the Attorney General by section 306 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 826), and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator of the Drug Enforcement Administration hereby orders that the revised 1980 aggregate production quotas for the below-listed controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

| Basic class | Revised 1980 aggregate production quota |
|---|---|
| SCHEDULE I | |
| 2,5-Dimethoxyamphetamine | 25,000,000 |
| SCHEDULE II | |
| Amobarbital | 3,913,000 |
| Amphetamine | 1,856,000 |
| Anileridine | 150,000 |
| Codeine | 53,000,000 |
| Codeine for Conversion | 3,187,000 |
| Desoxyephedrine | [1]1,824,000 |
| Dihydrocodeine | 1,106,000 |
| Diphenoxylate | 715,000 |
| Diprenorphine | 800 |
| Hydrocodone | 800,000 |
| Levorphanol | 13,000 |
| Meperidine | 11,000,000 |
| Methadone | 1,277,000 |
| Methadone Intermediate | 1,656,000 |
| Methaqualone | 4,266,000 |
| Methylphenidate | 1,443,000 |
| Morphine | 966,000 |
| Morphine for conversion | 57,703,000 |
| Opium (for tinctures, extracts, etc., expressed in terms of USP powdered opium in morphine content) | 2,435,000 |
| Pentobarbital | 18,562,000 |
| Phenmetrazine | 1,012,000 |
| Phenylacetone | 10,000,000 |
| Secobarbital | 7,347,000 |
| Thebaine for Conversion | 2,283,000 |

[1]1,644,000 for 1-desoxyephedrine and 180,000 for methamphetamine.

This order is effective upon publication.

Dated: May 5, 1980.

Peter B. Bensinger,

*Administrator, Drug Enforcement Administration.*

[FR Doc. 80-14290 Filed 5-8-80; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[ETA/OPER Solicitation 8009]

### Grants for Research on Social and Institutional Processes Affecting Hispanic American Employment Outcomes

U.S. Department of Labor, Employment and Training Administration, Office of Policy, Evaluation and Research, announces that it will provide funding for a limited number of grant awards—ranging from $20,000 to $100,000—to support and advance research and development studies contributing to an understanding of how social, economic and institutional factors and processes affect Hispanic American employment outcomes and recommending appropriate policy and program responses. The research work proposed under this solicitation should be aimed at enhancing, testing, or synthesizing knowledge related to this area of research.

Proposals may be submitted by the faculty or staff of colleges, universities, and public or private nonprivate organizations. Awards will be made to institutions/organizations naming the principal investigator.

Grants under this competition will be awarded through the Office of Research and Development on or before September 15, 1980. The deadline for receipt of proposals is June 30, 1980. Copies of the guidelines and instructions for submitting proposals under this invitation may be obtained by writing to: U.S. Department of Labor/ETA, Central Procurement Staff, ATTN: ETA/OPER Soliciation 8009, 601 D Street NW., Room 9432-PHB, Washington, D.C. 20213.

Issue date is expected to be May 20, 1980. Enclose two self-addressed gummed labels with request.

Arvon W. Jordan,

*Chief, Central Procurement Staff.*

[FR Doc. 80-14308 Filed 5-8-80; 8:45 am]

BILLING CODE 4510-30-M

### Temporary Alien Labor Certification Program: 1980 Adverse Effect Wage Rates

AGENCY: U.S. Employment Service, Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Administrator, U.S. Employment Service, announces, pursuant to 20 CFR § 655.207(b), the 1980 adverse effect wage rates, that is, the minimum wage rates which the Department of Labor has determined must be offered and paid by employers of temporary alien agricultural workers. Adverse effect wage rates are established and set to prevent the employment of these aliens from adversely affecting the wages of similarly employed U.S. workers.

EFFECTIVE DATE: May 9, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Bodin (phone: 202-376-6295) or Mr. Kenneth Bell (phone: 202-376-6297), U.S. Employment Service, Employment and Training Administration, U.S. Department of Labor, Suite 8410, 601 D Street NW., Washington, D.C. 20213.

SUPPLEMENTARY INFORMATION:

#### Requirement of Notice

The Department of Labor (DOL) has published regulations at 20 CFR Part 655, Subpart C, for the certification of aliens for temporary employment in the United States in agriculture and logging. In pertinent part, these regulations require the Administrator, U.S. Employment Service, to cause a notice to be published in the Federal Register annually, announcing adverse effect wage rates (AEWRs) for agricultural workers (except sheepherders) in thirteen States and for sugar cane workers in Florida. 20 CFR § 655.207 (1979); as amended at 44 FR 32209 (September 28, 1979); 44 FR 47040 (August 10, 1979); and 44 FR 55825 (September 28, 1979). See also 44 FR 32211 (June 5, 1979); and 44 FR 49664 (August 24, 1979). The 1979 AEWRs were published in the Federal Register at 44 FR 32306 (June 5, 1979); 44 FR 39049 (July 3, 1979); 44 FR 47174 (August 10, 1979); and 44 FR 56052 (September 28, 1979).

#### Methodology

Based upon 1978-79 wage data supplied to DOL by the U.S. Department of Agriculture (USDA), and upon the methodology published at 20 CFR § 655.207, DOL has calculated the 1980 AEWRs. See also 41 FR 25018 (June 22, 1976); 42 FR 40192 (August 9, 1977); and 43 FR 10310 (March 10, 1978).

The AEWRs set out in the table below have been computed for 1980 using the same methodology that has been used by DOL for many years. See 43 FR 10310 (March 10, 1978). The AEWR for each State has been changed from last year's AEWR by the same percentage change as the change in the wage rates of agricultural workers in the State between 1978 and 1979. See 20 CFR § 655.207(b).

On March 11, 1980, a document was published in the Federal Register proposing a new methodology for computing AEWRs. 45 FR 15914; see 45 FR 16500 (March 14, 1980); and 44 FR 59890 (October 16, 1979). Since the comment period on the proposed rulemaking has been extended, the present requirements of 20 CFR § 655.207 and the approach of the harvest season necessitate the publication of this notice document.

### 1980 Adverse Effect Wage Rates

The 1980 AEWRs, along with the 1979 rates and the percentage increases in the various rates over the year are published in the table below. The 1980 rates are effective on May 9, 1980.

**Adverse effect Wage Rates: 1980**

| States | 1979 rates [1] | 1980 rates [2] | Percentage changes |
|---|---|---|---|
| Arizona | $3.67 | $3.3.73 | +1.6 |
| Colorado | 3.59 | 3.79 | +5.6 |
| Connecticut | 2.92 | 3.32 | +13.8 |
| Florida (sugar cane only) | 3.79 | 4.09 | +7.8 |
| Maine | 3.01 | 3.43 | +13.8 |
| Maryland | 3.01 | 3.23 | +7.3 |
| Massachusetts | 2.90 | 3.30 | +13.8 |
| New Hampshire | 3.15 | 3.58 | +13.8 |
| New York | 3.06 | 3.18 | +3.9 |
| Rhode Island | 2.90 | 3.30 | +13.8 |
| Texas | 3.25 | 3.54 | +9.0 |
| Vermont | 3.10 | 3.53 | +13.8 |
| Virginia | 2.96 | 3.51 | +18.7 |
| West Virgina | 3.10 | 3.28 | +5.8 |

[1] 44 FR 32306, 39049, 47174, and 56052.
[2] Based upon 1978-79 USDA wage data and the formula published at 20 CFR § 655.207(b)(1). Pursuant to 20 CFR § 655.207(e), the employer must pay at least $3.35 per hour in calendar year 1981. See 29 U.S.C. 206(a)(1).

Signed at Washington, D.C., this 2nd day of May 1980.

David O. Williams,

*Administrator, U.S. Employment Service.*

[FR Doc. 80-14150 Filed 5-8-80; 8:45 am]

BILLING CODE 4510-30-M

## Mine Safety and Health Administration

**[Docket No. M-80-55-C]**

### Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241, has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Shoemaker Mine located in Marshall County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the housing and ventilation of an electrical gathering pump located on the main haulage track in an area which was mined in 1966 and consists of three entries: a belt line, a track haulageway and a parallel intake which has fallen in.

2. The nearest return airway from the subject pump house is approximately 1,100 feet away.

3. Because the track entry and the belt entry are cribbed and posted extensively, which limits the space in these areas, it would be impossible to install a tube or pipe large enough to provide adequate air flow to ventilate the pump house.

4. As an alternative method which will provide the same measure of protection as that of the standard, petitioner proposes that:

a. The subject pump will be totally enclosed in a fireproof housing, i.e., concrete walls and a steel roof;

b. An automatic fire suppression device which will be activated by heat sensors will be installed in the pump house;

c. No oil or combustible materials will be stored in the pump station;

d. An opening will be provided toward the beltline so that in the event of a fire, the smoke will travel to the belt entry into the return, rather than onto the track; and

e. Inspection of this pump house will be made in compliance with the necessary requirements.

### Request for Comments

Persons interested in this petition may furnish written comments on or before June 11, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: April 30, 1980.

Frank A. White,

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 80-14358 Filed 5-8-80; 8:45 am]

BILLING CODE 4510-43-M

**[Docket No. M-80-37-C]**

### K and W Coal Co; Petition for Modification of Application of Mandatory Safety Standard

K and W Coal Company, P.O. Box 61, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity and velocity) to its No. 7-Vein Slope located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1979.

A summary of the petitioner's statements follows:

1. Air sample analysis history reveals that harmful quantities of methane are non-existent in the mine.

2. Ignition, explosion and mine fire history are nonexistent for the mine.

3. There is no history of harmful quantities of carbon dioxide and other noxious or poisonous gases.

4. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

5. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners.

6. High velocities and large air quantities cause extremely uncomfortable damp and cold conditions in the already uncomfortable, wet mines.

7. As a alternative method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

9. Petitioner states that the alternative method proposed will at all times provide the same measure of protection for the miners affected as that provided by the standard.

### Request for Comments

Persons interested in this petition may furnish written comments on or before June 11, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: April 30, 1980.

Frank A. White,

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 80-14357 Filed 5-8-80; 8:45 am]

BILLING CODE 4510-43-M

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[Docket No. M-80-36-M]

## Latrobe Construction Co.; Petition for Modification of Application of Mandatory Safety Standard

Latrobe Construction Company, P.O. Box 150, Latrobe, Pennsylvania 15650 has filed a petition to modify the application of 30 CFR 57.6-220 (Ammonium nitrate-fuel oil blasting agents) to its Blue Stone Quarry located in Westmoreland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petitioner in the past had been using premixed bags of ammonium nitrate but states that the cost has become prohibitive. In addition, the weight of the bags is getting to be too much for some of the crew.

2. As an alternative to premixed bags, petitioner proposes to use a bulk loading vehicle to supply ammonium nitrate with fuel oil metered and applied at the bin discharge point and conveyed by auger to the "powder monkey" (a closed pressure vessel). Petitioner can meter the exact amount of fuel and nitrate into the powder monkey and place it into the holes without spilling or wasting of materials.

3. The bulk truck is state inspected and periodically checked by a competent mechanic.

4. The mine's electrical contractor states that minimal stray electrical current and static electricity exist in the mine.

5. Proper grounding of the truck will be maintained by a copper wire grounded from the frame of the truck to a steel plate placed on the mine floor when loading starts.

6. No paper or plastic bags which could catch fire and cause a hazard are in the loading area.

7. Only the amount of fuel and nitrate to be mixed will be drawn from separate compartments from the bulk truck and will not be sensitized until it is augered into the powder monkey, a distance of 14 feet. The bulk truck is then moved 25 to 50 feet away from the face and not used again until the powder monkey is emptied. After moving the truck, the ammonium nitrate is blown into the hole from the powder monkey with approximately 20 pounds of air utilizing a semi-conductive hose.

8. Petitioner states that the bulk truck allows no ammonium nitrate and fuel mixture premixed in the mine ahead of time of loading.

9. For these reasons, petitioner requests a modification of the standard for the mine.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 11, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: April 30, 1980.

Frank A. White,

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 80-14356 Filed 5-8-80; 8:45 am]

BILLING CODE 4510-43-M

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[Docket No. M-80-20-M]

## St. Joe Mineral Corp.; Petition for Modification of Application of Mandatory Safety Standard

St. Joe Mineral Corporation, Southeast Missouri Mining and Milling Division, Viburnum, Missouri 65566 has filed a petition to modify the application of 30 CFR 57.4-61A (installation of ventilation doors) to its Indian Creek, Viburnum No. 28, Viburnum No. 29, Fletcher and Bushy Creek Mines located in Washington, Iron and Reynolds Counties, Missouri, respectively. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Each of the petitioner's mines is wet and has only one operating level with a constant temperature of approximately 60 degrees fahrenheit. Each mine is non-gassy and the ore is not combustible.

2. The ventilation shafts are lined completely with steel or lined with steel to solid rock and the other shafts are completely lined with reinforced concrete. All shafts are direct from the surface to the operating level.

3. Mining is accomplished by the room and pillar method and no timbering is used for support.

4. There are no abandoned or sealed areas in any of the mines and each mine is totally ventilated at all times.

5. The only flammable materials in each mine are the operating supplies and equipment taken into the mines. This flammable material is located within a few hundred feet of an air uptake shaft so that in the event of a fire, the smoke and gas would be rapidly diluted and removed directly from the mines.

6. The largest single supply of combustible liquids in each mine is enclosed and protected by an automatic, high expansion foam fire suppression system.

7. As the air intake shafts at each mine furnish fresh air to the miners, each of these shafts would furnish a safe area for the miners in the event of a fire.

8. The closing of any of the air uptake shafts in the event of a fire would greatly diminish or eliminate the effectiveness of the ventilation system and would result in a diminution of safety for the miners affected.

9. In the event of a fire, it is quite likely that due to panic or poor judgment, shafts would erroneously be closed. Such closing of air intake shafts would eliminate the safe areas and would prevent these shafts from serving the purpose of rapidly diluting the smoke or gas.

10. For the above reasons, petitioner believes installation of ventilation doors at the mine's shafts would result in a diminution of safety for the miners affected and request a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 11, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: April 30, 1980.

Frank A. White,

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 80-14355 Filed 5-8-80; 8:45 am]

BILLING CODE 4510-43-M

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## Summary of Decisions Granting in Whole or in Part Petitions for Modification of Application of Mandatory Safety Standards

**AGENCY:** Mine Safety and Health Administration (MSHA), Department of Labor.

**ACTION:** Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

**SUMMARY:** Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either or both of the following: that an alternative method exists at the petitioner's mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard to the petitioner's mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the Federal Register. Final decisions on these petitions are based upon the petitioner's statement, comments and information submitted by interested persons and a field investigation of the conditions at the petitioner's mine. The Secretary has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon the petitioner's compliance with stipulations stated in the decision.

**FOR FUTHER INFORMATION:** The petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: April 25, 1980.

Frank A. White,

*Director, Office of Standards, Regulations and Variances.*

**Affirmative Decisions on Petitions for Modification**

| Docket No. | FR notice | Petitioner | Regulation affected | Summary of findings |
|---|---|---|---|---|
| M-76-492 | 41 FR 31905 | Bethlehem Mines Corp | 30 CFR 75.1710 | Use of cabs and canopies on petitioner's mining machines, shuttle cars and roof bolters would result in a diminution of safety in low mining heights. Granted with conditions. |
| M-79-2-C | 44 FR 6789 | Amanda Mining, Inc | 30 CFR 75.1710 | Use of cabs and canopies on petitioner's cutting machine, roof bolting machines and scoops would result in a diminution of safety in low mining heights. Granted in part with conditions. |
| M-79-10-C | 44 FR 11139 | Keystone Coal Mining Corp | 30 CFR 75.1101 | Use of a single branch line of sprinklers on belt conveyors considered acceptable alternative method of fire control. Granted with conditions. |
| M-79-11-C | 44 FR 11139 | Consolidation Coal Co | 30 CFR 75.1101 | Use of a single branch line of sprinklers on belt conveyors considered acceptable alternative method of fire control. Granted with conditions. |
| M-79-13-C | 44 FR 13091 | Kanawha Coal Co | 30 CFR 75.305 | Petitioner proposed making return air examinations on a weekly basis from surface locations in lieu of making weekly inspections of the airways. Granted in part with conditions. |
| M-79-43-C | 44 FR 21396 | Bishop Coal Co | 30 CFR 75.1101 | Use of a single branch line of nozzles at main and secondary belt conveyor drives considered acceptable alternative method of fire control. Granted with conditions. |
| M-79-50-C | 44 FR 31735 | Polcovich Coal Co | 30 CFR 75.301 | Proposed airflow reduction in petitioner's mine which would maintain a safe and healthful atmosphere considered acceptable alternative method of ventilation. Granted with conditions. |
| M-79-56-C | 44 FR 26222 | Youghiogheny & Ohio Coal Co | 30 CFR 75.519 | Proposed installation of air brake disconnect switch for the main power circuit in a breakthrough, along a main haulage entry 100 feet more than allowed by standard which would place switch in visible area rather than isolated intake air entry considered acceptable alternative method. Granted with conditions. |
| M-79-58-C | 44 FR 26221 | North American Coal Corp | 30 CFR 75.1700 | Proposed plan to plug and mine through abandoned oil/gas wells considered acceptable alternative to leaving coal barriers around the wells. Granted with conditions. |
| M-79-61-C | 44 FR 29747 | Consolidation Coal Co | 30 CFR 75.305 | Due to poor roof conditions, petitioner's proposal to establish air-monitoring checkpoints on specified return airways considered acceptable alternative to making weekly inspections of the airways. Granted with conditions. |
| M-79-63-C | 44 FR 29746 | Cannelton Industries, Inc | 30 CFR 75.305 | Due to poor roof conditions, petitioner's proposal to establish air monitoring checkpoints on specified return airways considered acceptable alternative to making weekly inspections of the airways. Granted with conditions. |
| M-79-65-C | 44 FR 30466 | Knox Creek Coal Corp | 30 CFR 75.1605(k) | Proposed maintenance procedures and traffic control system for petitioners elevated roadway considered acceptable alternative to berms or guards for road control. Granted with conditions. |
| M-79-68-C | 44 FR 33747 | Wyomac Coal Co | 30 CFR 75.1710 | Use of cabs or canopies on petitioner's electric face equipment would result in a diminution of safety in low mining heights. Granted in part with conditions. |
| M-79-73-C | 44 FR 33747 | Wyomac Coal Co | 30 CFR 75.1710 | Use of cabs or canopies on petitioner's electric face equipment would result in a diminution of safety in low mining heights. Granted in part with conditions. |
| M-79-77-C | 44 FR 33747 | Wyomac Coal Co | 30 CFR 75.1710 | Use of cabs and canopies on petitioner's cutting machine, coal drill, roof bolting machine and scoops would result in a diminution of safety in specified low mining heights. Granted in part with conditions. |
| M-79-78-C | 44 FR 36504 | Bethlehem Mines Corp | 30 CFR 75.305 | Due to poor roof conditions, petitioner's proposal to establish air monitoring checkpoints on specified return airways considered acceptable alternative to making weekly inspections of the airways. Granted with conditions. |

Affirmative Decisions on Petitions for Modification—Continued

| Docket No. | FR notice | Petitioner | Regulation affected | Summary of findings |
|---|---|---|---|---|
| M-79-83-C | 44 FR 36505 | Bishop Coal Co | 30 CFR 75.313 | Proposed rewiring of methane monitor to deenergize only the cutting head rather than entire machine which would allow tramming of machine to safe place for methane examination considered acceptable alternative method. Granted with conditions. |
| M-79-84-C | 44 FR 36505 | Bishop Coal Co | 30 CFR 75.321 | In interconnected mines ventilated by 3 fans, when one fan stops, allowing power to remain on for pumping operations considered acceptable alternative method of operation. Granted with conditions. |
| M-79-85-C | 44 FR 34654 | Garden Creek Pochahontas Co | 30 CFR 75.326 | Due to high rate of methane liberation and conditions preventing the development of additional airways, the use of a belt entry as an intake airway considered acceptable alternative method of ventilation. Granted with conditions. |
| M-79-99-C | 44 FR 49802 | Rushton Mining Co | 30 CFR 75.1405 | Use of a second hole in its supply car bumper for off-track coupling considered acceptable alternative method to automatic couplers. Granted with conditions. |
| M-79-102-C | 44 FR 43356 | United Pocahontas Coal Co | 30 CFR 77.1914(a) | Proposed procedures for use of non-permissible transformer to power tunnel borer considered alternative to use of only permissible transformers below collar of shaft. Granted with conditions. |
| M-79-103-C | 44 FR 43355 | Consolidation Coal Co | 30 CFR 75.1700 | Proposed plan to plug and mine through abandoned oil/gas wells considered acceptable alternative to leaving coal barriers around the wells. Granted with conditions. |
| M-79-110-C | 44 FR 51469 | M & M Coal Co | 30 CFR 75.1710 | Use of cabs or canopies on petitioner's scoops would result in a diminution of safety in specified low mining heights. Granted in part with conditions. |
| M-79-116-C | 44 FR 49025 | Union Carbide Corp | 30 CFR 75.305 | Due to poor roof condition, petitioner's proposal to establish air monitoring checkpoints on specified return airways considering acceptable alternative to making weekly inspections of the airways. Granted with conditions. |
| M-79-116-C | 44 FR 49025 | Union Carbide Corp | 30 CFR 75.305 | Due to poor roof conditions, petitioner's proposal to establish air monitoring checkpoints on specified return airways considered acceptable alternative to making weekly inspections of the airways. Granted with conditions. |
| M-79-119-C | 44 FR 49024 | Consolidation Coal Co | 30 CFR 75.305 | Due to poor roof conditions, petitioner's proposal to establish air monitoring checkpoints on specified return airways considered acceptable alternative to making weekly inspections of the airways. Granted in part with conditions. |
| M-79-125-C | 44 FR 49802 | Westmoreland Coal Co | 30 CFR 75.305 | Due to poor roof conditions, petitioner's proposal to establish air monitoring checkpoints on specified return airways considered acceptable alternative to making weekly inspections of the airways. Granted with conditions. |
| M-79-126-C | 44 FR 55239 | B.G.P.T. Coal Co | 30 CFR 75.301 | Proposed airflow reduction in petitioner's mine which would maintain a safe and healthful atmosphere considered acceptable alternative method of ventilation. Granted with conditions. |
| M-79-127-C | 44 FR 55239 | H & H Coal Co | 30 CFR 75.301 | Proposed airflow reduction in petitioner's mine which would maintain a safe and healthful atmosphere considered acceptable alternative method of ventilation. Granted with conditions. |
| M-79-130-C | 44 FR 55239 | J & M Coal Corp | 30 CFR 75.1710 | Use of cabs or canopies on petitioner's cutting machine would result in a diminution of safety in low mining heights. Granted in part with conditions. |
| M-79-144-C | 44 FR 6453 | Danny Boy Coal Co., Inc | 30 CFR 75.1710 | Use of cabs and canopies on petitioner's scoops, loader, cutting machine and coal drill would result in a diminution of safety in low mining heights. Granted in part with conditions. |

[FR Doc. 80-14354 Filed 5-8-80; 8:45 am]
BILLING CODE 4510-43-M

## Office of Pension and Welfare Benefit Programs

[Application No. D-1785]

## Proposed Exemption for Certain Transactions Involving the Elias Shammas, M.D., Inc., Pension Plan Located in Providence, R.I.

**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 certain of 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 certain real property by the Elias Shammas, M.D., Inc. Pension Plan (the Plan) to Dr. Elias Shammas (Shammas) a party in interest with respect to the Plan.

The proposed exemption, if granted, would affect Shammas, the Plan, and other persons participating in the proposed transaction.

**DATES:** Written comments and requests for a public hearing must be received by the Department on or before June 18, 1980.

**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 NW., Washington, D.C. 20216, Attention: Application No. D-1785. 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 NW., Washington, D.C. 20216.

**FOR FURTHER INFORMATION CONTACT:** Richard Small of the Department, telephone (202) 523-7222. (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 section 406(a), 406(b)(1), and 406(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 by Elias Shammas and Ines Shammas (the Trustees), the Trustees of the Plan, 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). 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. As of the Plan year ending August 31, 1979, the Plan had three participants and net assets of $491,546.93. Investment decisions for the Plan are made by the Trustees.

2. In November 1978, the Plan acquired certain real property (the Property) located at 1565-1567 Mineral Spring Ave., North Providence, Rhode Island. The Property was purchased by the Plan from Douglas Drug Co. for a purchase price of $240,000. The Trustees, at the time of the purchase of the Property, projected a return to the Plan of 9% per annum. However, two months after the Plan acquired the Property, a major tenant vacated and the result to the Plan for its first year of operation was a negative 2% return. In addition, the Trustees represent that presently the major tenant of the Property is experiencing financial difficulties and may vacate or be forced to vacate the Property in the near future.

3. The Trustees are requesting an exemption to allow the Plan to sell the Property to Shammas for a cash price of $277,500. The price of the proposed sale was determined by an independent appraisal performed on September 19, 1979 by the Philip A. Saccoccia Real Estate Co. of Cranston, Rhode Island. The Plan will incur no expenses or sales charges with respect to the proposed sale.

4. In summary, the Trustees represent that the proposed sale of the Property meets the statutory criteria for an exemption under section 408(a) of the Act as follows: (1) the Trustees of the Plan represent that the proposed sale is in the best interests of the Plan; (2) the price of the Property was determined by an independent appraisal; (3) the transaction will be a one time cash sale; (4) the Plan will incur no expenses or sales charges in the proposed transaction; and (5) the Plan will be able to sell the Property which has a negative cash flow and will realize a profit.

## Notice to Interested Persons

A copy of the notice of pendency within ten days of its publication in the Federal Register will be posted in the office of the employer sponsoring the Plan.

## 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 408(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), 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale by the Plan to Shammus of the

Property located at 1565–1567 Mineral Spring Ave., North Providence, Rhode Island for $277,500 provided that this amount is at least the fair market value of the Property at the time of the sale.

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 1st day of May, 1980.

Ian D. Lanoff,

*Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.*

[FR Doc. 80-14121 Filed 5-8-80; 8:45 am]

BILLING CODE 4510-29-M

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[Application No. D-996]

## Proposed Exemption for Certain Transactions Involving Leep Homes Profit Sharing Plan and Leep Homes Pension Plan Located in San Francisco, Calif.

**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 certain of 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 sales of model homes by Leep Homes (Leep) to the Leep Homes Profit Sharing Plan and the Leep Homes Pension Plan (the Plans), the leasing of those homes by the Plans to Leep and the personal guarantees of Leep's obligation by Elwood J. Leep, sole shareholder of Leep. The proposed exemption, if granted, would affect participants and beneficiaries of the Plans, Leep and other persons participating in the transactions. On December 28, 1979, notice of the proposed exemption was published in the Federal Register (44 FR 76878). The proposed exemption is being republished due to the submission by Leep after the first publication, of additional facts and representations. The purpose of the additional submission is to strengthen existing safegards for the greater protection of the Plans and their participants and beneficiaries.

**DATES:** Written comments and requests for a public hearing must be received by the Department of Labor on or before June 23, 1980.

**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 Ave., N.W., Washington, D.C. 20216, Attention: Application No. D-996. 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:** Mr. Robert N. Sandler of the Department of Labor, telephone (202) 523-8883. (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), 406(b)(1) and (b)(2), and 407(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 (E) of the code. The proposed exemption was requested in an application filed on behalf of Leep, 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). 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) Leep is a corporation actively engaged in the construction of residential housing units, including single family residences, townhouse developments, planned unit developments and condominium developments. Its business activities are centered primarily in the San Francisco Bay Area. As in many residential developments, model homes demonstrating the available plans are constructed for public inspection and, occasionally, for use as an on-site office for sales representatives for the development. At the conclusion of the development and sale of the constructed properties, the model homes are sold at the then prevailing market price.

(2) It is proposed that the Plans purchase model homes from Leep, and that the Plans receive a net return on their investment in the form of rental, which would be the greater of the prevailing discount rate charged by the San Francisco Federal Reserve Bank on the 25th day of the month preceding the execution of the lease plus 5%, or 10% per annum. Lease payments will be adjusted annually on the anniversary date of the execution of the lease to reflect the above formula. All leases of model homes would have a maximum term of five years.

(3) The Plans will at all times limit their investment in model homes to 25% of each Plan's assets. For purposes of the 25% limitation, the homes will be valued at the purchase price which the Plans paid to Leep. Leep will make the initial acquisition of the tract of land to be developed and incur all expenses in the improvement and development of the land.

(4) The Plans and Leep will execute a purchase agreement, the terms of which will remain the same for all similar purchases. The purchase price, which is Leep's cost, will be the acquisition cost of the land, the actual cost of construction of the home and an overhead factor of 7.2 percent of actual construction costs, including land acquisition cost. The 7.2 percent figure is based on Leep's historical experience regarding the costs of construction of residential housing. The purchase price will be paid by the Plans to Leep upon completion of construction of the home. All payments by the Plans to Leep will be made in cash.

(5) Prior to the purchase by the Plans of any model home constructed by Leep, Leep will offer to sell to the Plans all of the model homes which it then owns. The Plans' trustees who make investment decisions for the Plans are Elwood Leep, president and treasurer of Leep and its sole shareholder, and Leonard B. Bearden, Sr., vice-president of Leep. The Plans' trustees would then submit all of the offers to a qualified independent real estate investment advisor for his review of the properties themselves and terms and conditions of the offers. The independent investment advisor would have the power to reject any or all of the offers on behalf of the Plans. Any offers not rejected by the independent investment advisor would be accepted by the Plans' trustees on behalf of the Plans, unless doing so

would exceed the 25% limitation on Plan investment in model homes. If the 25% limitation would be exceeded, the Plans' trustees will resubmit the offers to the independent investment advisor and request that he reject additional offers in order to come within the 25% limitation. The independent investment advisor will also monitor all terms and conditions of the proposed transactions.

(6) Each home is to be completed for eventual sale. Any and all additions to the home to make it usable as a model are to be made at the expense of Leep. Leep will pay a monthly rental to the Plans which will provide the above-described net return on all cash payments made by the Plans, accruing from the date of each payment. Such rental payments will continue until the home is sold. The trustees of the Plans will submit all proposed leases to the independent real estate investment advisor. The Plans will not enter into any lease unless the investment advisor determines that the rental payments under the lease, and the other terms and conditions, are fair and equitable to the Plans in light of then existing market conditions.

(7) All taxes relating to any model home purchased by the Plans will be paid by Leep. All maintenance expenses will be paid by Leep and at the conclusion of its use as a model, each home will be repaired at Leep's expense, so as to be saleable as a new house. At the conclusion of a home's use as a model, Leep will sell the home and lot on behalf of the Plans. The Plans will receive the gross sales price and Leep will incur all selling expenses, including payment of a real estate agent's commission, if one should be involved.

(8) The Plans' trustees will have an option to sell any model home acquired from Leep back to Leep, at any time the trustees elect to do so, at a cash price which is the greater of the cost of the model home to the Plans or the fair market value of the model home as determined by an independent appraisal. The independent investment advisor, who will review the sale-leaseback transactions at their inception, will periodically review the model homes owned by the Plans and the leases of such model homes to Leep in order to determine whether such model homes continue to be good investments for the Plans. If, at any time, the independent investment advisor determines that it would be in the best interests of the Plans to exercise their option to sell a model home back to Leep, the advisor shall so inform the trustees, and the trustees shall, upon being so informed, exercise their option to sell.

(9) At any time that the trustees of the Plans receive a bona fide offer from a third party to purchase a model home owned by the Plans, the trustees shall submit the offer to the independent investment advisor for his review. If the advisor determines that it would be in the best interests of the Plans to accept such offer, he shall so inform the trustees. No offer shall be recommended for acceptance if it would produce a net return to the Plans which is less than could be obtained by exercising the option to sell to Leep. The trustees will give Leep notice of any offer recommended for acceptance by the advisor. Leep shall then have thirty (30) days within which to exercise a right of first refusal to purchase the model home on the terms and conditions offered by the third party. If Leep does not purchase the model home within the thirty (30) day period, the trustees shall sell the model home to the third party buyer on the terms and conditions approved by the independent investment advisor.

(10) Elwood J. Leep, who is the sole shareholder of Leep, will personally guarantee Leep's obligations to make lease payments to the Plans and will personally guarantee Leep's obligations under the above-described put option.

(11) The exemption for the sale and leaseback of model homes will be a temporary exemption, expiring five years from its effective date. However, the Plans may continue to lease model homes to Leep that were acquired and leased to Leep prior to the expiration date of the exemption and with regard to such model homes, the terms and conditions of the exemption shall remain in full force and effect until the last model home is sold.

(12) In summary, it is represented that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act, due to the following reasons:

(a) the Plans' trustees have represented that the proposed transactions are protective of and in the best interests of the Plans and their participants and beneficiaries;

(b) the Plans will purchase the model homes at a price representing Leep's cost of building the homes;

(c) the Plans will limit their investment in model homes to 25 percent of Plan assets;

(d) the exemption will be temporary, expiring five years from the time it is granted;

(e) Leep will pay all taxes and maintenance expenses relating to the model homes;

(f) all leases of model homes will have a maximum term of five years;

(g) a qualified independent real estate investment advisor will review all model homes that Leep owns and have the power to accept or reject any homes offered for sale to the Plan by Leep, subject only to the 25 percent limitation on Plan investment in the model homes;

(h) the independent advisor will have the power to direct the trustees to exercise a put option and sell a home back to Leep for the higher of the Plans' cost or current fair market value;

(i) the independent advisor will monitor all terms and conditions of the sales and leasebacks;

(j) the rate of return to the Plans will be annually adjusted on the basis of the higher of the San Francisco Federal Reserve Bank discount rate (currently 13 percent) plus 5 percent, or 10 percent per annum;

(k) at the conclusion of a home's use as a model, Leep will, at its own expense, make any repairs necessary to make it saleable as a new house; and

(l) at the conclusion of a home's use as a model, Leep will sell the house on behalf of the Plans and incur all selling expenses, including payment of a real estate agent's commission, if one should be involved.

**Notice to Interested Persons**

Notice of the proposed exemption will be given to all interested parties, including the trustees of the Plans and all participants and beneficiaries of the Plans on or before May 23, 1980. The notice will contain a copy of the notice of proposed exemption and will inform each recipient of his right to comment or request a hearing with regard to the proposed exemption. The notice will be hand delivered to all interested parties.

**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 interests 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 sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale for cash of model homes by Leep to the Plan, the leasing of such model homes back to Leep, as above-described, or to Elwood Leep's personal guarantee of Leep's obligations to the Plans. The exemption will be a temporary exemption, expiring five years from the date it is published in the Federal Register. 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 1st day of May 1980.

Ian D. Lanoff,

*Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.*

[FR Doc. 80-14120 Filed 5-8-80; 8:45 am]

BILLING CODE 4510-29-M

## Office of the Secretary

[TA-W-6159]

### AMM Industries, Inc., Harrison, N.J.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 30, 1979, applicable to workers and former workers of AMM Industries, Inc., Harrison, New Jersey. The Notice of Certification was published in the Federal Register on December 11, 1979, (44 FR 71471).

On the basis of additional information, the Department, on its own motion, reviewed the certification. It was found on review that AMM Industries, Inc., produced ladies' sportswear and dresses for two separately incorporated sales facilities, Flomar Knits, Inc., and Ivy Stevens, Inc., New York, New York. AMM Industries, Flomar Knits, and Ivy Stevens are affiliated by virtue of common ownership and the fact that employment and sales are closely tied among the facilities. Therefore, the three entities constitute a single firm for purposes of Section 222 of the Trade Act of 1974 and 29 CFR 90.2

The certification is revised to include all workers of Flomar Knits, Inc., and Ivy Stevens, Inc., who became totally or partially separated from employment on or after September 28, 1978. The amended certification applicable to TA-W-6159 is hereby issued as follows:

All workers of AMM Industries, Inc., Harrison, New Jersey, Flomar Knits, Inc., New York, New York, and Ivy Stevens, Inc., New York, New York, who became totally or partially separated from employment on or after September 28, 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 April 1980.

James F. Taylor,

*Director, Office of Management, Administration and Planning.*

[FR Doc. 80-14362 Filed 5-8-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6557]

### Cohoes Fabrics Printers, Inc., Cohoes, N.Y.; Negative Determination on Reconsideration

On March 14, 1980, the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Cohoes Fabrics Printers, Inc., Cohoes, New York. This determination was published in the Federal Register on April 4, 1980 (45 FR 23098).

The petitioners argue in their request for reconsideration that the Department's initial survey of a major customer of Cohoes Fabrics Printers, Inc., was inadequate to support the determination that increases of imports of articles like or directly competitive with the printed fabric produced at Cohoes Fabrics Printers had not contributed importantly to the separation of workers and to the decline in sales at the firm. On reconsideration, the Department conducted a second survey of the customers of Cohoes Fabrics Printers drawn from a list submitted by the petitioners. This survey, as in the survey conducted in the original investigation, failed to reveal that imports of printed fabric were an important factor in the sales and employment declines at Cohoes Fabrics Printers, Inc.

Aggregate U.S. imports of finished fabric decreased during 1979 compared with 1978 and represented 2.1 percent of U.S. production in 1978.

Conclusion

After careful review of the facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with the printed fabric produced at Cohoes Fabrics Printers, Inc., did not contribute importantly to the separation of workers and to the decline in sales at that firm. The denial of eligibility to apply for adjustment assistance of the workers and former workers of Cohoes Fabrics Printers, Inc., Cohoes, New York, therefore, is affirmed.

Signed at Washington, D.C., this 2nd day of May 1980.

James F. Taylor,

*Director, Office of Management, Administration and Planning.*

[FR Doc. 80-14363 Filed 5-8-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-7605]

## GTE Products Corp., Altoona, Pa.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 14, 1980 in response to a worker petition received on March 27, 1980 which was filed on behalf of workers and former workers producing electronic receiving tubes at the Altoona, Pennsylvania plant of GTE Products Corporation.

The petitioning group of workers in this case was included in a determination (TA-W-4061) issued on November 21, 1978 which certified as eligible to apply for adjustment assistance all workers at the Altoona, Pennsylvania plant of GTE Sylvania, Incorporated (now GTE Products Corporation). Since all workers separated, totally or partially, from the Altoona, Pennsylvania plant of GTE Products Corporation on or after February 28, 1978 (impact date) and before November 21, 1980 (expiration date of the determination) are covered by an existing determination, a new investigation would serve no purpose. Therefore, it is recommended that this investigation be terminated.

Signed at Washington, D.C., this 30th day of April 1980.

Marvin M. Fooks

*Director, Office of Trade Adjustment Assistance*

[FR Doc. 80-14361 Filed 5-8-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-7480]

## Ivy Stevens, Harrison, N.J.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 31, 1980 in response to a worker petition received on March 17, 1980 which was filed on behalf of workers of Ivy Stevens, Harrison, New Jersey. The workers sell ladies' sportswear.

On April 25, 1980 the petitioning group of workers was certified as eligible to apply for adjustment assistance (TA-W-6159) in a revised determination.

Since workers of Ivy Stevens are covered by an existing certification, (TA-W-6159) a new investigation would serve no purpose. Consequently, the investigation (TA-W-7480) has been terminated.

Signed at Washington, D.C. this 1st day of May 1980.

Marvin M. Fooks,

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 80-14359 Filed 5-8-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6909]

## Spectator Casuals, Inc., New York, N.Y.; Negative Determination Regarding Application for Reconsideration

By an application dated April 17, 1980, one of the former workers requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers of Spectator Casuals, Inc., New York, New York. The determination was published in the Federal Register on April 15, 1980 (45 FR 25553).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The former worker claims that the Department's investigation was inadequate since it only considered the 1978-1979 time period in considering whether the worker group met the three statutory group criteria of Section 222 of the Trade Act of 1974.

The Department's review indicated that workers of Spectator Casuals, Inc., New York, New York, did not meet the "contributed importantly" test of the Trade Act. The Department's survey which included customers of Spectator representing about half of Spectator's total sales in 1978 and 1979, indicated that such customers either reduced purchases of imported ladies' dresses and suits in 1979 compared to 1978 or did not purchase any imported ladies' dresses or suits in 1978 or 1979. The few customers who reduced their purchases from Spectator in 1979 and increased their purchases of imported ladies' dresses and suits during this time period represented an insignificant proportion of Spectator's 1979 sales decline.

The Department does not agree with the former worker's claim that imports of ladies' dresses and suits in the entire 1975-1979 period should be used in determining worker group eligibility. Given the one-year rule in the Act, a certification can only cover worker separations which occurred no earlier than one year prior to the petition date, i.e., separations occurring after December 11, 1978. Therefore, the Department's use of the 1978-1979 period is a reasonable and appropriate time frame to adequately measure the impact of imports on firm production and employment.

### Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 5th day of May 1980.

James F. Taylor,

*Director, Office of Management, Administration and Planning.*

[FR Doc. 80-14364 Filed 5-8-80; 8:45 am]

BILLING CODE 4510-28-M

## 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 summaries of negative determinations regarding eligibility to apply for worker adjustment assistance issued during the period April 28th-May 2nd, 1980.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number of proportion of workers in the workers's firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely,

(3) 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.

In each of the following cases it has been concluded that at least one of the above criteria has not been met.

TA-W-7267; Al Baumann Chevrolet, Inc., Fremont, Ohio

The investigation was initiated on March 3, 1980 in response to a petition which was filed by the workers at Al Baumann Chevrolet, Incorporated, Fremont, Ohio. The workers at Al Baumann Chevrolet, Incorporated are engaged in selling and servicing automobiles and trucks.

The investigation revealed that workers of Al Baumann Chevrolet, 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 a parent firm, a firm otherwise related to Al Baumann Chevrolet, Incorporated by ownership, or a firm related by control. In any case, the reunion 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.

Al Baumann Chevrolet, Incorporated and its suppliers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in selling and servicing automobiles and trucks at Al Baumann Chevrolet, Incorporated are employed by that firm. All personnel actions and payroll transactions are controlled by Al Baumann Chevrolet, Incorporated. All employee benefits are provided and maintained by Al Baumann Chevrolet, Incorporated. Workers are not, at any time, under employment or supervision by the suppliers of Al Baumann Chevrolet Incorporated. Thus, Al Baumann Chevrolet, Incorporated and not any of its suppliers, must be considered to be the "workers' firm".

In this case, therefore, the certifying officer has determined that all workers of Al Baumann Chevrolet, Incorporated, Fremont, Ohio are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7277; Automobile Carriers, Inc., Flint, Mich.

The investigation was initiated on March 3, 1980 in response to a petition which was filed by the General Drivers and Helpers, Local 332 on behalf of workers at Automobile Carriers, Incorporated, Flint, Michigan. The workers at Automobile Carriers, Incorporated are engaged in providing the service of transporting automobiles and trucks.

The investigation revealed that workers of Automobile Carriers, 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 a parent firm, a firm otherwise related to Automobile Carriers, 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.

Automobile Carriers, Incorporated and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any company producing automobiles.

All workers engaged in transporting automobiles and trucks at Automobile Carriers, Incorporated are employed by that firm. All personnel actions and payroll transactions are controlled by Automobile Carriers, Incorporated. All employee benefits are provided and maintained by Automobile Carriers, Incorporated. Workers are not, at any time, under employment or supervision by customers of Automobile Carriers, Incorporated. Thus, Automobile Carriers, Incorporated and not any of its customers, must be considered to be the "workers' firm".

In this case, therefore, the certifying officer has determined that all workers of the Automobile Carriers, Incorporated, Flint, Michigan are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7256; Ball Electronic Display Division, Ball Corp., Circle Pines, Minn.

The investigation was initiated on March 3, 1980 in response to a petition which was filed on behalf of workers at the Ball Electronic Display Division of Ball Corporation, Circle Pines, Minnesota. The workers produce video display monitors for computer terminals.

The investigation revealed that criterion (2) has not been met.

Sales by the Ball Electronic Display Division increased in quantity and in value in every quarter of 1979 compared to the same quarter of 1978 and in the January-February 1980 period compared to the January-February 1979 period. Ball produces only for orders from manufacturers; consequently production is equal to sales.

In this case, therefore, the certifying officer has determined that all workers of the Ball Electronic Display Division of Ball Corporation, Circle Pines, Minnesota are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7278; B & C Inc., Flint, Mich.

The investigation was initiated on March 3, 1980 in response to a petition which was filed by the General Drivers and Helpers, Local 332 on behalf of workers at B & C Incorporated, Flint, Michigan. The workers at B & C Incorporated are engaged in providing the service of transporting automobiles and trucks for other transport firms.

The investigation revealed that workers of B & C 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 a parent firm, a firm otherwise related to B & C 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.

B & C is wholly owned by the firms for which it transports automobiles and trucks. However, none of those firms produce an article or are corporately affiliated with any company producing automobiles.

All workers engaged in transporting automobiles and trucks at B & C Incorporated are employed by that firm. All personnel actions and payroll transactions are controlled by B & C Incorporated. All employee benefits are provided and maintained by B & C Incorporated. Workers are not, at any time, under employment or supervision by customers of B & C Incorporated. Thus, B & C Incorporated and not any of its customers, must be considered to be the "workers' firm".

In this case, therefore, the certifying officer has determined that all workers of B & C, Incorporated, Flint, Michigan are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7136; Becker Miller Construction Co., Beckley, W. Va.

The investigation was initiated on February 19, 1980 in response to a petition which awas filed by the United Mine Workers of America on behalf of workers at Becker Miller Construction

Company, Beckley, West Virginia. The workers at the Becker Miller Construction Company are engaged in concrete and steel construction for coal preparation plants.

The investigation revealed that workers of the Becker Miller Construction Company 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 a parent firm, a firm otherwise related to the Becker Miller Construction Company 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.

The Becker Miller Construction Company 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 concrete and steel construction for the Becker Miller Construction Company are employed by that firm. All personnel actions and payroll transactions are controlled by the Becker Miller Construction Company. All employees benefits are provided and maintained by the Becker Miller Construction Company. Workers are not, at any time, under employment or supervision by customers of the Becker Miller Construction Company. Thus, the Becker Miller Construction Company and not any of its customers, must be considered to be the "workers' firm".

In the case, therefore, the certifying officer has determined that all workers of Becker Miller Construction Company, Beckley, West Virginia are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

**TA-W-6869; Body Fashions, Inc., North Bergen, N.J.**

The investigation was initiated on January 30, 1980 in response to a petition which was filed on behalf of workers at Body Fashions, Incorporated, North Bergen, New Jersey. The workers produce women's blouses, tops, dresses, shifts, bras and girdles.

The investigation revealed that criterion (3) has not been met.

Surveyed customers of Body Fashions, Incorporated did not decrease purchases from the subject firm and increase purchases of imported sportswear and foundation garments in 1979 compared to 1978.

In this case, therefore, the certifying officer has determined that all workers of Body Fashions, Incorporated, North Bergen, New Jersey are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

**TA-W-6412; Brown Shoe Co., Brookfield, Mo.**

The investigation was initiated on November 21, 1979 in response to a petition which was filed by the Footwear Division of the United Food and Commercial Workers International Union on behalf of workers at the Brookfield, Missouri plant of Brown Shoe Company. Workers at the Brookfield, Missouri plant produce men's shoes and boots.

The investigation revealed that criterion (3) has not been met.

U.S. imports of men's dress and casual footwear, except athletic, declined in quantity absolutely and relative to domestic production in 1978 from 1977. Imports continued to decline absolutely in quantity in 1979 from 1978.

A survey conducted by the department revealed that major surveyed customers of Brown Shoe Company did not increase their reliance on imported shoes relative to total shoe purchases in 1979 from 1978.

In this case, therefore, the certifying officer has determined that all workers of the Brookfield, Missouri plant of Brown Shoe Company are denied eligibility to apply for adjustment assistance under Section 223 of the trade Act of 1974.

**TA-W-6371; Brown Shoe Co., Piggott, Ark.**

The investigation was initiated on November 15, 1979 in response to a petition which was filed by the Amalgamated Shoe Workers on behalf of workers at the the Piggott, Arkansas plant of Brown Shoe Company. Workers at the Piggott, Arkansas plant produce men's shoes and boots.

The investigation revealed that criterion (3) has not been met.

U.S. imports of men's dress and casual footwear, except athletic, declined in quantity absolutely and relative to domestic production and 1978 from 1977. Imports continued to decline absolutely in quantity in 1979 from 1978.

A survey conducted by the Department revealed that major surveyed customers of Brown Shoe Company did not increase their reliance on imported shoes relative to total shoe purchases in 1979 from 1978.

In this case, therefore, the certifying officer has determined that all workers of the Piggott, Arkansas plant of Brown Shoe Company are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

**TA-W-7274; Butte, Anaconda and Pacific Railway Co., Anaconda, Mont.**

The investigation was initiated on March 3, 1980 in response to a petition which was filed by the United Transportation Union on behalf of workers at the Butte, Anaconda and Pacific Railway Company, Anaconda, Montana. Workers at this firm provide rail transportation produce.

The investigation revealed that criterion (3) has not been met.

The Butte, Anaconda and Pacific Railway Company (B.A. & P.) hauls materials used in the processing of refined copper for the Anaconda Copper Company—B.A. & P.'s parent firm. U.S. imports of refined copper decreased both absolutely and relative to domestic production in 1979 compared with 1978. The B.A. & Ps production/sales increased in terms of tonnage hauled and revenues in 1979 compared with 1978 and in the first two months of 1980 compared with the same period of 1979.

In this case, therefore, the certifying officer has determined that all workers of the Butte, Anacaonda and Pacific Railway Company, Anaconda, Montana are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

**TA-W-7273; Conrail, Central Region, Subdivision 3 of the Pittsburgh Region, Pittsburgh, Pa.**

The investigation was initiated on March 3, 1980 in response to a petition which was filed by the Brotherhood of Maintenance of Way, Local 3004 on behalf of workers at Conrail, Central Region, Subdivision 3 of the Pittsburgh Region, Pittsburgh, Pennsylvania. The workers at Conrail are engaged in providing the service of transporting general commodities by railroad.

The investigation revealed that workers of Conrail 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 a parent firm, a firm otherwise related to Conrail, 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.

Conrail and its customers have no controlling interest in one another. The subject firm is not corporately affiliated

with any other company producing products.

All workers engaged in transporting general commodities by railroad at Conrail are employed by that firm. All personnel actions and payroll transactions are controlled by Conrail. All employee benefits are provided and maintained by Conrail. Workers are not, at any time, under employment or supervision by customers of Conrail. Thus, Conrail and not any of its customers, must be considered to be the "workers' firm".

In this case, therefore, the certifying officer has determined that all workers of Conrail, Central Region, Subdivision 3 of the Pittsburgh Division, Pittsburgh, Pennsylvania are denied eligibility to apply for adjustment assistance under section 223 of the Trade Act of 1974.

TA-W-7174; Enterprise Plastics, Inc.; Caryville, Tenn.

The investigation was initiated on February 25, 1980 in response to a petition which was filed on behalf of workers formerly at Enterprise Plastics, Incorporated, Caryville, Tennessee. The workers produced plastic parts for automobile seat belts.

The investigation revealed that criterion (3) has not been met.

A Department survey of the customers of Enterprise Plastics, Incorporated revealed that none of the customers surveyed purchased inported plastic parts for automobile seat belts from 1978 to 1979.

Industry sources indicate that U.S. imports of plastic components and accessories for motor vehciles were negligible in 1978 and in 1979.

Petitioners allege that increased imports of automobiles caused the Caryville, Tennessee plant of Enterprise Plastics, Incorporated to shut down. Although imported automobiles incorporate plastic parts for automobile seat belts, imports of the whole product are not "like or directly competitive" with their components.

Imports of plastic parts for automobile seat belts must be considered in determining import injury to workers producing plastic parts for automobile seat belts at the Caryville, Tennessee plant of Enterprise Plastics, Incorporated.

In this case, therefore, the certifying officer has determined that all workers of Enterprise Plastics, Incorporated, Caryville, Tennessee are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7266; Executive Aviation, Inc., Detroit, Mich.

The investigation was initiated on March 3, 1980 in response to a petition which was filed on behalf of workers at Executive Aviation, Incorporated, Detroit, Michigan. The workers at Executive Aviation, Incorporated are engaged in providing the service of transporting automobile parts by air.

The investigation revealed that workers of Executive Aviation, 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 be a reduced demand for their services from a parent firm, a firm otherwise related to Executive Aviation, 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.

Executive Aviation, Incorporated and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any company producing an article.

All workers engaged in transporting automobile parts by air at Executive Aviation, Incorporated are employed by that firm. All personnel actions and payroll transactions are controlled by Executive Aviation, Incorporated. All employee benefits are provided and maintained by Executive Aviation, Incorporated. Workers are not, at any time, under employment or supervision by customers of Executive Aviation, Incorporated. Thus, Executive Aviation, Incorporated and not any of its customers, must be considered to be the "workers' firm".

In this case, therefore, the certifying officer has determined that all workers of Executive Aviation, Incorporated, Detroit, Michigan are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7248, 7371; Ferro Manufacturing Corp., Detroit, Mich. and Mt. Pleasant, Mich.

The investigations were initiated on March 3 and 17, 1980, respectively, in response to petitions which were filed by the United Auto Workers of America on behalf of workers at the Detroit and Mt. Pleasant, Michigan plants of the Ferro Manufacturing Corporation. Workers at the Detroit and Mt. Pleasant plants produce seat tracks.

The investigation revealed that criterion (3) has not been met.

Imported automobiles cannot be considered to be like or directly competitive with domestically produced seat tracks. Imports of seat tracks must be considered in determining import injury to workers producing seat tracks at the Detroit and Mt. Pleasant, Michigan plants of the Ferro Manufacturing Corporation.

Industry sources indicate that U.S. imports of seat tracks are negligible.

The Department conducted a survey with customers of the Ferro Manufacturing Corporation. The survey revealed that customers accounting for the preponderance of the Ferro Manufacturing Corporation's sales in recent years did not import seat tracks in model years 1977, 1978, 1979 and 1980 (through December).

In this case, therefore, the certifying officer has determined that all workers of the Detroit and Mt. Pleasant, Michigan plants of the Ferro Manufacturing Corporation are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7279; F. J. Boutell Driveaway Company, Inc., Flint, Mich.

The investigation was initiated on March 3, 1980 in response to a petition which was filed by the General Drivers and Helpers, Local 332 on behalf of workers at F. J. Boutell Driveaway Company, Incorporated, Flint, Michigan. The workers at F. J. Boutell Driveaway Company, Incorporated are engaged in providing the service of transporting automobiles and commercial vehicles.

The investigation revealed that workers of F. J. Boutell Driveaway Company 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 service from a parent firm, a firm otherwise related to F. J. Boutell Driveaway Company, 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.

F. J. Boutell Driveaway Company, Incorporated and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any company producing automobiles or commercial vehicles.

All workers engaged in transporting automobiles and commercial vehicles at F. J. Boutell Driveaway Company, Incorporated are employed by that firm.

All personnel actions and payroll transactions are controlled by F. J. Boutell Driveaway Company, Incorporated. All employee benefits are provided and maintained by F. J. Boutell Driveaway Company, Incorporated. Workers are not, at any time, under employment or supervision by customers of F. J. Boutell Driveaway Company, Incorporated. Thus, F. J. Boutell Driveaway Company, Incorporated and not any of its customers, must be considered to be the "workers' firm".

In this case, thererfore, the certifying officer has determined that all workers of the F. J. Boutell Driveaway Company, Incorporated, Flint, Michigan are denied eligibility to apply for adjustment assistance under section 223 of the Trade Act of 1974.

**TA-W-7344; Frolic Footwear, Walnut Ridge, Ark.**

The investigation was initiated on March 17, 1980 in response to a petition which was filed by the United Food and Commercial Workers, Boot and Shoe Division, Local 822 on behalf of workers at the Walnut Ridge, Arkansas plant of Frolic Footwear. Workers at the Walnut Ridge plant produce women's shoes and boots.

The investigation revealed that criterion (2) has not been met.

Total company sales of women's shoes and boots increased in both quantity and value in 1979, compared with 1978, and in the first 12 weeks of 1980, compared with the same period of 1979. Plant production of women's shoes and boots increased in value in 1979, compared with 1978, and in both quantitiy and value in the first 12 weeks of 1980, compared with the same period of 1979.

In this case, therefore certifying officer has determined that all workers at the Walnut Ridge, Arkansas plant of Frolic Footwear are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

**TA-W-6819; Goodyear Tire and Rubber Co., Luckey, Ohio**

The investigation was initiated on January 21, 1980 in response to a petition which was filed by the United Rubber, Cork, Linoleum and Plastic Workers of America on behalf of workers at the Luckey, Ohio plant of Goodyear Tire and Rubber Company. The workers produce pliofoam urethane automative seat cushioning and styled wheels.

The investigation revealed that criterion (3) has not been met.

With regard to the production of seat cushioning, a Labor Department Survey revealed that the major customers which decreased purchases of seat cushioning from the subject firm in 1979 compared to 1978 increased their reliance on other domestic sources, including in-house production, and decreased their reliance on imported seat cushioning for the same time period.

With regard to the production of styled wheels, the Labor Department determined that customers which decreased purchases of styled wheels from the subject firm in 1979 compared to 1978 had purchased the Luckey plant's styled wheel primarily for use on certain automobile models. Purchases of the styled wheel declined because that type of wheel was no longer designed into these models.

The Labor Department also determined that the Luckey plant's styled wheel is composed of a pliofoam urethane exterior attached to a metal rim, in contrast to the styled wheel more prominently recognized in the automotive industry which is composed of metal entirely.

Petitioners allege that increased imports of automobiles have caused decrease in production and employment at the Luckey, Ohio plant of Goodyear Tire and Rubber Company. Although imported automobiles incorporate seat cushioning and styled wheels of the same origin, imports of the whole products are not "like or directly competitive" with their component parts. Imports of seat cushioning and styled wheels must be considered in determining import injury to workers producing seat cushioning and styled wheels at the Luckey, Ohio plant of Goodyear Tire and Rubber Company.

In this case, therefore, the certifying officer has determined that all workers of the Luckey, Ohio plant of Goodyear Tire and Rubber Company are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

**TA-W-7243; H & M Dress Co., Laflin, Pa.**

The investigation was initiated on March 3, 1980 in response to a petition which was filed by the International Ladies' Garment Workers Union on behalf of workers at H and M Dress Company, Laflin, Pennsylvania. Workers at the Laflin, Pennsylvania facility plant produce girls' sportswear including pants, tops, skirts, jumpers and shorts.

The investigation revealed that criterion (3) has not been met.

U.S. imports of women's, misses' and children's slacks and shorts, blouses and shirts, skirts, and children's dresses decreased on an absolute basis in 1979 compared to 1978.

H and M Dress Company produces girls' sportswear on a contract basis for one manufacturer. That manufacturer does not purchase imported sportswear and decreased its foreign contracts in 1979 compared to 1978. A Department survey was conducted of the major customers who decreased their purchases from the manufacturer in 1979 compared to 1978. Customers which increased purchases of imported girls' sportswear also increased their purchases from domestic sources other than the manufacturer in 1979 compared to 1978. The customers relied primarily on domestic sources for their supply of girls' sportswear.

In this case, therefore, the certifying officer has determined that all workers of the H and M Dress Company, Laflin, Pennsylvania are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

**TA-W-7376; Irvama-Carmel Originals, Inc., New York, N.Y.**

The investigation was initiated on March 17, 1980 in response to a petition which was filed on behalf of workers at Irvama-Carmel Originals, Incorporated, New York, New York. Workers at the plant produced women's coats and suits.

The investigation revealed that criterion (3) has not been met.

U.S. imports of women's, misses' and children's coats and jackets decreased absolutely from 1978 to 1979. U.S. imports of women's, misses' and children's suits decreased absolutely from 1978 to 1979.

A survey of customers of Irvama-Carmel Originals, Incorporated revealed that customers who reported decreasing purchases of women's coats and suits from Irvama-Carmel Originals, Incorporated and increasing purchases of imported coats and suits represented an insignificant portion of the subject firm's sales decline in 1979 and 1980.

In this case, therefore, the certifying officer has determined that all workers of Irvama-Carmel Originals, Incorporated, New York, New York are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

**TA-W-7308; Merit Manufacturing Co., Fall River, Mass.**

The investigation was initiated on March 10, 1980 in response to a petition which was filed on behalf of workers at Merit Manufacturing Company, Fall River, Massachusetts. Workers produce women's dresses.

The investigation revealed that criterion (3) has not been met.

Imports of women's, misses, and children's dresses decreased absolutely in 1979 compared to 1978.

A survey conducted by the U.S. Department of Labor revealed that the subject firm's major manufacturer did not import women's dresses and had decreasing sales. Retail customers of the manufacturer revealed that they did not increase imports of women's dresses while decreasing purchases from the manufacturer, or that they had increased purchases of domestically produced women's dressed during the period under investigation.

In this case, therefore, the certifying officer had determined that all workers of Merit Manufacturing Company, Fall River, Massachusetts are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7100; Osan Manufacturing Co., Boyertown, Pa.

The investigation was initiated on February 12, 1980, in response to a petition which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers at the Osan Manufacturing Company, Boyertown, Pennsylvania. Workers at the Boyertown plant produce men's slacks.

The investigation revealed that criterion (3) has not been met.

U.S. imports of men's and boys' tailored suits decreased absolutely in 1979 compared to 1978. U.S. imports of men's and boys' dress and sport trousers and shorts decreased absolutely in 1979 compared to 1978.

Osan Manufacturing Company produces men's trousers on a contract basis for several manufacturers. Although none of the manufacturers uses foreign contractors or purchases imported trousers, sales of some manufacturers declined. A survey of the retail customers of the manufacturers revealed that the respondents either did not purchase imported trousers or suits or did not increase their reliance on imports from 1978 to 1979.

In this case, therefore, the certifying officer has determined that all workers of the Boyertown, Pennsylvania plant of Osan Manufacturing Company are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7192; Parry Footwear, Inc., Cambridge, Mass.

The investigation was initiated on February 25, 1980 in response to a petition which was filed on behalf of workers at Parry Footwear, Incorporated, Cambridge, Massachusetts. The workers at Parry Footwear, Incorporated produce men's house slippers.

The investigation revealed that criterion (3) has not been met.

U.S. imports of house slippers decreased absolutely and relative to domestic production in 1978 compared to 1977 and further decreased absolutely in 1979 compared to 1978.

A survey of the customers of Parry Footwear, Incorporated revealed that most customers responding to the survey who decreased purchases from Parry Footwear in 1979 compared to 1978 did not import slippers. Customers which decreased purchases from Parry Footwear, Incorporated while increasing purchases of imported slippers represented an insignificant portion of the subject firm's sales.

In this case, therefore, the certifying officer has determined that all workers of the Parry Footwear, Incorporated, Cambridge, Massachusetts are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7235; Pioneer Fuel, Inc., Crab Orchard Tipple, Raleigh County, W. Va.

The investigation was initiated on March 3, 1980 in response to a worker petition which was filed by the United Mine Workers of America on behalf of workers at Pioneer Fuel, Incorporated, Crab Orchard Tipple, Raleigh County, West Virginia. The workers produce metallurgical coal.

The investigation revealed that criterion (3) has not been met.

The petition was filed on behalf of workers engaged in employment related to the mining of metallurgical coal. In accordance with Section 222 of the Trade Act of 1974 and 29 CFR 90.2 a domestic article may be "directly competitive" with an imported article at a later stage of processing. Coke is metallurgical coal at a later stage of processing. Imports of coke and imports of metallurgical coal should be considered in determining import injury to workers mining metallurgical coal.

U.S. imports of metallurgical coal and of coke decreased both absolutely and relative to domestic production in 1979 compared to 1978.

Workers of Pioneer Fuel's Crab Orchard Tipple crush and load metallurgical coal exclusively for Vecellio and Grogan's Sullivan #1 Mine. Although Pioneer Fuel is considered an independent company, the owners of Pioneer Fuel also own and operate Vecellio and Grogan, Incorporated.

Approximately 75 percent of the metallurgical coal from the Sullivan Strip Mine #1 was sold to a sales agent. A Department survey revealed that 100 percent of this coal was exported. The remaining 25 percent of the metallurgical coal from the Sullivan Strip Mine #1 was sold to a domestic coal company which then supplied metallurgical coal to industrial customers. A Department survey revealed that none of that coal company's customers purchased imported metallurgical coal during 1978 or 1979. The survey further revealed that none of the customers increased their reliance on imported coke in 1979 compared to 1978.

In this case, therefore, the certifying officer has determined that all workers of Pioneer Fuel, Incorporated, Crab Orchard Tipple, Raleigh County, West Virginia are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7252; Roberts & Schaefer Co., Sabine, W. Va.

The investigation was initiated on March 3, 1980 in response to a petition which was filed by the United Mine Workers of America on behalf of workers at Roberts and Schaefer Company, Sabine, West Virginia. The workers at Roberts and Schaefer Company are engaged in providing construction and engineering services to coal mining companies.

The investigation revealed that workers of Roberts and Schaefer Company, Sabine, West Virginia 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 a parent firm, a firm otherwise related to Roberts and Schaefer Company 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.

Roberts and Schaefer Company and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any company producing coal.

All workers engaged in construction and engineering work for Roberts and Schaefer Company, Sabine, West Virginia are employed by that firm. All personnel actions and payroll transactions are controlled by Roberts and Schaefer Company. All employee benefits are provided and maintained by Roberts and Schaefer Company. Workers are not, at any time, under employment or supervision by customers of Roberts and Schaefer Company. Thus, Roberts and Schaefer

Company and not any of its customers, must be considered to be the "workers' firm".

In this case, therefore, the certifying officer has determined that all workers of Roberts and Schaefer Company, Sabine, West Virginia are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

**TA-W-7402; Reed Plating Co.; Centerline, Mich.**

The investigation was initiated on March 24, 1980, in response to a petition, which was filed by the United Auto Workers on behalf of workers at the Centerline, Michigan plant of the Reed Plating Company. The workers at Reed Plating Company are engaged in providing the service of chrome and nickel plating of automobile components.

The investigation revealed that workers of Reed Plating Company 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 a parent firm, a firm otherwise related to Reed Plating Company 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.

Reed Plating Company 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 chrome and nickel plating at Reed Plating Company are employed by that firm. All personnel actions and payroll transactions are controlled by Reed Plating Company. All employee benefits are provided and maintained by Reed Plating Company. Workers are not, at any time, under employment or supervision by customers of Reed Plating Company. Thus, Reed Plating Company, and not any of its customers, must be considered to be the "workers' firm".

In this case, therefore, the certifying officer has determined that all workers of the Centerline, Michigan plant of the Reed Plating Company are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

**TA-W-7276; Reserve Terminal Co., Highland Park, Mich.**

The investigation was initiated on March 3, 1980 in response to a petition which was filed by the United Automobile, Aerospace and Agricultural Implement Workers of America on behalf of workers at the Reserve Terminal Company, Highland Park, Michigan. The workers at Reserve Terminal Company are engaged in providing the service of warehousing automobile component products.

The investigation revealed that workers of the Reserve Terminal Company 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 a parent firm, a firm otherwise related to Reserve Terminal Company 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.

Reserve Terminal Company and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any company producing automobile component products.

All workers engaged in warehousing automobile component products at the Reserve Terminal Company are employed by that firm. All personnel actions and payroll transactions are controlled by the Reserve Terminal Company. All employee benefits are provided and maintained by the Reserve Terminal Company. Workers are not, at any time, under employment or supervision by customers of the Reserve Terminal Company. Thus, Reserve Terminal Company and not any of its customers, must be considered to be the "workers' firm".

In this case, therefore, the certifying officer has determined that all workers of the Reserve Terminal Company, Highland Park, Michigan are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

**TA-W-7249; Steel Shearing & Processing Corp., Detroit, Mich.**

The investigation was initiated on March 3, 1980 in response to a petition which was filed on behalf of workers at the Steel Shearing and Processing Corporation in Detroit, Michigan. Workers at the Detroit plant process hot and cold rolled carbon steel sheet.

The investigation revealed that criterion (3) has not been met.

Imports of hot and cold rolled carbon steel sheet declined both absolutely and relative to domestic shipments in 1978 compared to 1977 and continued to decline in 1979 compared to 1978.

The petition alleges that increased imports of automobiles contributed importantly to the decline in sales and production at the Steel Shearing and Processing Corporation. Imported automobiles cannot be considered like or directly competitive with steel sheet. Imports of steel sheet must be considered in determining import injury to workers producing steel sheet at Steel Shearing and Processing.

In this case, therefore, the certifying officer has determined that all workers of the Steel Shearing and Processing Corporation in Detroit, Michigan are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

**TA-W-7221; Samesta Manufacturing Co., Fall River, Mass.**

The investigation was initiated on February 25, 1980 in response to a petition which was filed by three workers on behalf of workers at Samesta Manufacturing Company, Fall River, Massachusetts. The workers produce women's dresses.

The investigation revealed that criterion (3) has not been met.

Imports of women's, misses and children's dresses decreased absolutely in 1979 compared to 1978.

A survey conducted by the U.S. Department of Labor revealed that manufacturers representing a significant portion of the subject firm's sales declines did not import women's dresses. Surveyed customers of manufacturers with declining dress sales did not increase purchases of imported women's dresses relative to purchases of domestically produced women's dresses during the period under investigation.

In this case, therefore, the certifying officer has determined that all workers of Samesta Manufacturing Company, Fall River, Massachusetts are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

**TA-W-7172; Selby, Battersby and Co.; Quincy, Mass.**

The investigation was initiated on February 25, 1980 in response to a petition which was filed by the Industrial Union of Marine and Shipbuilding Workers of America on behalf of workers at Selby, Battersby and Company, Quincy, Massachusetts.

The workers install deck covering and hull outfitting equipment onboard ships under construction by the General Dynamics Corporation at the Quincy, Massachusetts Shipyard.

The investigation revealed that criterion (3) has not been met.

Workers of Selby Battersby employed at the Quincy Shipyard are engaged in the installation of decking and hull outfitting equipment on two ships currently under construction by General Dynamics at Quincy. With the exception of temporary layoffs due to construction lags, the workers are expected to remain employed at the Quincy Shipyard for at least the duration of the contract, now scheduled for completion in September 1980. Since the workers are currently employed under a specific ongoing contract, at this point they cannot be adversely affected by any lack of orders to General Dynamics since activities under the current contract are proceeding.

In this case, therefore, the certifying officer has determined that all workers of Selby, Battersby and Company, Quincy, Massachusetts are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7239; Sew Fab, Inc.; East Newark, N.J.

The investigation was initiated on March 3, 1980 in response to a petition which was filed by the International Ladies' Garment Workers' Union on behalf of workers at Sew Fab, Incorporated, East Newark, New Jersey. The workers produce ladies' blouses.

The investigation revealed that criterion (3) has not been met.

U.S. imports of women's, misses' and children's blouses and shirts decreased on an absolute basis in 1979 compared to 1978.

A Departmental survey of the blouse manufacturers from whom Sew Fab, Incorporated received contract work revealed that the manufacturers did not use foreign sources in 1978 or 1979. The manufacturers increased their in-house production of ladies' blouses and also experienced increasing sales from 1978 to 1979.

In this case, therefore, the certifying officer has determined that all workers of Sew Fab, Incorporated, East Newark, New Jersey are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7175; Soundesign Corp., Corporate Headquarters, Jersey City, N.J.; Warehouse/Distribution Center, Bayonne, N.J.

The investigation was initiated on February 25, 1980 in response to a petition which was filed by the Warehouse and Production Employees Union on behalf of workers at the Jersey City, New Jersey corporate headquarters and the Bayonne, New Jersey warehouse/distribution center of Soundesign Corporation. The workers are engaged in employment related to the production and sale of audio equipment.

The investigation revealed that criterion (3) has not been met. Workers at the Bayonne, New Jersey warehouse/distribution center of Soundesign Corporation handle imported audio equipment exclusively. Hence, any increase of imports of audio equipment into the United States would not lower employment at the Bayonne, New Jersey warehouse and distribution center. Workers at the Jersey City, New Jersey corporate headquarters of Soundesign Corporation perform administrative, sales, quality control and service functions related to imported and domestically produced audio equipment. Sales of such equipment by Soundesign Corporation increased in 1979 compared to 1978.

In this case, therefore, the certifying officer has determined that all workers of the Jersey City, New Jersey corporate headquarters and the Bayonne, New Jersey warehouse/distribution center of Soundesign Corporation are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7311 & 7312; Southern Appalachian Coal Co., Freeport No. 1 Mine, Bull Creek No. 1 Mine, Julian, W. Va.

The investigation was initiated on March 10, 1980 in response to a petition which was filed on behalf of workers at the Southern Appalachian Coal Company, Freeport No. 1 and Bull Creek No. 1 Mines, Julian, West Virginia. Workers at the mines extract bituminous coal.

The investigation revealed that criterion (3) has not been met.

Evidence developed during the course of the investigation revealed that the bituminous coal mined at the Freeport No. 1 and Bull Creek No. 1 mines by the Southern Appalachian Coal Company is sold to domestic companies for use in electrical power generation.

U.S. imports of bituminous coal are negligible. The ratio of imports to domestic production did not exceed six-tenths of one percent from 1974 through 1979. Imports decreased in 1979 compared to 1978.

In this case, therefore, the certifying officer has determined that all workers of Southern Appalachian Coal Company, Freeport No. 1 and Bull Creek No. 1 Mines, Julian, West Virginia are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7230; Sweater Gems Limited, New York, N.Y.

The investigation was initiated on March 3, 1980 in response to a petition which was filed on behalf of workers at Sweater Gems Limited, New York, New York. The workers at Sweater Gems produce ladies' sweaters.

The investigation revealed that criterion (3) has not been met.

The Office of Trade Adjustment Assistance conducted a survey of the major customers of Sweater Gems Limited. Some of the customers surveyed reduced purchases of imported women's sweaters in 1979 compared to 1978, while increasing their overall domestic purchases of women's sweaters. The remaining customers responding to the survey increased their purchases of both domestically made and imported sweaters in 1979 compared to 1978. However, these customers increased their purchases of domestically made sweaters more than they increased their purchases of imported sweaters. Every customer surveyed reported that imports were a smaller percentage of its overall sweater purchases in 1979 than in 1978.

U.S. imports of women's, misses' and children's sweaters decreased absolutely in 1979 compared to 1978.

In this case, therefore, the certifying officer has determined that all workers of Sweater Gems Limited, New York, New York are denied eligibility to apply fo adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7275; United Automobile, Aerospace, Agricultural Implement Workers of America, Local No. 25, St. Louis, Mo.

The investigation was initiated on March 3, 1980 in response to a petition which was filed by the United Automobile, Aerospace, Agricultural Implement Workers of America, Local No. 25 on behalf of workers at the United Automobile, Aerospace Agricultural Implement Workers of America, Local No. 25, St. Louis, Missouri. The workers at the U.A.W., Local No. 25 are engaged in providing services for the union membership.

The investigation revealed that workers of the U.A.W., Local No. 25 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 a parent firm, a firm otherwise related to the U.A.W., Local No. 25 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.

The U.A.W., Local No. 25 and the companies whose employees it represents have no controlling interest in one another. The U.A.W. is not corporately affiliated with any other company.

All workers engaged in providing services for the U.A.W., Local No. 25 are employed by the U.A.W. All personnel actions and payroll transactions are controlled by the U.A.W., Local No. 25. All employee benefits are provided and maintained by the U.A.W., Local No. 25. Workers are not, at any time, under employment or supervision by the companies whose employees the U.A.W., Local No. 25 represents. Thus, the U.A.W., Local No. 25 and not any other company must be considered to be the "workers' firm".

In this case, therefore, the certifying officer has determined that all workers of United Automobile, Aerospace, Agricultural Implement Workers of America, Local No. 25, St. Louis, Missouri are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

I hereby certify that determinations were issued with respect to all of the aforementioned cases during the week of April 28th—May 2nd 1980.

Marvin M. Fooks,

*Director, Office of Trade Adjustment Assistance*

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BILLING CODE 4510-28-M

## Affirmative Determinations 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 summaries of certifications of eligibility to apply for worker adjustment assistance issued during the period April 28th–May 2nd, 1980.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the act must have been met.

In the following cases it has been concluded that all of the criteria have been met.

**TA–W–7241 and 7299; Barson and Co., Lehighton and Palmerton, Pa.**

The investigations were initiated on March 3, 1980 and on March 10, 1980 for the Lehighton, Pennsylvania and the Palmerton, Pennsylvania plants of Barson and Company in response to petitions which were filed on behalf of workers at the Lehighton and Palmerton, Pennsylvania plants of Barson and Company. The workers at both companies produce ladies' blouses.

U.S. imports of women's, misses; and children's blouses and shirts increased absolutely and relative to domestic production in 1978 compared to 1977. The ratio of imports to domestic production exceeded 64 percent in each year from 1975 through 1978.

The Department surveyed the maufacturers with whom Barson and Company contracted for the production of ladies' blouses. The survey revealed that sales of these manufacturers declined, in quantity, in 1978 and 1979 compared to the previous year. A Departmental survey of customers representing a substantial portion of these manufacturers' sales was conducted. The survey revealed that, in aggregate, the respondents to the survey decreased their purchases of ladies' blouses from the manufacturers and increased their relliance on imported ladies' blouses in 1979 compared to 1978.

In this case, therefore, the certifying officer has determined that:

"All workers at the Lehighton and Palmerton, Pennsylvania plants of Barson and Company who became totally or partially separated from employment on or after June 1, 1979 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

**TA–W–7231; Easton Clothing Co., Souderton, Pa.**

The investigation was initiated on March 3, 1980 in response to a petition which was filed on behalf of workers at Easton Clothing Company, Souderton, Pennsylvania, a branch of Martil Clothing Company. The workers produce men's suitcoats and sportcoats.

U.S. imports of men's and boys' tailored dress coats and sportcoats increased absolutely and relative to domestic production in 1978 compared with 1977.

A Department survey revealed that customers surveyed increased their purchases of imports of suits and sportcoats as a percentage of total demand from 1978 to 1979. Many of the customers that decreased purchases from Easton Clothing Company increased purchases of imports in 1979.

In this case, therefore, the certifing officer has determined that:

"All workers of Easton Clothing Company, Souderton, Pennsylvania who became totally or partially separated from employment on or after March 2, 1979 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

**TA–W–7000, 7073 and 7081; General Motors Corp., Cadillac Assembly, Detroit, Mich.; GMAD–South Gate, Calif.; GMAD–St. Louis, Mo.**

The investigation was initiated on February 11, 1980 in response to a petition which was filed by the United Automobile, Aerospace and Agricultural Workers of America (U.A.W.) on behalf of workers at the final assembly plants of General Motor Corporation listed in the appendix.

Standard cars produced by GM include the Chevrolet Impala and Caprice, the Pontiac Catalina and Bonneville, the Oldsmobile Delta 88 and Ninety-Eight and the Buick LeSabre and Electra. Also included as standard cars were the MY 1978 Oldsmobile Toronado and the MY 1978 Buick Riviera. IN MY 1978, the Riviera was a rear wheel drive car. Starting with MY 1979, the Riviera was converted to a front wheel drive luxury car, while design and price changes shifted the Toronado from a standard to a luxury/specialty car.

The Riviera and Toronado design changes from MY 1978 to MY 1979 were indicative of the changes being undertaken by domestic automobile manufacturers during the MY 1977–MY 1979 period. MY 1979 was the year of transition as several car lines were phased out and replaced by smaller models. Design changes emphasized downsizing, improved fuel mileage and modified passenger seating. While GM's standard cars were less affected by changes in size than its mid-size and luxury/specialty cars, automobiles manufactured by GM's domestic competitors were greatly affected. Moreover, GM undertook its design changes generally one year earlier than its domestic competitors. As a result of design changes throughout the domestic industry during the MY 1977–MY 1979 period, the traditionally distinctions between the mid-size and standard cars and between the standard and luxury/specialty classes of cars became less clear. Because the traditional classes of

cars became blurred, imports of both mid-size and standard cars can be considered competitive with GM standard cars in MY 1979 and MY 1980 and imports of standard and luxury/specialty cars can be considered competitive with GM standard and luxury/specialty cars in MY 1979 and MY 1980.

U.S. imports of mid-size cars increased both absolutely and relative to domestic production in MY 1979 compared to MY 1978 and increased relative to domestic production in the first quarter of MY 1980 compared to the same period in MY 1979. U.S. imports of standard cars increased both absolutely and relative to domestic production in MY 1979 compared to MY 1978.

Imported mid-size and standard cars are like or directly competitive with standard cars produced at the South Gate and St. Louis GMAD plants.

The Cadillac Seville, Fleetwood and DeVille are classified as luxury/specialty cars. U.S. imports of luxury/specialty automobiles increased absolutely and relative to domestic production in MY 1979 compared to MY 1978 and increased absolutely and relatively in the first quarter of MY 1980 compared to the same period in MY 1979.

Imported luxury/specialty cars are like or directly competitive with luxury/specialty cars produced at the Cadillac Assembly plant and at the South Gate GMAD plant.

Nearly all the light duty trucks sold by GM are pickup trucks. U.S. imports of pickup trucks increased from 1977 to 1978 and from 1978 to 1979, both absolutely and relative to domestic production and consumption.

Company imports of light duty trucks increased in the 1979 model year compared with MY 1978 and in the first 4 months of MY 1980 compared with the same MY 1979 period.

Imported pickup trucks are like or directly competitive with light duty trucks produced at the St. Louis GMAD plant.

In this case, therefore, the certifying officer has determined that

All workers of the final assembly plants of General Motors Corporation listed in the appendix who became totally or partially separated from employment on or after the impact date listed in the appendix are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Appendix

| TA-W | Plant and location | Impact date |
|---|---|---|
| 7000 | Cadillac Assembly, Detroit, MI | Sept. 1, 1979 |
| 7073 | GMAD, South Gate, CA | Sept. 1, 1979. |

Appendix—Continued

| TA-W | Plant and location | Impact date |
|---|---|---|
| 7081 | GMAD, St. Louis, MO | June 15, 1979 |

TA-W-7270; Jamesville Auto Transport Co. Chicago, Ill.

The investigation was initiated on March 3, 1980 in response to a petition which was filed on behalf of workers at Jamesville Auto Transport Company, Chicago, Illinois. The workers at Jamesville Auto Transport Company, Chicago, Illinois are engaged in providing the service of transporting automobiles and trucks.

The investigation revealed that workers of Jamesville Auto Transport Company 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 a parent firm, a firm otherwise related to Jamesville Auto Transport Company 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.

Jamesville Auto Transport Company and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any company producing automobiles or trucks.

All workers engaged in transporting automobiles and trucks at Jamesville Auto Transport Company are employed by that firm. All personnel actions and payroll transactions are controlled by Jamesville Auto Transport Company. All employee benefits are provided and maintained by Jamesville Auto Transport Company. Workers are not, at any time, under employment or supervision by customers of Jamesville Auto Transport Company. Thus, Jamesville Auto Transport Company and not any of its customers, must be considered to be the "workers' firm".

In this case, therefore, the certifying officer has determined that all workers of Jamesville Auto Transport Company, Chicago, Illinois are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7323; Levy Goldklang, Inc., New York, N.Y.; TA-W-7324; Sidley, Inc., New York, N.Y.

The investigations were initiated on March 10, 1980 in response to petitions which were filed on behalf of workers at Levy Goldklang, Incorporated, New York, New York (TA-W-7323) and on behalf of workers at Sidley, Incorporated, New York, New York (TA-W-7324). The workers produce women's leather coats and jackets.

U.S. imports of leather coats and jackets increased absolutely and relative to domestic production in each year compared to the previous year from 1975 through 1978. U.S. imports of leather coats and jackets increased absolutely and relative to domestic production during 1979 compared to the average for the 1975–1978 period. The ratio of imports to domestic production was 96.8 during 1979.

Levy Goldklang and Sidley, Incorporated are jointly owned and operated. A Department survey revealed that major customers of Levy Goldklang decreased purchases from Levy Goldklang and increased purchases of imported women's leather coats and jackets in 1979 compared to 1978.

In this case, therefore, the certifying officer has determined that:

All workers of Levy Goldklang, Incorporated, New York, New York (TA-W-7323) and all workers of Sidley, Incorporated, New York, New York (TA-W-7324) who became totally or partially separated from employment on or after July 6, 1979 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7223; State Beef Co.; Boston, Mass.

The investigation was initiated on February 25, 1980 in response to a petition which was filed on behalf of workers at State Beef Company, Boston, Massachusetts. The workers produced boneless beef products.

Imports of meat for manufacturing, including boneless beef products, increased both absolutely and relative to domestic production in 1978 compared with 1977 and increased absolutely and relative to domestic production in 1979 compared with 1978.

A customer survey conducted by the U.S. Department of Labor revealed that major customers reduced purchases from State Beef Company and increased purchases of imported beef products during the 1978–1980 period.

In this case, therefore, the certifying officer has determined that:

All workers of State Beef Company, Boston, Massachusetts who became totally or partially separated from employment on or after February 10, 1979 and before May 1, 1979 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

TA-W-7128; Sullcraft Industries, Dushore, Pa.

The investigation was initiated on Feburary 19, 1980 in response to a petition which was filed of workers at Sullcraft Industries, Dushore, Pennsylvania. The workers produce men's and boys' pajamas, robes, nightshirts and gym shorts.

U.S. imports of men's and boys' pajamas and other nightwear increased absolutely and relative to domestic production in 1978 compared to 1977 and in 1979 compared to 1978.

All sewing operations at the Dushore plant were terminated in December 1979. The sewing operations previously performed at the Dushore plant have been transfered to a foreign subsidiary of Sullcraft. Company imports of men's and boys' pajamas, robes, nightshirts and gym shorts increased in the first quarter of 1980 compared to the like quarter in 1979.

In this case, therefore, the certifying officer has determined that:

All workers of Sullcraft Industries, Dushore, Pennsylvania, who became totally or partially separated from employment on or after November 24, 1979 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

I hereby certify that determinations were issued with respect to all of the aforementioned cases during the week of April 28th-May 2nd, 1980.

Marvin M. Fooks,

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 80-14360 Filed 5-8-80; 8:45 am]

BILLING CODE 4510-28-M

## MINIMUM WAGE STUDY COMMISSION

### Invitation to Submit Testimony and Comments; Correction

In FR Doc. 80-13580 appearing on page 29444 in the Federal Register of May 2, 1980 the Commission's address was inadvertently omitted in the last paragraph on page 29445. The public is invited to send their comments and submissions to: Mr. Louis E. McConnell; Minimum Wage Study Commission; 1430 K St. NW; Suite 500; Washington, DC 20005.

Louis E. McConnell,

*Executive Director.*

[FR Doc. 80-14365 Filed 5-8-80; 8:45 am]

BILLING CODE 4510-23-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 80-36]

### Sentry Products, Inc., of Santa Clara, Calif.; Intent To Grant Exclusive Patent License

Notice is hereby given that consideration is being given to the grant to Sentry Products, Inc. of Santa Clara, California, of a limited, exclusive, revocable license to practice the invention described in U.S. Patent No. 3,750,131 for "Silent Emergency Alarm System for School and the Like", issued July 31, 1973, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 C.F.R. 1245.2, as revised April 1, 1972. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 30 days of the date of this Notice, the Chairman, Inventions and Contributions Board, NASA, Washington, DC., 20546, receives in writing any of the following, together with supporting documentation: (i) A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed exclusive license; (ii) an application for a nonexclusive license under such invention, in accordance with § 1245.206(b) in which applicant states that he has already brought or is likely to bring the invention to practical application within a reasonable period. The Board will review all written responses to the Notice and then recommend to the Administrator whether to grant the exclusive license.

Dated: May 2, 1980.

S. Neil Hosenball,

*General Counsel.*

[FR Doc. 80-14297 Filed 5-8-80; 8:45 am]

BILLING CODE 7510-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No.-123]

### Board of Curators, University of Missouri-Rolla; Notice of Proposed Renewal of Facility License

The United States Nuclear Regulatory Commission (the Commission) is considering renewal of Facility License No. R-79, issued to The Board of Curators, University of Missouri-Rolla (the licensee), for operation of the pool-type research reactor located on the licensee's campus at Rolla, Missouri.

The renewal would extend the expiration date of Facility License No. R-79 to November 20, 1989, in accordance with the licensee's timely application for renewal dated October 15, 1979, as supplemented December 14, 1979.

Prior to renewal of the license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 11, 1980, the licensee may file a request for a hearing with respect to renewal of the subject facility license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the renewal action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert W. Reid: (petitioner's name and telephone number); (date petition was mailed); (Missouri-Rolla); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR § 2.714(a)(i)-(v) and § 2.714(d).

For further details with respect to this action, see the application for renewal dated October 10, 1979, as supplemental December 14, 1979, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C.

Dated at Bethesda, Maryland, this 30th day of April 1980.

For the Nuclear Regulatory Commission.

Robert W. Reid,

*Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.*

[FR Doc. 80-14330 Filed 5-8-80; 8:45 am]
BILLING CODE 7590-01-M

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[Docket Nos. 50-498; 50-499]

## Houston Lighting & Power Co. (South Texas Project, Units 1 & 2); Order To Show Cause (Effective Immediately)

I

The Houston Lighting and Power Company is the holder of Construction Permit Nos. CPPR-128 and CPPR-129, issued on December 25, 1975. These permits authorize, in accordance with their provisions, construction of the South Texas Project, Units 1 and 2, in Matagorda County, Texas.

II

As a result of allegations that QC inspectors were being threatened if they identified unacceptable items during concrete placements, an investigation (Report No. 50-498/77-08; 50-499/77-08) was conducted by the NRC Region IV (Arlington, Texas) Office during July 1977. Ten QC inspectors were interviewed, six stated they had experienced some harassment, but none stated that the harassment led to overlooking unacceptable items. In December 1977, an investigation (Report No. 50-498/77-14; 50-499/77-14) of an allegation that certain radiographs, mailed to a concerned citizen, revealed faulty welds, was not substantiated as the alleger was apparently the victim of a hoax. In March 1978, an investigation (Report No. 50-498/78-05; 50-499/78-05) was conducted of an allegation from an individual who felt he would become a potential scapegoat for allowing the improper use of procedures; this allegation was not substantiated. In May 1978, an investigation (Report No. 50-498/78-09; 50-499/78-09) was conducted of allegations made by an anonymous individual that Cadweld records involving qualifications of QC inspectors were being falsified and QC inspectors were under pressure to violate inspection procedures and, thereby, not hold up construction work. There was no evidence that Cadweld records had been falsified. Interviews with QC inspectors indicated that while there was normal pressure to get the job done there was no undue pressure to violate procedures. One QC supervisor stated that his "holds" (inspection hold points) had sometimes been overruled by higher authority, but he stated this was management's prerogative and did not result from construction pressure. In July 1978, an investigation (Report No. 50-498/78-12; 50-499/78-12) was conducted of allegations made by an individual that QC Civil inspectors were inadequately trained on new procedures; the nonconformance reporting system was inadequate; QC inspectors were not given adequate support; upper management was inaccessible; and construction personnel placed undue pressure on QC inspectors. The allegations, for the most part, could not be substantiated. The investigation results did indicate apparent low morale of some QA/QC Civil inspectors and some weaknesses in the Civil QA program.

In early August 1978, Region IV rereviewed the results of the past several investigations and noted that although most of the allegations were not substantiated, low morale of QC personnel was certainly evident during the investigations. This observation prompted Region IV management to conduct a special meeting with licensee's corporate management representatives in their corporate offices in Houston, Texas, on August 15, 1978 (Report No. 50-498/78-13; 50-499/78-13). The specific purpose of the meeting was not only to express concern about the apparent low morale of some Civil QA/QC personnel, but also to discuss apparent weaknesses in the implementation of the site QA/QC Civil program, and the adequacy of the present QA/QC staffing level. Region IV concluded the meeting by stating that although they recognized that most ot the items discussed were based on allegations which were not substantiated, there was concern about certain perceived indications. Specifically, there appeared to be a morale problem in the site Civil QA/QC organization; the long QC inspectors punch lists would suggest that the construction surveillance inspections by the craft foreman and field engineers were less than adequate and, thereby, placing additional pressures on QC inspectors to complete final inspections; the observations made by Region IV inspectors that Civil QC inspectors appeared to spend very little time at their desk preparing for inspections could suggest that QC inspectors have

too heavy an inspection workload; finally, with regard to the adequacy of staffing, concern was expressed that the staffing plan for the current status of the project indicated that the site was below the specified QA/QC manpower level by some 21 Brown and Root personnel and by some 2 licensee personnel.

One month later, on September 15, 1978, a meeting was held in the Region IV office with licensee and Brown and Root management to further discuss commitments made by the licensee during the August 15, 1978, meeting in Houston.

Also discussed during the meeting were findings identified during the September 11–14, 1978, Region IV investigation of Cadweld irregularities which resulted in the issuance of an Immediate Action Letter on September 14, 1978, confirming a licensee imposed stop work order on placement of concrete in the Unit 1 Reactor Containment Building. The September 15 meeting was followed by a licensee letter dated October 3, 1978 to the Region IV office which addressed the several allegations that were the subject of the July 1978 Region IV investigation that led to the special meeting with the licensee on August 15, 1978. The actions committed to by the licensee, as set forth in the October 3 letter, to correct the apparent low morale problem and strengthen the QA/QC program were included in the inspection agenda for forthcoming Region IV inspections. The results of Region IV inspections conducted during the next several months indicated that actions were being taken by the licensee to strengthen the onsite QA/QC program and improve the morale of site QC inspectors.

Region IV continued to receive allegations which were primarily directed toward site QA/QC activities. During the period August 1978 to November 1979, five investigations were conducted by Region IV. In August 1978, an investigation (Report No. 50–498/78–14; 50–499/78–14) was conducted of an alleged solicitation of bribes by a former QC inspector. The allegation, involving one man's word against another, was not substantiated. An additional allegation revealed during the investigation that QC inspectors would be adversely affected by the termination of the former QC inspector was not substantiated.

In September 1978, an investigation (Report No. 50–498/78–15; 50–499/78–15) was conducted of allegations made by a QC inspector involving installation and inspection of Cadwelds, mislocation of a Unit 2 structure and the inability of some construction foremen to read and write. Four of the thirteen allegations were substantiated, resulting in two items of noncompliance. Allegations that were substantiated included the loss of a field sketch, application of centering marks to rebar after Cadwelds were completed, lack of second shift QC inspector coverage for Cadwelding, and that only threee Cadweld QC inspectors were available for Cadweld inspection. The allegation concerning mislocation of a Unit 2 structure was, in fact, a survey error which resulted in the Mechanical/Electrical Auxiliary Building concrete mat being one foot too narrow. This item had already been identified by the licensee.

In January and February 1979, an investigation (Report No. 50–498/79–01; 50–499/79–01) was conducted of allegations made by a former employee concerning installation and inspection of Cadwelds. Two of the six allegations were substantiated resulting in one item of noncompliance. Allegations that were substantiated included the copying over of dirty Cadweld Examination Checklists and entering the QC inspector's initials on the clean checklists by another person; and the acceptance of a Cadweld with excess voids in the filler metal. In May 1979, an investigation (Report No. 50–498/79–09; 50–499/79–09) was conducted of allegations concerning refusal of a QC inspector to sign a concrete pour card and widespread discrepancies in the Cadweld "as-built" location records. Both allegations were substantiated, but no items of noncompliance were identified. In September 1979, an investigation (Report No. 50–498/79–14; 50–499/79–14) was conducted of alleged intimidation of QC inspectors by construction personnel and QA/QC program irregularities. Four of the ten allegations were substantiated resulting in an item of noncompliance and a deviation. Allegations that were substantiated included the finding that holes were, in fact, left in walls of safety-related structures after removal of form ties; Lift 5 of the Unit 2 Reactor Containment Building contained Cadwelds that were not accounted for; an inspection report contained an unsigned and undated entry by a person other than the QC inspector; and a QC inspector was verbally instructed to disregard a stopwork notice.

In addition to the several investigations of allegations, an investigation of an altercation between a construction engineer and a QC inspector was conducted in May 1979, and was documented in Inspection Report No. 50–498/79–04; 50–499/79–04. The incident was confirmed, but licensee actions were considered appropriate and no items of noncompliance were identified.

Significant civil/structural problems identified and reported to Region IV by the licensee during 1978 and 1979, in accordance with 10 CFR Part 50.55(e), included unconsolidated concrete in the slab under the spent fuel pool in theUnit 1 Fuel Handling Building; a dimensional error in the base mat of the Unit 2 Mechanical/Electrical Auxiliary Building (MEAD2); placement of Category I backfill over a clay ramp in the MEAB2 area; concrete voids behind the liner plate in Lift 15 of the Unit 1 Reactor Containment Building (RCB) exterior wall; and concrete voids in Lift 8 of the Unit 1 RCB wall. The voids in Lift 8 and later in other areas of the Units 1 and 2 RCB exterior walls were identified by the licensee as a result of Region IV concerns which were expressed following the discovery of the voids in Lift 15 of the Unit 1 RCB.

Region IV issued five Immediate Action Letters (IAL) to the licensee during the period January 1978 to November 1979. An IAL confirming a licensee imposed stopwork order on concrete placement in the RCB1 was issued in September 1978. The stop work resulted from problems concerning installation and inspection of Cadwelds, indentified during the investigation conducted in September 1978. An IAL concerning improper storage of reinforcing steel was issued in April 1979. The IAL was the result of reinforcing steel storage discrepancies identified during an inspection (Report No. 50–498/79–05; 50–499/79–05) conducted in April 1979. An IAL confirming a licensee imposed stopwork order related to placement of safety-related concrete was issued in June 1979. The stopwork order was the result of the discovery of concrete voids in Lift 8 of the Unit 1 RCB. Another IAL was issued in June 1979 which confirmed the partial release of the stopwork order for safety-related concrete but continued the stop work for RCB exterior shell wall placements. An IAL issued in September 1979 involved release of the stopwork order affecting RCB shell wall placements.

In addition to the ten investigations performed during the July 1977 to November 1979 period, a special Mid-Team QA inspection (Report No. 50–498/79–13; 50–499/79–13) was conducted during the week of August 6, 1979, on an accelerated schedule. NRC participants in the inspection included two Region IV inspectors, the RRI designee from Region III, and an Inspection Specialist from Region II. Five items of

noncompliance related to QA program implementation were identified during the inspection.

A Reactor Resident Inspector (RRI) was assigned to the South Texas Project on August 26, 1979, and assumed resident duties on September 2, 1979. On November 2, 1979, the RRI was contacted on site by a Brown and Root QC inspector who alleged that civil QC inspectors were being harassed and intimidated by Brown and Root construction personnel.

III

As a result of the allegations received on November 2, 1979, past allegations of a similar nature and repeated failures on the part of both HL&P and B&R to effectively correct poor construction practices, a special investigation effort was initiated. The purpose of this investigation effort, conducted over the period of November 10, 1979 to February 7, 1980, was to determine the validity of the recent allegations and to assess the effectiveness of the Quality Assurance/Quality Control (QA/QC) program at the South Texas Project (STP). The investigation team reporting directly to the HQ staff was comprised of an investigator and one inspector from Region IV, one inspector each from the Region I and II offices and two from the Region III office.

The details of these findings are described in the investigation report No. 50-498/79-19 and 50-499/79-19. The items of noncompliance resulting from the special investigation are described in Appendix A* of the transmittal letter of this Order.

The allegations of harassment, intimidation and lack of support of QC inspectors were substantiated during the investigation and demonstrate shortcomings in the management or poor management attitude and practices at the STP. Further, the results of the investigation establish that the QA/QC program at the South Texas Project is deficient and does not meet the standards required to assure that STP will be constructed to NRC requirements.

Procedural and programmatic inadequacies in the HL&P and B&R organization have resulted in a failure to identify quality problems and a failure to correct and prevent recurrence of identified problems. The lack of adequate control by B&R over safety-related activities and the lack of detailed involvement of HL&P in the total scope of activities associated with the STP has apparently been the reason behind these problems. This lack of detailed knowledge and involvement has hindered HL&P's ability to maintain adequate control of B&R, which for this facility is designer, constructor and provides the majority of the support personnel for the quality assurance/quality control program.

The South Texas Project QA management does not fully recognize the requirement for QA/QC organizational freedom. This is evidenced by a January 4, 1980 lecture by the B&R Project QA manager to the B&R site QA/QC and construction and engineering supervisory personnel. This lecture which has not yet been revised repeatedly overemphasized the B&R QA/QC organization's responsibilities for minimizing project cost and maintaining the construction schedule. In addition, the lecture stressed the fact that a B&R QC inspector's decisions are subject to question, challenge and supervisory review and reversal.

The inspection of current activities and recent QA records indicate that the QA/QC program has not prevented recurrence of poor concreting practices that at times resulted in voids in structural concrete. A recent example of this was the lack of quality controls during the Unit 2 containment shell void evaluation in December 1979, which resulted in severe deformation of the containment liner.

Procedures lackling in clarity and qualitative acceptance criteria; personnel with inadequate training, experience and/or education; and production and scheduling pressures, harassment and intimidation may have contributed to this situation.

In the area of soil foundations, serious questions remain as to whether the inplace compacted backfill has met the required densities. When the licensee recently initiated a test program to provide answers to these questions, the QA/QC program failed to adequately review and control this operation, in that standard test requirements were not followed.

Although safety-related pipe welding activities are at an early stage at the STP, serious problems were identified in the areas of welder qualification, welding process controls and NDE performance and interpretation.

Improper implementation of the HL&P and B&R QA audits and surveillance programs and failure to perform continuous and effective trend analysis of site documents that record problem areas have allowed these conditions to persist.

During the review of backfill installation and testing activities two apparent false statements in the FSAR were identified regarding test and observation work actually performed. (Sections 2.5.4.5.6.2.4 and 2.5.4.5.6.2.5)

At the present time work involving complex safety-related concrete placement at the site is stopped as confirmed by an Immediate Action Letter from Region IV dated December 31, 1979 and safety related welding is stopped at the site as confirmed by an Immediate Action Letter from Region IV dated April 17, 1980. Potential for future significant construction deficiencies exist if the quality assurance program is not improved prior to proceeding to the more complex construction stages of this project.

IV

The facts set forth in parts II and III, above, reflect widespread noncompliance by the licensee and its principal contractor, Brown and Root, with 10 CFR Part 50, Appendix B, of the Commission's regulations. In view of this past record and the importance of quality assurance during construction of a nuclear power plant, I have determined that the public health, safety, and interest requires that this Order be temporarily effective as of this date, pending further Order of the Commission.

V

A. Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, IT IS HEREBY ORDERED THAT, the licensee, holder of Construction Permits No. CPPR-128 and No. CPPR-129, shall show cause, in the manner hereinafter provided, why safety-related construction activities on the South Texas Project, Units 1 and 2 should not be stopped ninety (90) days from the date of this Order and remain stopped until such time as the licensee completes the following items and submits in writing under oath to the Director, Office of Inspection and Enforcement information addressing each of the items:

(1) A review shall be conducted by an experienced, independent management consultant, knowledgeable in QA/QC and nuclear construction, of the licensee's management of the quality assurance program to determine whether the management of the program is adequate to exercise full control over all aspects of the South Texas Project. Consideration shall be given to the revision of organizational responsibilities to control the design, procurement and construction activities

*This document is available in the Commission's Public Document Room at 1717 H St., N.W., Washington, D.C. 20555, and at the Local Public Document Room at Sealy Public Library, 415 Main Street, Sealy, Texas 77474.

of the licensee's prime contractor, Brown and Root, Incorporated (B&R). A discussion of the pros and cons of each concept shall be included. The alternatives considered shall include as a minimum:

(a) the present organizational structure where B&R has implemented a Quality Assurance/Control (QA/QC) Program, under the licensee,

(b) an organizational structure where all levels of the B&R QA/QC organization would report to the licensee yet remain B&R employees,

(c) an organizational structure where the licensee establishes a total QA/QC organization to conduct the current B&R QA/QC functions,

(d) an organizational structure where the licensee contracts with another independent organization to perform the current B&R QA/QC functions,

(e) an organizational structure where the licensee establishes a duplicate QA/QC organization, in whole or in part, to that of B&R with both groups performing duplicate functions.

A recommended course of action shall be defined by the licensee including the schedule for implementation. In evaluating the recommendations of the consultant in order to select the best concept, the licensee shall provide information on how it will exercise its overall responsibility for the QA/QC program including the management structure, the degree of involvement, qualifications, staff size, training, and experience. Of particular interest are the frequency and depth of participation of upper and middle management to assure that knowledge of the effectiveness of the QA/QC program is current, that such persons take the necessary actions to verify that the various QA staffs are effectively applying good QA controls, and that all personnel have the proper attitude and are applying the necessary attention to detail.

(2) A review shall be completed or new data obtained to provide information to address the following issues with respect to the Category I structrual backfill:

(a) test fill program which established the soil conditions, lift thickness, compactive effort, and equipment characteristics necessary to develop the necessary in-place densities,

(b) comparison of material(s) tested and described in Section 2.5.4.8.3 of FSAR addressing liquefaction with those used in the field,

(c) the sequence of construction of existing backfill including the loose lift thickness and number of passes of the equipment,

(d) the adequacy of existing backfill material including that under structures founded on backfill,

(e) and the rationale behind the use of 18" loose lifts compacted by 8 passes of the equipment to achieve the required densities.

(3) A review shall be made of the safety-related work described below, completed as of the date of this Order to determine whether such work was properly performed. If repairs are required, describe the extent of the repairs necessary and the schedule for completion.

Also describe the manner in which the review was completed and extent of the review.

(a) Safety-related welding including civil-structural and piping.

(b) Safety-related concrete structures including embedments such as supports and the fuel transfer tube.

(4) The licensee shall cause the Brown and Root, Incorporated brochure titled, "Implementation of the Brown and Root Quality Assurance Program at the South Texas Project Jobsite," which was widely distributed to site personnel and the subject of seminars on January 4, 1980, rescinded and the associated video tape to be destroyed or revised. Further, the licensee shall cause the republication of a new QA Program brochure which has been approved by the licensee which reflects the fundamental philosophies of 10 CFR Part 50, Appendix B, and conduct new seminars with Construction and QC personnel on the fundamental philosophies and standards of the licensee's QA Program with emphasis on the roles played by the respective personnel and the underlying purpose of the Program.

(5) The licensee shall define more clearly the stop work authority, temporary or otherwise, including implementation of the stop work authority.

(6) The licensee shall develop and implement a more effective system to provide for the identification and correction of the root causes of the nonconformances which occur.

(7) The licensee shall develop and implement a more effective system to provide for the control of field changes in order to assess the impact of the design changes on the design.

(8) The licensee shall develop and implement a more effective system of record controls.

(9) The licensee shall develop and implement an improved audit system.

(10) The licensee shall verify or correct, if necessary, the FSAR statements contained in Section 2.5.4, Stability of Subsurface Materials, especially Section 2.5.4.5, Excavations and Backfill.

B. In addition, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered that:

After the responses to Section A above have been submitted, the licensee shall participate in a public meeting with the NRC in a location near the South Texas Project site to discuss the licensee's response to that section of the Order. Senior representatives of Brown and Root will be expected to participate. The Director, Region IV, will inform the licensee and members of the public at least two weeks in advance of the specific time and location of the meeting.

C. The Director, Office of Inspection and Enforcement, will review the responses to Section A, above, to determine whether safety related construction will be conducted in accordance with Appendix B of 10 CFR Part 50 of the Commission's regulations, and may take, as appropriate, further action.

VI

The licensee may file a written answer to this Order under oath or affirmation within twenty-five days of the date of this Order. Any answer filed shall specifically admit or deny each allegation made in Sections II and III, above, and may set forth the matter of fact and law upon which the licensee relies. The licensee or any other person whose interest may be affected by this Order may request a hearing within twenty-five days of this Order. Any request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Executive Legal Director at the same address. If a hearing is requested by a person whose interest may be affected by this Order, the Commission will issue an Order designating the time and place of any such hearing. Such a request for a hearing SHALL NOT STAY THE TEMPORARY EFFECTIVENESS OF THIS ORDER. Upon failure of the licensee to file an answer within the time specified, the Director, Office of Inspection and Enforcement, will without further notice, issue an Order Suspending Construction Permit Nos. CPPR-128 and CPPR-129 if the required actions are not taken in the specified time period.

VII

In the event a hearing is held, the issue to be considered at such hearing shall be:

Whether the licensee shall be required to take the actions specified in Section

V(A), above, within 90 days of the date of this Order.

In the event that a need for further enforcement action becomes apparent, either in the course of the hearing or at any other time, appropriate action will be taken by the Director.

Dated at Bethesda, Maryland this 30th day of April 1980.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

*Director, Office of Inspection and Enforcement.*

[FR Doc. 80-14327 Filed 5-8-80; 8:45 am]

BILLING CODE 7590-01-M

## International Atomic Energy Agency Draft Safety Guide; Notice of Availability of Draft for Public Comment

The International Atomic Energy Agency (IAEA) is developing a limited number of internationally acceptable codes of practice and safety guides for nuclear power plants. These codes and guides will be developed in the following five areas: Government Organization, Siting, Design, Operation, and Quality Assurance. The purpose of these codes and guides is to provide IAEA guidance to countries beginning nuclear power programs.

The IAEA Codes of Practice and Safety Guides are developed in the following way. The IAEA receives and collates relevant existing information used by member countries. Using this collation as a starting point, an IAEA Working Group of a few experts then develops a preliminary draft. This preliminary draft is reviewed and modified by the IAEA Technical Review Committee to the extent necessary to develop a draft acceptable to them. This draft Code of Practice or Safety Guide is then sent to the IAEA Senior Advisory Group which reviews and modifies the draft as necessary to reach agreement on the draft and then forwards it to the IAEA Secretariat to obtain comments from the Member States. The Senior Advisory Group then considers the Member State comments, again modifies the draft as necessary to reach agreement and forwards it to the IAEA Director General with a recommendation that it be accepted.

As part of this program, Safety Guide SG-S10B, "Determination of Design Basis Floods for Nuclear Power Plants on Coastal Sites," has been developed. The Working Group, consisting of A. Van Urk of The Netherlands; R. M. Noble (Dames & Moore Company) of the United States of America; and R. Fotheringham and G. Verploegh of the World Meteorological Organization, developed the initial draft of this Safety Guide from an IAEA collation during a meeting on January 16-27, 1978. The Working Group draft of this Safety Guide was modified by the IAEA Technical Review Committee on Siting at its meetings on March 6-10, 1978, November 13-17, 1978, September 24-28, 1979, and November 26-30, 1979. The Senior Advisory Group subsequently reviewed and further modified this Guide at a meeting on March 3-7, 1980, and we are soliciting public comments on this modified draft (Rev. 6, April 8, 1980). Comments on this draft received by June 30, 1980, will be useful to the U.S. representatives to the Technical Review Committee and Senior Advisory Group in evaluating its adequacy prior to the next IAEA discussion. Single copies of this draft may be obtained by a written request to the Director, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(5 U.S.C. 522(a))

Dated at Rockville, Maryland, this 29th day of April 1980.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

*Director, Office of Standards Development.*

[FR Doc. 80-14325 Filed 5-8-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

## Jersey Central Power & Light Co. (Oyster Creek Nuclear Generating Station), Conversion to Full-Term Operating License; Assignment of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this operating License proceeding:

Alan S. Rosenthal, Chairman
Dr. John H. Buck
Thomas S. Moore

Dated: May 1, 1980

C. Jean Bishop,

*Secretary to the Appeal Board.*

[FR Doc. 80-14326 Filed 5-8-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-30]

## National Aeronautics and Space Administration; Notice of Proposed Issuance of Orders Authorizing Dismantling of Facility, Disposition of Component Parts and Termination of Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of orders authorizing The National Aeronautics and Space Administration (the licensee) to dismantle the Plum Brook Reactor, a test reactor located on the Plum Brook Station, Sandusky, Ohio, to dispose of the component parts in accordance with the plan set out in the licnesee's application dated March 17, 1980, and to terminate the facility license. The reactor is covered by Facility License No. TR-3.

Prior to issuance of any orders, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

By June 11, 1980, the licensee may file a request for a hearing with respect to issuance of the subject orders and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings"in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition shall specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the

petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert W. Reid: (petitioner's name and telephone number); (date petition was mailed); (Plum Brook Test Reactor); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer of the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR § 2.714(a)(i)–(v) and § 2.714(d).

For further details with respect to this action, see the licensee's application dated March 17, 1980, as may be supplemented by future submittals, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C.

Dated at Bethesda, Maryland, this 30th day of April, 1980.

For the Nuclear Regulatory Commission.

Robert W. Reid,

*Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.*

[FR Doc. 80-14332 Filed 5-7-80; 8:45 am]

BILLING CODE 7590-1-M

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[Docket No. 50-185]

## National Aeronautics and Space Administration; Notice of Proposed Issuance of Orders Authorizing Dismantling of Facility, Disposition of Component Parts, and Termination of Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of orders authorizing The National Aeronautics and Space Administration (the licensee) to dismantle the Plum Brook Mock-Up Reactor (the facility), a research reactor located at the Plum Brook Station, Sandusky, Ohio, to dispose of the component parts in accordance with the plan set out in the licensee's application dated March 17, 1980, and to terminate the facility license. The Plum Brook Mock-Up Reactor is covered by Facility License No. R-93.

Prior to issuance of any orders, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

By June 11, 1980, the licensee may file a request for a hearing with respect to issuance of the subject orders and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert W. Reid: (petitioner's name and telephone number); (date petition was mailed; (Plum Brook Mock-Up); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR § 2.714(a)(i)-(v) and § 2.714(d).

For further details with respect to this action, see the licensee's application dated March 17, 1980, as may be supplemented by future submittals, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C.

Dated at Bethesda, Maryland, this 30th day of April, 1980.

For the Nuclear Regulatory Commission.

Robert W. Reid,

*Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.*

## Petitions for Rulemaking; Issuance of Quarterly Report

The Nuclear Regulatory Commission has issued the March 31, 1980, quarterly report on petitions for rulemaking. This report is issued in accordance with 10 CFR 2.802 and is a quarterly summary of petitions for rulemaking that are pending final action.

A copy of the report, designated NRC Petitions for Rulemaking Pending Final Action as of March 31, 1980, is available for inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC.

Requests for single copies of this report, or requests to be placed on an automatic distribution list for single copies of future reports, should be made in writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Bethesda, Maryland this 5th day of May, 1980.

For the Nuclear Regulatory Commission.

J. M. Felton,

*Director, Division of Rules and Records, Office of Administration.*

[FR Doc. 80-14331 Filed 5-8-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-375]

## Rockwell International Corp.; Notice of Proposed Issuance of Orders Authorizing Dismantling of Facility, Disposition of Component Parts and Termination of Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of orders authorizing Rockwell International Corporation (the licensee) to dismantle the L-85 Nuclear Examination Reactor (the facility), a research reactor located on the licensee's site at Santa Susana Field Laboratory, Ventura County, California, to dispose of the component parts in accordance with the plan set out in the licensee's application dated March 10, 1980, and to terminate the facility license. The reactor is covered by Facility License No. R-118.

Prior to issuance of any orders, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

By June 11, 1980, the licensee may file a request for a hearing with respect to issuance of the subject orders and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the action under consideration. A petitoner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may

be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert W. Reid: (petitioner's name and telephone number); and (date petition was mailed); (L-85 Reactor); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or request for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR § 2.714(a)(i)-(v) and § 2.714(d).

For further details with respect to this action, see the licensee's application dated March 10, 1980, as may be supplemented by future submittals, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C.

Dated at Bethesda, Maryland, this 30th day of April, 1980.

For the Nuclear Regulatory Commission.

Robert W. Reid, Chief,

*Operating Reactors Branch #4 Division of Operating Reactors.*

[FR Doc. 80-14328 Filed 5-8-80; 8:45 am]

BILLING CODE 7590-01-M

## Extension of Comment Periods Regarding the "Environmental Assessment for Decontamination of the Three Mile Island Unit 2 Reactor Building Atmosphere" (NUREG-0662) and Addendum 1 and 2

On March 27, 1980, notice was published providing an opportunity to comment upon the draft NRC staff report entitled "Environmental Assessment for Decontamination of Three Mile Island Unit 2 Reactor Building Atmosphere" (NUREG-0662) and Addendum 1 to NUREG-0662 (45 FR 20265). NUREG-0662, which was prepared by the Commission's Office of Nuclear Reactor Regulation and which relates to the decontamination of the reactor building atmosphere at the Three Mile Island Nuclear Station Unit No. 2, considers five alternate methods for decontaminating the reactor building atmosphere and recommends that the building atmosphere be decontaminated by purging to the environment through the building's hydrogen control system. Addendum 1 references studies that have been done on the issue of psychological stress. One of the studies referenced was published on April 8, 1980 entitled "Health—Related Behavioral Impact of the Three Mile Island Nuclear Incident," a report submitted to the TMI Advisory Panel on Health Research Studies of the Pennsylvania Department of Health, Part I. Psychological stress studies in addition to those listed in Addendum 1 of NUREG-0662 are being performed. These are "Technical Staff Analysis Report on Behavioral Effects" to the President's Commission on the accident at Three Mile Island. The NRC staff has recently contracted with the Human Design Group to undertake analysis and to report on psychological stress associated with Unit 2 atmospheric decontamination and programmatic environmental impact statement on decontamination. Comments on NUREG-0662 and Addendum 1 were requested to be submitted by April 11, 1980.

On April 2, 1980, a notice informing the public of the availability of Addendum 2 to NUREG-0662 was published (45 FR 27176). Addendum 2 considers a variation in the previously discussed method for decontaminating the reactor building atmosphere by purging to the environment. This variation would involve more rapid purging and would be permitted only under meteorological conditions favorable for atmospheric dispersion. Comments were due on April 17, 1980.

Pursuant to the National Environmental Policy Act and the U.S. Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that at the request of the Governor of Pennsylvania, comment periods previously allowed upon issuance of NUREG-0662 and Addenda 1 and 2 to NUREG-0662 are now being extended. Comments upon these documents by government agencies and members of the public are now due by May 16, 1980.

NUREG-0662 with its accompanying Addenda 1 and 2 are available for public inspection at the Commission's

Public Document Room, 1717 H Steet, N.W., Washington, D.C. 20555 and at the TMI-2 Local Public Document Room at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania, 17162 and at York College of Pennsylvania, Country Club Road, York, Pennsylvania 17405. Requests for single copies of these documents should be addressed in writing to Director, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Comments should be to the attention of Program Director, Three Mile Island Program Office, NRR, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. After analysis of the comments, the staff will update the documents and brief the Commission. The Commission will then determine the appropriate action to be taken.

Dated at Bethesda, Md., this 7th day of May 1980.

For the Nuclear Regulatory Commission.

Bernard J. Snyder,

*Program Director, Three Mile Island Program Office, Office of Nuclear Reactor Regulation.*

[FR Doc. 80-14595 Filed 5-8-80; 10:31 am]

BILLING CODE 7590-01-M

## OFFICE OF PERSONNEL MANAGEMENT

### Committee on Private Voluntary Agency Eligibility

Note.—This document originally appeared in the Federal Register for Wednesday, May 7, 1980. It is reprinted in this issue to meet requirements for publication on an assigned day of the week. (See OFR notice 41 FR 32914, August 6, 1976.)

In accordance with the Federal Advisory Committee Act, Public Law 92-463, the Office of Personnel Management announces the following meeting:

Name: Committee on Private Voluntary Agency Eligibility.

Date and Time: May 22, 1980, 9:00 a.m.

Place: Office of Personnel Management, 1900 E Street, N.W., Washington, D.C.

Room: 1304.

Type of meeting: Open. Any interested person may file a written statement with the Committee in advance of or at the meeting.

Contact person: Nelda Perkins, Office of the Assistant to the Director, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415. Telephone: 202-632-5564.

Purpose of Committee: To make recommendations to the Director of the Office of Personnel Management regarding eligibility of national voluntary agencies to participate in the Federal fund-raising program.

Agenda: Review of applications for fund-raising privileges which have been submitted by voluntary organizations to the Office of Personnel Management in accordance with the Federal Fund-Raising Manual.

Carl V. Beeler,

*Acting Assistant to the Director.*

[FR Doc. 80-13993 Filed 5-6-80; 8:45 am]

BILLING CODE 6325-01-M

## PRESIDENT'S COMMISSION ON THE HOLOCAUST

### U.S. Holocaust Memorial Council; Meeting

May 6, 1980.

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the United States Holocaust Memorial Council will be held at 10 a.m. on Wednesday, May 28, 1980 in Room 2008, New Executive Office Building, 726 Jackson Place, NW, Washington, D.C. 20503.

The Council was established by Executive Order 12169, October 26, 1979, to submit a report to the President and the Secretary of the Interior containing its recommendations with respect to ways to implement the approved recommendations of the President's Commission on the Holocaust: (a) The erection of a memorial museum, (b) the establishment of an educational and research foundation, and (c) the establishment of a Citizens Committee on Conscience.

The Council shall recommend specific site locations within the Washington, D.C. metropolitan area. Criteria for choosing architectural design should be included in the site recommendations.

The Council shall propose a concept for the memorial museum, including general descriptions of the types and categories of exhibits to be displayed in the museum. Similarly, suggested functions and limitations for the educational and research foundation should be recommended.

The Council shall recommend the size, composition, and names of distinguished American citizens qualified to serve on the Citizens Committee on Conscience. It shall advise on the specific duties and limitations of such a Committee.

The Council shall also advise on the various ways to fund all of these recommendations. Funding proposals should provide that construction costs would be raised primarily from private contributions.

The agenda for this meeting will consist of the establishment of Committees and procedures for

developing the Councils' recommendations on the above mandates.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Those wishing to attend on a first-come, first-serve basis should notify in writing no later than May 23, 1980, Mr. Monroe Freedman, Director, U.S. Holocaust Memorial Council, Suite 832, 425 13th St. NW, Washington, D.C. 20004 of their intention to attend. Any person may file with the Council a written statement concerning the matters to be discussed. Persons who wish to file a written statement or who want further information concerning the meeting may contact Mr. Freedman at 202-724-0779. The proceedings will be transcribed and the transcripts will be available for public inspection 2 weeks after the meeting.

Dated: May 6, 1980.

Monroe Freedman,

*Director.*

[FR Doc. 80-14352 Filed 5-8-80; 8:45 am]

BILLING CODE 4310-70-M

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Consumer Program

**AGENCY:** Government Financial Operations.

**ACTION:** Proposed Consumer Program.

**SUMMARY:** The primary purpose of the Bureau's Consumer Program is to insure that individuals have the opportunity to present views on any Bureau regulation or program decision which affects them, and that such views are considered in the decision-making process. Under the provisions of E.O. 12160 the Bureau invites active consumer opinion in our efforts to be as responsive as possible to the recipients of our services.

**EFFECTIVE DATE:** May 9, 1980.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas M. Williams, Jr., Room 600G, Treasury Annex, Pennsylvania Avenue and Madison Place, N.W., Washington, D.C. 20226 (202) 566-2016.

### I. Consumer Affairs Prospective

*Introduction*

The Bureau of Government Financial Operations (Bureau) was created on February 1, 1974 by Treasury Department Order No. 229. Responsibilities include (1) disbursing for most civilian Government agencies; (2) settling claims involving loss or forgery of Treasury checks; (3) managing the Government's central accounting and financial reporting system; (4) providing guidance and policy direction throughout the Federal sector to agencies and other entities regarding cash management practices, banking services, and other matters involving the management of Federal funds; (5) investing various trust/funds; (6) overseeing the destruction of unfit currency; and (7) providing central direction for various financial programs and practices of Government agencies. The Chief Officer of the Bureau is the Commissioner.

### II. Staffing and Responsibilities

The Bureau has appointed a Consumer Contact Officer (Officer) in connection with carrying out all public-contact functions. The Officer is located within the Executive Staff of the Bureau Headquarters, Washington, DC, and is concerned with all Bureau consumer affairs functions. For these purposes, the Officer has access to the Commissioner and:

1. Performs coordination or liaison with the Bureau's operating division to insure that complaints are being investigated and answered as soon as possible; and.

2. Coordinates or arranges activities with other Treasury offices when specific complaints, suggestions or queries involve areas beyond Bureau responsibilities.

Within the Bureau itself, the wide spectrum of activities of service to the public has required the establishment of mechanisms to insure that consumer suggestions or complaints are considered carefully. The following list is intended to assist consumers in directing their communications to the appropriate element of the Bureau:

| Query/complaint | Contact organization |
|---|---|
| Queries concerning mutilated currency, to include redemption of partially-destroyed currency. | Division of Currency Claims, BGFO, 13th and C Streets, SW, Washington, D.C. 20226, (202) 447-0278. |
| General queries concerning U.S. Currency. | Special Financing Staff, Treasury Annex, Pennsylvania Ave. and Madison Place, NW, Washington, D.C. 20226, (202) 566-5125. |
| Queries/complaints concerning Letters of Credit, or Treasury Tax and Loan Accounts. | Special Financing Staff, Treasury Annex, Pennsylvania Ave. and Madison Place, NW, Washington, D.C. 20226, (202) 566-5125. |
| Queries/complaints concerning inability to cash U.S. Treasury Checks at a local bank. | Operation Planning and Research Staff, Treasury Annex, Pennsylvania Ave. and Madison Place, NW, Washington, D.C. 20226, (202) 566-5278. |

| Query/complaint | Contact organization |
|---|---|
| Queries concerning failure to receive a Government check, or matters concerning an individual check, i.e., amount. | Contact the program agency (such as Social Security Administration, IRS or VA) which actually authorized issuance of the check. That agency will convey the information to the Bureau which, in turn, will contact the claimant. Note.—Consumers should not contact the Bureau directly, since this will only delay established procedures. |
| General disbursing matters..... | Management Services Branch, BGFO, Vermont Bldg., Vermont Ave. and L Street NW, Washington, D.C. 20226, (202) 634-2011. |

## III. Consumer Participation

Detailed records of complaints will be available to the Officer so that he can ascertain the current status of the Bureau's responses. Additionally, all such processing will be expedited as much as possible, consistent with Bureau missions. The Officer will be concerned that every reasonable consumer complaint has been addressed and satisfied by the appropriate Bureau element as completely as possible.

## IV. Oversight

Ultimate responsibility for the Consumer Program within the Bureau rests with the Commissioner. However, authority for overseeing its implementation is delegated through the Assistant Commissioner, Administration to the Director, Executive Staff, who oversees the activities of the Consumer Contact Officer. The latter individual in turn, is authorized to make direct requests to any of the Bureau's officers or key staff personnel in the performance of duties to resolve complaints from consumers. Such requests will be given the highest priority possible in terms of response time frames.

The Consumer Contact Officer will prepare periodic reports of progress and achievement for transmittal to the Commissioner and to the Department of the Treasury, where they will be of interest to the Special Assistant to the Secretary (Consumer Affairs). The Officer will make special reports to appropriate audiences upon direction from appropriate authority.

## V. Judicial Review

Nothing in this program is intended to provide new grounds for judicial review or be interpreted as superseding any existing statutory obligation concerning rule-making.

Signed the 2nd day of May 1980.

Gerald Murphy,

*Acting Commissioner.*

[FR Doc. 80-14406 Filed 5-8-80; 8:45 am]

BILLING CODE 4810-35-M

# Sunshine Act Meetings

Federal Register
Vol. 45, No. 92
Friday, May 9, 1980

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

**CHRYSLER CORPORATION LOAN GUARANTEE BOARD.**

**TIME AND DATE:** 2 p.m., May 9, 1980.

**PLACE:** Board Room, Federal Reserve System, second floor, 20th and C Streets NW., Washington, D.C. 20551.

**STATUS:** Closed to the public.

**MATTERS TO BE DISCUSSED:** The Board will reconvene the adjourned meeting of May 1, 1980 and continue its deliberations. The Board has received an application from the Chrysler Corporation for commitments to guarantee and guarantees under the Chrysler Corporation Loan Guarantee Act (Pub. L. 96-185) ("Act"). The Board will consider whether the Chrysler Corporation has satisfied the requirements necessary for such Federal assistance, as set forth in the Act.

**CONTACT PERSON FOR MORE INFORMATION:** Brian M. Freeman, Secretary of the Board (202) 566-5888.

This notice is given as a result of Court order. The position of the Board is that it is not subject to the Government in the Sunshine Act.

Dated: May 7, 1980.

Brian M. Freeman,
*Secretary of the Board.*

[S-933-80 Filed 5-7-80; 2:56 pm]
BILLING CODE 4810-27-M

2

[M-280; May 6, 1980]

**CIVIL AERONAUTICS BOARD.**

**TIME AND DATE:** 1:30 p.m., May 13, 1980.

**PLACE:** Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C., 20428.

**SUBJECT:**

1. Ratification of items adopted by notation.
2. Docket 37982, Domestic Fare Flexibility—consideration of comments (BDA).
3. Dockets 36333, 36339, 36567—Southeast Airlines, Inc. exemption requests (memo 9523-A, BDA, OGC, BCP).
4. Dockets 34074, 34254, 33764, 33938 and 34445, Petitions of American Airlines, Braniff Airways, Continental Air Lines and Northwest Airlines for declaratory orders (BDA).
5. Docket 37781, Notice of Frontier Airlines of intent to reduce service below the essential air service level in the Scottsbluff-Lincoln/Omaha market (BDA, OCCR).
6. Docket 35194, Notice of Intent of Frontier Airlines, Inc. to suspend its air service under section 401(j) (1) at the Act at Glasgow, Glendive, Havre, Lewistown, Miles City, Sidney, and Wolf Point, Montana, and Williston, North Dakota (BDA).
7. Dockets 36445 and 36538, Air Pacific's Notice of Intent to Suspend Service at Chico, California (memo 9677, BDA).
8. Docket 34832, Hughes Airwest's notice of intent to suspend service at Crescent City, California (BDA).
9. Docket 37707, Eastern Air Lines' notice, pursuant to Section 401(j)(1) of the Act and part 323 of the Board's regulations, of its intention to continue its present suspension of all air transportation to Mayaguez, Puerto Rico (BDA, OCCR).
10. Docket 38039—Air Oregon's notice to terminate service at Albany/Corvallis, Oregon (BDA, OCCR).
11. Docket 37169—Petition for rulemaking by Golden Holiday Tours, Inc., to make the direct air carrier responsible for returning charter passengers who are stranded by a strike or other interruption in its service (OGC, BDA, BCP, OEA).
12. Dockets 37447 and 33477, *Texas/Great Lakes-Eastern Canada Service Case,* Tentative opinion (OGC).
13. Docket 34171, *Allegheny Airlines, Inc. v. United Air Lines, Inc., Enforcement Proceeding,* discretionary review on Board initiative (no petition for review filed) of initial decision finding United violated section 401(a) of the Act by engaging in nonstop air transportation between Cleveland, Ohio and Rochester, New York without proper Board authorization, and ordering United to cease and desist (OGC).
14. Docket 34308, *Worldways Travel Corporation v. Worldways Travel Company,* review on Board initiative (no petition for review filed) of ALJ's termination of proceeding on respondent tour operator's misappropriation of complaint tour operator's trade name (OGC).
15. § 380.33(c) & (e) Consumer Protection Rules for Public Charter Participants (BCP, BDA).

**STATUS:** Open.

**PERSON TO CONTACT:** Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-932-80 Filed 5-7-80; 2:56 pm]
BILLING CODE 6320-01-M

3

**COMMISSION ON CIVIL RIGHTS.**

**DATE AND TIME:** Monday, May 12, 1980, 10 a.m.-12 noon; 1:30-4:30 p.m.

**PLACE:** Room 512, 1121 Vermont Avenue NW., Washington, D.C.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

I. Approval of Agenda.
II. Approval of Minutes of Last Meeting.
III. Staff Director's Report.
A. Status of Funds.
B. Personnel Report.
C. Office Directors' Reports.
D. Correspondence.
1. Letter from Commerce Secretary Phillip W. Klutznick.
2. Response from Justice Department re Investigation of police misconduct in Memphis.
3. Proposed letter to President re KKK activity.
IV. Civil Rights Developments in the Rocky Mountain Region.
V. Interim Appointment to Vermont Advisory Committee.
VI. Memorandum on Youth Unemployment.
VII. Review of Statement on Religious Discrimination.
VIII. Approval of Resolution for June 17-18 Battered Women Hearing in Harrisburg.
IX. Review of National Immigration Report.
X. Review of Analysis of Congressional Exemption from Federal EEO Laws.
XI. Review of Analysis of Federal Criminal Code Revision.

**FOR FURTHER INFORMATION CONTACT:** Charles Rivera or Barbara Brooks, Press and Communications Division (202) 254-6697.

[S-6335-01 Filed 5-7-80; 2:03 pm]
BILLING CODE 6335-01-M

4

**COMMODITY FUTURES TRADING COMMISSION:**

**TIME AND DATE:** 11:45 a.m., May 13, 1980.

**PLACE:** 2033 K Street NW., Washington, D.C. fifth floor hearing room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Executive session.

**CONTACT PERSON FOR MORE INFORMATION:** Jane Stuckey, 254-6314.

[S-931-80 Filed 5-7-80; 2:56 pm]

BILLING CODE 6351-01-M

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5

**FEDERAL RESERVE SYSTEM.**

**TIME AND DATE:** 10 a.m., Wednesday, May 14, 1980.

**PLACE:** 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Discussion Agenda:

1. Proposed amendments to Regulation Z (Truth in Lending) to implement the Truth in Lending Simplification and Reform Act dealing with (1) exempting agricultural credit and closed-end periodic statements from coverage; (2) continuing the exemption from the right of rescission for advances on an open-end credit plan secured by a consumer's home; and (3) liberalizing the annual percentage rate tolerance for irregular mortgage transactions.
2. Proposed continuation of delegation of authority to ensure the expeditious handling of certain Board business when a quorum of Board members is not available.
3. Any agenda items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: May 7, 1980.

Griffith L. Garwood,

*Deputy Secretary of the Board.*

[S-928-80 Filed 5-7-80; 10:06 am]

BILLING CODE 6210-01-M

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6

**FEDERAL TRADE COMMISSION.**

**TIME AND DATE:** 10 a.m., Wednesday, May 14, 1980.

**PLACE:** Room 432, Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

Consideration of Trade Regulation Rule Concerning the Sale of Used Motor Vehicles

**CONTACT PERSON FOR MORE INFORMATION:** Pamela F. Richard, Office of Public Information: (202) 523-3830; Recorded Message: (202) 523-3806.

[S-929-80 Filed 5-7-80; 11:01 am]

BILLING CODE 6750-01-M

Federal Register

Friday
May 9, 1980

Part II

# Department of Education

Establishment of Title 34

## DEPARTMENT OF EDUCATION

## 34 CFR Chs. I–VIII

## Establishment of Title and Chapters

**AGENCY:** Department of Education.

**ACTION:** Final rule.

**SUMMARY:** The Department of Education Organization Act (Pub. L. 96–88, enacted Oct. 17, 1979) establishes the Department of Education as a new executive department. The statute transfers to the new department functions from five other departments and the National Science Foundation.

Since the regulations governing the various functions assumed by the Department of Education are found in separate Titles of the Code of Federal Regulations, it would be beneficial to consolidate and codify them in a single Title of the Code.

Therefore, this publication establishes Title 34, describes the chapters to be included within that Title, recodifies certain regulations of the former Department of Health, Education, and Welfare, and lists the other regulations that are transferred to the Department of Education under the Department of Education Organization Act and will ultimately be recodified in Title 34.

**EFFECTIVE DATE:** May 4, 1980.

**ADDRESS:** Department of Education, Washington D.C. 20202.

**FOR FURTHER INFORMATION CONTACT:** A. Neal Shedd, Department of Education (Room 2129), Washington, D.C. 20202, Telephone: (202) 245–7091.

**SUPPLEMENTARY INFORMATION:** It has been determined that publication of this rule as a proposal for public comment is unnecessary as it deals only with establishment and arrangement of Title 34, the recodification of certain regulations with no substantive changes, and other technical matters. The regulations recodified in Title 34 apply to the Department of Education as a matter of law under Section 505(a) of the Department of Education organization Act. Functions Transferred to the Department of Education.

The functions transferred to the Department of Education by the Department of Education Organization Act include, generally—

(a) A broad range of education functions previously performed by the Department of Health, Education, and Welfare (HEW), as well as the functions of the Office for Civil Rights relating to the education functions transferred;

(b) All functions relating to the operation of overseas schools for dependents of the Department of Defense, provided that certain statutory requirements are fulfilled;

(c) All functions of the Secretary of labor or the Department of Labor under secton 303(c)(2) of the Comprehensive Employment and Training Act relating to certain migrant education programs;

(d) All functions relating to certain science education programs transferred from the National Science Foundation;

(e) The law enforcement education program and the law enforcement internship program previously administered by the Department of Justice; and

(f) All functions of the Secretary of Housing and Urban Development and of the Department of Housing and Urban Development relating to college housing loans under Title IV of the Housing Act of 1950.

## Regulations To Be Redesignated

Under the Department of Education Organization Act, the following existing regulations (as of April 20, 1980) are transferred by operation of law to the Department of Education. These regulations will ultimately be redesignated and recodified in Title 34 of the Code of Federal Regulations. Until redesignation and recodification is accomplished, however, these regulations will retain their current CFR title and part number designation.

### Title of Regulations

Chapter I—Office of Education, Department of Health, Education, and Welfare

| 45 CFR Part | |
|---|---|
| 100a | Direct project grant and contract programs. |
| 100b | State-administered programs. |
| 100c | General. |
| 100d | Education Appeals Board. |
| 101 | Grants to land grant colleges and universities. |
| 104 | State vocational education programs. |
| 105 | Commissioner's discretionary programs of vocational education. |
| 111 | Hearings in connection with school construction and financial assistance in federally impacted areas. |
| 112 | School construction assistance in cases of certain disasters. |
| 113 | Assistance for current school expenditures in cases of certain disasters. |
| 114 | Assistance for school construction in areas affected by Federal activities. |
| 115 | Assistance for local educational agencies in areas affected by Federal activities and arrangements for education of children where local educationally agencies cannot provide suitable free public education. |
| 116 | Financial assistance to local educational agencies and state agencies to meet the special educational needs of educationally deprived, handicapped, migrant, and neglected and delinquent children—general provisions. |
| 116a | Financial assistance to local educational agencies to meet the special educational needs of educationally deprived and neglected and delinquent children. |
| 116b | State operated programs for handicapped children. |
| 116c | Grants to State agencies for programs to meet the special educational needs of children in institutions for neglected or delinquent children. |
| 116d | Grants to State educational needs of migratory children. |
| 119 | Strengthening State educational agency management. |
| 120 | Administration of education programs and duties of the State educational agency. |

### Title of Regulations—Continued

Chapter I—Office of Education, Department of Health, Education, and Welfare

| | |
|---|---|
| 121a | Assistance to States for education of handicapped children. |
| 121b | Regional resource centers. |
| 121c | Centers and services for deaf-blind children. |
| 121d | Early education for handicapped children. |
| 121e | Auxiliary activities. |
| 121f | Training personnel for the education of the handicapped. |
| 121g | Recruitment of personnel and dissemination of information. |
| 121h | Research in education of the handicapped. |
| 121i | Instructional media for the handicapped. |
| 121k | Regional education programs for handicapped persons. |
| 121m | Incentive grants. |
| 122a | Indochina Refugee Children Assistance. |
| 123 | Bilingual education. |
| 123a | Bilingual education basic projects. |
| 123b | Bilingual education demonstration projects. |
| 123c | Bilingual education State educational agency projects for coordinating technical assistance. |
| 123d | Bilingual education support services projects. |
| 123e | Bilingual education training projects. |
| 123f | Bilingual education school of education projects. |
| 123g | Bilingual education desegregaton support program. |
| 123h | Bilingual education fellowship program. |
| 123i | Bilingual education material development projects program. |
| 126 | Health education assistance loan program. |
| 130 | Library services, public library construction, and interlibrary cooperation. |
| 131 | College library resources program. |
| 132 | Grants for training in librarianship. |
| 133 | Library research and demonstration. |
| 134 | Grants to State educational agencies for educational improvement, resources, and support. |
| 136 | Strengthening research library resources. |
| 137 | Eductional information centers programs. |
| 146 | Modern foreign language and area studies. |
| 146a | Citizen education for cultural understanding program. |
| 147 | Procedures and criteria for resolving questions involving moral character or loyalty of applicants for and holders of NDEA Fellowships. |
| 148 | Higher education programs in modern foreign language training and area studies. |
| 149 | Commissioner's recognition procedures for national accrediting bodies and State agencies. |
| 153 | Noncommerical educational broadcasting facilities program. |
| 154 | Educational opportunity centers. |
| 155 | Upward Bound Program. |
| 157 | Special services for disadvantaged students program. |
| 158 | Follow Through Program. |
| 159 | Talent Search Program. |
| 160e | Consumers' education program. |
| 160f | Womens' Educational Equity Act program. |
| 161 | Career Education, State Allotment Program. |
| 161a | Career Education Discretionary Programs. |
| 161b | Metric Education Program. |
| 161c | Arts education program. |
| 161e | Consumers' education. |
| 161f | Youth employment program. |
| 161h | Financial assistance for environmental education projects. |
| 161i | Biomedical Sciences Program. |
| 161m | Population education program. |
| 162 | National reading improvement program. |
| 163 | Community Education. |
| 163a | State Community Education Programs. |
| 163b | Community Education—Grants to Local Educational Agencies. |
| 163c | Community Education—Public Agencies and Nonprofit Private Corporations. |
| 163d | Community Education—Training grants to Institutions of Higher Education. |
| 164 | Capacity-building for statistical activities in State educational agencies. |
| 166 | Adult education programs. |
| 166a | Adult Education—Grants to States. |
| 166b | Adult Education—Development, Dissemination, and Planning Grants. |
| 166c | Adult Immigrant Program. |
| 168 | General provisions relating to student assistance programs. |
| 169 | Strengthening Developing Institutions Program. |
| 172 | Teacher Corps. |
| 173 | Community service and continuing education programs. |
| 174 | National Direct Student Loan Program. |
| 175 | College work-study and job location and development program. |
| 176 | Supplemental Educational Opportunity Grant Program. |

Title of Regulations—Continued

Chapter I—Office of Education, Department of Health, Education, and Welfare

177 Guaranteed Student Loan Program.
178 Student consumer information services.
178a Incentive grants for State student financial assistance training program.
179 Graduate and professional study fellowships and institutional grants.
180 Desegregation of pubulic education.
182 Cooperative education programs.
182a National alcohol and drug abuse prevention program.
183 Financial assistance for environmental education projects.
184 Ethnic heritage studies program.
185 Emergency school aid.
186 Indian Elementary and Secondary School Assistance Act.
187 Indian Education Act (Part B).
188 Indian Education Act (Part C).
189 Veterans' cost-of-instruction payments to institutions of higher education.
190 Basic educational opportunity grant program.
191 Guidance and counseling.
192 State Student Incentive Grant Program.
193 National diffusion network program.
194 Public service education program.
195 Gifted and talented children's education program: General.
195a Gifted and talented children's education: State-administered program.
195b Gifted and talented children's education program: Discretionary grant program.
196 Domestic Mining and Mineral and Mineral Fuel Conservation Fellowships.
197 Teacher centers program.
198 Training for higher education personnel.
199a State postsecondary education commissions program—intrastate planning.

Chapter XIII—Office of Human Development, Department of Health, Education, and Welfare

1361 The State vocational rehabilitation program.
1362 Project grants and other assistance in vocational rehabilitation.
1369 Vending Facility Program for the blind on federal and other property.
1370 Evaluation standards.

Chapter XIV—National Institute of Education, Department of Health, Education, and Welfare

1400 General.
1403 Eligibility and application for research grant assistance.
1410 Miscellaneous requirements.
1430 Experimental program for opportunities in advanced study and research in education.
1440 Government in the Sunshine Act Regulations.
1450 Research grants program.
1451 Basic skills research grants program.
1460 State dissemination grants program.
1470 Education and work grants program.
1480 Program of research grants on organizational processes in education.
1490 Education equity research grants program.
1495 Law and government studies in education.

Chapter XV—Fund for the Improvement of Postsecondary Education, Department of Health, Education, and Welfare

1501 Support for improvement of postsecondary education.

24 CFR
Part
279 College Housing.

20 CFR
Part
676 General provisions governing programs under the Comprehensive Employment and Training Act (to the extent the regulations apply to functions of the Secretary of Labor or the Department of Labor under section 303(c)(2) of the Comprehensive Employment and Training Act).
689 Migrant and other seasonally employed farmworkers programs (to the extent the regulations apply to functions of the Secretary of Labor or the Department of Labor under section 303(c)(2) of the Comprehensive Employment and Training Act).

## Establishment and Organization of Title 34

All regulations transferred into the Department of Education will be reorganized into a single Title 34 of the Code of Federal Regulations entitled "Education." Subtitle A of Title 34 will include regulations of the Office of the Secretary of Education, such as regulations under the Freedom of Information Act, regulations under the Privacy Act of 1974, and standards of conduct for Department officials. Subtitle B will include regulations governing the functions of the major offices established by the Department of Education Organization Act.

(Department of Education Organization Act, Pub. L. 96-88, Oct. 17, 1979 (20 U.S.C. 3401 *et seq.*))

Dated: April 30, 1980.

Shirley M. Hufstedler,

*Secretary of Education.*

1. Accordingly, a new Title 34 of the Code of Federal Regulations entitled "Education" is hereby established with the following subtitles and Chapters.

Title 34—Education

Subtitle A—Office of the Secretary, Department of Education (Parts 1-99).
Subtitle B—Regulations of the Offices of the Department of Education.
Chapter I—Office for Civil Rights (Parts 100-199).
Chapter II—Office of Elementary and Secondary Education (Parts 200-299).
Chapter III—Office of Special Education and Rehabilitative Services (Parts 300-399).
Chapter IV—Office of Vocational and Adult Education (Parts 400-499).
Chapter V—Office of Bilingual Education and Minority Languages Affairs (Parts 500-599).
Chapter VI—Office of Postsecondary Education (Parts 600-699).
Chapter VII—Office of Educational Research and Improvement (Parts 700-799).
Chapter VIII—Office of Education for Overseas Dependents (Parts 800-899).

## Regulations Recodified in Title 34

2. The following parts are added to Title 34, Subtitle A:

### SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF EDUCATION

Part
4 Service of process.
5 Availability of information to the public pursuant to Public Law 90-23.
5b Privacy Act regulations.
6 Inventions and patents (general).
7 Employee inventions.
8 Inventions resulting from research grants, fellowship awards, and contracts for research.
10 Departmental Fellowship Review Panel.
11 Committee Management.
12 Disposal and utilization of surplus real property for educational purposes.
15 Relocation assistance and real property acquisition policies.
17 Release of adverse information to news media.
30 Claims collection.
35 Tort claims against the Government.
50 U.S. exchange visitor program—request for waiver of the two-year foreign residence requirement.
63 Telecommunications Demonstration Program.
64 Museum Services Program.
67 Student Loan Marketing Association—Issuance and Transfer of Common Stock.
73 Standards of conduct.
74 Administration of grants.
99 Privacy rights of parents and students.

### PART 4—SERVICE OF PROCESS

Sec.
4.1 Service of process required to be served on or delivered to Secretary.

Authority: 5 U.S.C. 301.

**§ 4.1 Service of process required to be served on or delivered to Secretary.**

Summons, complaints, subpoenas, and other process which are required to be served on or delivered to the Secretary of Education shall be delivered to the General Counsel or the Secretary to the General Counsel, by mail at 400 Maryland Avenue SW., Washington, D.C. 20202 or by personal service at that address. The persons above designated are authorized to accept service of such process.

(5 U.S.C. 301)

### PART 5—AVAILABILITY OF INFORMATION TO THE PUBLIC PURSUANT TO PUBLIC LAW 90-23

#### Subpart A—Definitions

Sec.
5.1 Act.
5.2 Department.
5.5 Records.

#### Subpart B—What Records Are Available

5.11 Purpose and scope.
5.12 General policy.
5.13 Records available.
5.14 Published documents.
5.15 Creation of records.
5.16 Deletion of identifying details.
5.17 Records in record centers.
5.18 Destroyed records.
5.19 Records of other departments and agencies.

#### Subpart C—Freedom of Information Officer

5.32 Freedom of information officer.

#### Subpart D—Procedures for Requesting Access to Records

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5.52 Copies of records.
5.53 Denial of requests for records.

#### Subpart E—Fees

5.60 Policy on fees.
5.61 Fee schedules.
5.63 Searching records.
5.64 Copying.
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#### Subpart F—Availability of Specific Records

5.70 Policy.
5.71 Protection of personal privacy and proprietary information.
5.72 Records available.
5.73 Records not available.
5.74 Further disclosure.

#### Subpart G—Administrative Review

5.80 Review of denial of a record.
5.81 Time for initiation of request for review.

5.82 By whom review is made.
5.83 Contents of request for review.
5.84 Consideration on review.
5.85 Decisions on review.

Appendix

Authority: 81 Stat. 54; 7 U.S.C. 2243, 5 U.S.C. 552.

## Subpart A—Definitions

### § 5.1 Act.

As used in this part, "Act" means section 552 of Title 5, United States Code, as amended by Public Law 90–23, codifying the Act of July 4, 1966, sometimes referred to as the "Public Information Act".

### § 5.2 Department.

As used in this part, "Department" means the Department of Education.

### § 5.5 Records.

As used in this part:

(a) "Record" includes books, brochures, punch cards, magnetic tapes, paper tapes, sound recordings, maps, pamphlets, photographs, slides, motion pictures, or other documentary materials, regardless of physical form or characteristics, made or received by the Department pursuant to Federal law or in connection with the transaction of public business and preserved by the Department as evidence of the organization, functions, policies, decisions; procedures, operations, programs, or other activities.

(b) "Record" does not include: Objects or articles such as tangible exhibits, models, equipment, or processing materials; or formulae, designs, drawings, or other items of valuable property; books, magazines, pamphlets, or other reference material in formally organized and officially designated libraries of the Department, which are available under the rules of the particular library concerned.

## Subpart B—What Records Are Available

### § 5.11 Purpose and scope.

This part constitutes the regulation of the Department respecting the availability to the public, pursuant to the Act, of records of the Department. It informs the public what records are generally available.

### § 5.12 General policy.

The Department's policy is one of the fullest responsible disclosure limited only by the obligations of confidentiality and the administrative necessities recognized by the Act. Unless otherwise exempted from disclosure pursuant to law, records of the Department shall be available for inspection and copying in accordance with this part.

### § 5.13 Records available.

(a) *Publication in the Federal Register.* The following shall be published in the Federal Register:

(1) Descriptions of the Department's central and field organization and the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which the Department's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedures, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Department;

(5) Every amendment, revision, or repeal of the foregoing.

(b) *Agency opinions and orders.* The Department shall, in accordance with this part and applicable regulations, make available for public inspection and copying:

(1) All final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases (initial decisions and reconsiderations thereof in matters that are not the result of administrative proceedings such as hearings or formal appeals are not "opinions and orders in the adjudication of cases");

(2) Those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;

(3) Administrative staff manuals and instructions to staff that affect any member of the public;

unless such materials are promptly published and copies offered for sale.

The Department shall maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter which is issued, adopted, or promulgated after July 4, 1967, and which is required by this paragraph (b) to be published or made available.

(c) *Availability of records on request.* In addition to the records made available pursuant to paragraphs (a) and (b) of this section, the Department shall, upon request for identifiable records made in accordance with this part, make such records available to any person, unless it is determined that such records must be withheld from disclosure and are exempt under subsection (b) of the Act and Subpart F of this part.

### § 5.14 Published documents.

Published records of the Department, whether or not available for purchase, shall be made available for examination.

### § 5.15 Creation of records.

Records are not required to be created by compiling selected items from the files, and records are not required to be created to provide the requester with such data as ratios, proportions, percentages, per capitas, frequency distributions, trends, correlations, and comparisons. If such data have been compiled and are available in the form of a record, the record shall be made available as provided in this part.

### § 5.16 Deletion of identifying details.

Whenever any final opinion, order, or other materials required to be made available pursuant to subsection (a)(2) of the Act relates to a private party or parties and the release of the name or names or other identifying details will constitute a clearly unwarranted invasion of personal privacy, the record shall be published or made available with such identifying details left blank, or shall be published or made available with obviously fictitious substitutes and with a notification such as the following as a preamble:

> Names of parties and certain other identifying details have been removed [and fictitious names substituted] in order to prevent a clearly unwarranted invasion of the personal privacy of the individuals involved.

### § 5.17 Records in record centers.

When a request is made for identifiable records of the Department which have been stored in the National Archives or other record centers of the General Services Administration, but would otherwise be available under this Act, such records shall be requested by the Department for the requester.

### § 5.18 Destroyed records.

Records of specified form or character are destroyed after the lapse of time specified in the Records Disposal Act of 1943 (44 U.S.C. 366–380), the Federal Property Management Regulations (41 CFR Part 101–111), and the Records Control Schedules.

§ 5.19 Records of other departments and agencies.

Requests for records which originated in or concern matters which originated in another Department or Government agency may be forwarded to the Department or agency primarily concerned and the requester so notified.

## Subpart C—Freedom of Information Officer

§ 5.32 Freedom of information officer.

The Freedom of Information Officer shall be responsible for determining whether records of the Department must be withheld from disclosure and shall have authority to deny requests for records of the Department.

## Subpart D—Procedures for Requesting Access to Records

§ 5.51 Procedure.

(a) A request for any information or record may be made at any appropriate office of the Department.

(b) If a request is made at any office of the Department and the information or record is not located where the request is made, the requester shall be referred to the proper office, or if the request is put in writing it may be forwarded to the proper office.

(c) A request should reasonably identify the requested record by brief description. Requesters who have detailed information which would assist in identifying the records requested are urged to provide such information in order to expedite the handling of the request. Envelopes in which written requests are submitted should be clearly identified as a Freedom of Information request.

(d) Determination of whether records will be released or withheld will be made within 10 working days from date of receipt in the office having custody of the records This time may be extended by written notice for no longer than an additional 10 working days, only in unusual circumstances. Unusual circumstances mean:

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

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

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

If such extension is made, the requester will be notified in writing with an explanation of why the extension was necessary and the date on which a determination will be made.

§ 5.52 Copies of records.

Copies of available records shall be produced as promptly as possible upon receipt of the fee therefor. Copying service shall be limited to not more than two copies of any single page, except that additional copies may be made where administrative considerations permit. Records which are published or available for sale need not be copied.

§ 5.53 Denial of request for records.

Written requests for inspection or copying of records shall be denied only by the Freedom of Information Officer. Denials of requests shall be in writing and shall contain the reasons for the denial and provide the requester with appropriate information on how to exercise the right of appeal under Subpart G of this part. Such notification shall also set forth the names and titles or positions of each person responsible for the denial of such request if such person or persons is other than the Freedom of Information Officer.

## Subpart E—Fees

§ 5.60 Policy on fees.

It is the policy of the Department to provide routine information to the public without charge. Special information services involving a benefit that does not accrue to the general public shall be subject to the payment of fees which shall be fixed in amounts to recover the direct cost to the Government of providing such services. Fees will be charged for the following special services:

(a) Reproduction, duplication or copying of records;

(b) Certification or authentication of records;

(c) Searches for records.

§ 5.61 Fee schedules.

The fee schedule for the Department is as follows:

(a)(1) Search for records—three dollars per hour provided, however, that no charge will be made for the first half hour.

(2) Reproduction, duplication or copying of records—ten cents per page where such reproduction can be made by commonly available photocopying machines. However, the cost of reproducing records which are not susceptible to such photocopying, e.g. punch cards, magnetic tapes, blueprints, etc., will be determined on a case-by-case basis at actual cost.

(3) Certification or authentication of records—three dollars per certification or authentication.

(4) Forwarding material to destination—any special arrangements for forwarding which are requested by the requester shall be charged on an actual cost basis.

(5) No charge will be made where the total amount does not exceed five dollars.

(b) Waiver or reduction of the fees provided for in this subsection may be made upon a determination that such waiver or reduction is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

§ 5.63 Searching records.

Fees for searching shall be computed as follows:

(a) A predetermined standard hourly rate for labor and personal services of employees of the Department. Such hourly rates shall be published in advance.

(b) Actual cost to the Government of materials, postage and other direct costs, plus indirect costs to the Government. Such costs shall be determined for each request, at the time of the request, allowing a reasonable period for the development of the estimate.

§ 5.64 Copying.

Fees for copy or duplicating services shall be set on a per page basis. The fee shall be maintained as a predetermined standard rate.

§ 5.65 Certification or authentication.

A fee for certification or authentication of records shall be set on a per document basis. The fee shall be on the basis of a predetermined standard rate. Where the request includes making a copy of the record to be certified, the applicable fee for copying will also be charged. Where the requester furnishes a copy of the document to be authenticated or certified which requires comparison with the record on file, a comparing fee based upon predetermined hourly rates will be applicable.

## Subpart F—Availability of Specific Records

§ 5.70 Policy.

This subpart specifies the types of records which the Department shall, in keeping with its policy of fullest possible disclosure, make available for inspection and copying. For clarity and purposes of guidance, there are also set forth below the kinds or portions of records which generally will not be released, except as may be determined under § 5.74. The appendix to this part

contains some examples of the kinds of materials which, in accordance with § 5.72, will generally be released and other materials which, in accordance with § 5.73, are not normally available. In the event that any record contains both information which is disclosable and that which is not disclosable under this regulation, the nondisclosable information will be deleted and the balance of the record disclosed.

**§ 5.71 Protection of personal privacy and proprietary information.**

As set forth with more particularity below, certain types of information in whatever record or document contained shall not be disclosed where disclosure would be inconsistent with individual rights of personal privacy or would violate obligations of confidentiality.

(a) No disclosure will be made of information of a personal and private nature, such as information in personnel and medical files, in welfare and social security records and any other information of a private and personal nature.

(b) Information having a commercial or financial value and in which the person providing the information has a proprietary interest will not be disclosed if it is in fact confidential. In determining whether such information is in fact confidential, consideration may be given to such factors as (1) the general custom or usage in the occupation or business to which the information relates that it be held confidential, (2) the number and situation of the individuals who have access to such information, (3) the type and degree of risk of financial injury to be expected if disclosure occurs, and (4) the length of time such information should be regarded as retaining the characteristics noted above.

(c) Information obtained by the Department from any individual or organization, who furnishes it in reliance upon a provision for confidentiality authorized by applicable statute or regulation, will not be disclosed. This subpart does not itself authorize the giving of any pledge of confidentiality by any officer or employee of the Department.

This section does not preclude use of nondiscloseable records or information from such records for authorized program purposes, including law enforcement purposes and litigation. Release of information of the nature described in this section to the individual or the organization to whom the information pertains or to an authorized representative of either will not be deemed a disclosure within the meaning of this part.

**§ 5.72 Records available.**

The following records of the Department shall, subject to the exceptions set forth in §§ 5.71 and 5.73, be available upon request for inspection and copying.

(a) *Correspondence.* Correspondence, relating to or resulting from the conduct of the official business of the Department, between the Department and individuals or organizations which are not agencies within the meaning of 5 U.S.C. 551(1) and 552(e).

(b) *Records pertaining to grants.* (1) Portions of funded initial research grant applications and portions of continuation, renewal or supplemental grant applications, whether funded or not, including interim progress reports and other supporting documents submitted by applicants, which are not otherwise exempted from disclosure by this subpart.

(2) Grant award documents.

(3) All State plans, amendments, and supplements thereto, including applications for the waiver of any provision thereof whether acted upon by the Department or not.

(c) *Contracts.* (1) Contract instruments.

(2) Portions of offers reflecting final prices submitted in negotiated procurements.

(d) *Reports on grantee, contractor, or provider performance.* Final reports of audits, surveys, reviews, or evaluations by, for, or on behalf of the Department, of performance by any grantee, contractor, or provider under any departmentally financed or supported program or activity, which reports have been transmitted to the grantee, contractor, or provider.

(e) *Research, development, and demonstration project records.* The reports of a grantee or a contractor of the performance under any research, development, or demonstration project, records, other than reports, produced in such projects, such as films, computer software, other copyrightable materials and reports of inventions, will be available, except that considerations relating to obtaining copyright and patent protection may require delay in disclosure for such period as necessary to accomplish such protection. Disclosure of records which are copyrightable or which reflect patentable inventions shall not confer upon the requester any license under any copyright or patent without regard to the holder or owner thereof.

**§ 5.73 Records not available.**

The following types of records or information contained in any record, in addition to those prohibited by law from disclosure, are not available for inspection or copying, any provision of § 5.72 notwithstanding:

(a) *Intra-agency and inter-agency communications.* Communications within the Department other than those described in § 5.72(d) or between the Department or any other agency within the meaning of 5 U.S.C. 551(1) and 552(e), to the extent they reflect the views or judgment of the writer or of other individuals. If disclosure of any factual portion of the communication would indicate the views or judgment being withheld from disclosure, then such factual portions will also be withheld.

(b) *Investigatory files.* Investigatory files compiled for law enforcement purposes to the extent that production of such records would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source, and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures or (6) endanger the life or physical safety of law enforcement personnel. For the purpose of this section "enforcement action" means any authorized action intended to abate, prevent, counteract, deter, or terminate violations of law and includes action involving possible civil, criminal, or administrative sanctions whether such sanctions involve adversary proceedings or other procedures, such as termination of benefits, protective measures, etc.

**§ 5.74 Further disclosure.**

(a) The Secretary may in particular instances, except where prohibited by law, disclose documents or portions of documents described in § 5.73 if he determines that disclosure is in the public interest and is consistent with obligations of confidentiality and administrative necessity.

(b) In making such a determination, consideration may be given to the Department's responsibilities under law for dissemination to the public of information relating to education.

(c) When such determination has been made, the particular document or

portion of document to which it relates shall thereafter be available upon request for inspection and copying: *Provided however,* That use of nondiscloseable records or information from such records for authorized program purposes, including law enforcement purposes and litigation is not a disclosure within the meaning of this section.

## Subpart G—Administrative Review

### § 5.80 Review of denial of a record.

This subpart provides for the review of a denial, pursuant to § 5.53, of a written request for inspection or copying of a record.

### § 5.81 Time for initiation of request for review.

A person whose request has been denied may initiate a review by filing a request for review within (a) 30 days of receipt of the determination to deny or (b) within 30 days of receipt of records which are in partial response to his request if a portion of a request is granted and a portion denied, whatever is later.

### § 5.82 By whom review is made.

(a) Requests for review of denials should be addressed to the Secretary.

(b) [Reserved]

### § 5.83 Contents of request for review.

The request for review shall include a copy of the written request and the denial.

### § 5.84 Consideration on review.

Review shall be considered on the basis of the written record including any written argument submitted by the requester.

### § 5.85 Decisions on review.

(a) Decisions on review shall be in writing within 20 working days from receipt of the request for review. Extension of the time limit may be granted to the extent that the maximum 10-day limit on extensions has not been exhausted on the initial determination. Such extension may only be granted for the reasons enumerated in § 5.51(d).

(b) The decision, which constitutes final action of the Department, if adverse to the requester shall be in writing, stating the reasons for the decision, and advising the requester of the right to judicial review of such decision.

(c) Failure to comply with time limits set forth in § 5.51 or in this subsection constitutes an exhaustion of the requester's administrative remedies.

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APPENDIX

The following are some examples of specific records (or specific information relating to personnel, programs, or activities of this Department) listed according to whether or not they are available upon request for inspection and copying.

| *Generally Available* | *Generally Not Available* |
|---|---|
| **GRANTS** | |
| Funded initial grant applications, subject to provisions of § 5.71. | Research protocol, design, processing, and other technical information to the extent proprietary or of a confidential nature submitted with initial applications not yet funded, or where disclosure would adversely affect patent or other valuable rights. |
| Reports of grantee. | Confidential financial information of grantee. |
| Final report of any review or evaluation of grantee performance conducted or caused to be conducted by the Department. | Site visit reports. |
| Applications for continuation, renewal, or supplemental grants, subject to provisions of § 5.71. | Initial research or research training grant application on which award is not made. |
| State plan material. | |
| **CONTRACTS** | |
| Name of contractor, subject matter, date, and amount of contract. | Trade secrets. |
| Contract performance review report | Confidential pricing data contained in contract proposal if in the Department's judgment it is properly so designated by the offeror. |
| Deficiency report | Proprietary technical data contained in a contract proposal if in the Department's judgment it is properly so designated by offeror. |
| Final report | Confidential financial information of contractor. |
| | Draft of proposed final report submitted for comment prior to acceptance. |
| | Research protocol, design, processing, and other technical information to the extent proprietary or of a confidential nature, including proprietary contents of unsolicited proposals. |
| | Proposals on which no award is made. |
| **ADVISORY COMMITTEES** | |
| Name of committee | Minutes or transcripts of committee meetings or portions thereof which are involved with matters exempt from mandatory disclosure under Freedom of Information Act. |
| Final report | |
| Minutes or transcripts of meetings open to the public and not involved with matters exempt from mandatory disclosure under Freedom of Information Act. | |
| **PERSONNEL INFORMATION** | |
| Name of employee, title of position, and location of regular duty station. | Home addresses of employees. |
| Grade, position description, and salary of public employees. | |
| **AFFIRMATIVE ACTION PLAN FILED PURSUANT TO EXECUTIVE ORDER 11246** | |
| Approved action plan, including analysis, proposed remedial or affirmative steps to be taken with goals and timetables, policies on recruitment, hiring, and promotion, and description of grievance procedures. | |
| **MISCELLANEOUS** | |
| | Names of individual beneficiaries of departmental programs or a list of the benefits they receive if release would be an unwarranted invasion of privacy |
| | Office for Civil Rights investigatory files in open cases. |

## PART 5b—PRIVACY ACT REGULATIONS

Sec.
5b.1 Definitions.
5b.2 Purpose and scope.
5b.3 Policy.
5b.4 Maintenance of records.
5b.5 Notification of or access to records.
5b.7 Procedures for correction or amendment of records.
5b.8 Appeals of refusals to correct or amend records.
5b.9 Disclosure of records.
5b.10 Parents and guardians.
5b.11 Exempt systems.
5b.12 Contractors.
5b.13 Fees.
Appendix A Employee standards of conduct.
Appendix B Routine uses applicable to more than one system of records maintained by ED.

Authority: 5 U.S.C. 301, 5 U.S.C. 552a.

### § 5b.1 Definitions.

As used in this Part:

(a) "Access" means availability of a record to a subject individual.

(b) "Agency" means the Department of Health, Education, and Welfare.

(c) "Department" means the Department of Education.

(d) "Disclosure" means the availability or release of a record to anyone other than the subject individual.

(e) "Individual" means a living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. It does not include persons such as sole proprietorships, partnerships, or corporations. A business firm which is identified by the name of one or more persons is not an individual within the meaning of this Part.

(f) "Maintain" means to maintain, collect, use, or disseminate when used in connection with the term "record"; and, to have control over or responsibility for a system of records when used in connection with the term "system of records."

(g) "Notification" means communication to an individual whether he is a subject individual.

(h) "Record" means any item, collection, or grouping of information about an individual that is maintained by the Department, including but not limited to the individual's education, financial transactions, medical history, and criminal or employment history and that contains his name, or an identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. When used in this Part, record means only a record which is in a system of records.

(i) "Responsible Department official" means that officer who is listed in a notice of a system of records as the system manager for a given system of records or another individual listed in the notice of a system of records to whom requests may be made, or the designee of either such officer or individual.

(j) "Routine use" means the disclosure of a record outside the Department, without the consent of the subject individual, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the Freedom of Information Act, 5 U.S.C. 552. It does not include disclosures which are permitted to be made without the consent of the subject individual which are not compatible with the purpose for which it was collected such as disclosures to the Bureau of the Census, the General Accounting Office, or to Congress.

(k) "Secretary" means the Secretary of Education.

(l) "Statistical record" means a record maintained for statistical research or reporting purposes only and not maintained to make determinations about a particular subject individual.

(m) "Subject individual" means that individual to whom a record pertains.

(n) "System of records" means any group of records under the control of the Department from which a record is retrieved by personal identifier such as the name of the individual, number, symbol or other unique retriever assigned to the individual. Single records or groups of records which are not retrieved by a personal identifier are not part of a system of records. Papers maintained by individual employees of the Department which are prepared, maintained, or discarded at the discretion of the employee and which are not subject to the Federal Records Act, 44 U.S.C. 2901, are not part of a system of records; *Provided,* That such personal papers are not used by the employee or the Department to determine any rights, benefits, or privileges of individuals.

### § 5b.2 Purpose and scope.

(a) This Part implements section 3 of the Privacy Act of 1974, 5 U.S.C. 552a (hereinafter referred to as the Act), by establishing agency policies and procedures for the maintenance of records. This Part also establishes agency policies and procedures under which a subject individual may be given notification of or access to a record pertaining to him and policies and procedures under which a subject individual may have his record corrected or amended if he believes that his record is not accurate, timely, complete, or relevant or necessary to accomplish a Department function.

(b) All components of the Department are governed by the provisions of this Part. Also governed by the provisions of this Part are advisory committees and councils within the meaning of the Federal Advisory Committee Act which provide advice to (1) any official or component of the Department or (2) the President and for which the Department has been delegated responsibility for providing services.

(c) Employees of the Department governed by this Part include all regular and special government employees of the Department; experts and consultants whose temporary (not in excess of 1 year) or intermittent services have been procured by the Department by contract pursuant to 3109 of title 5, United States Code; volunteers where acceptance of their services are authorized by law; those individuals performing gratuitous services as permitted under conditions prescribed by the Civil Service Commission; and, participants in work-study or training programs.

(d) This Part does not:

(1) Make available to a subject individual records which are not retrieved by that individual's name or other personal identifier.

(2) Make available to the general public records which are retrieved by a subject individual's name or other personal identifier or make available to the general public records which would otherwise not be available to the general public under the Freedom of Information Act, 5 U.S.C. 552, and Part 5 of this title.

(3) Govern the maintenance or disclosure of, notification of or access to, records in the possession of the Department which are subject to regulations of another agency, such as personnel records subject to the regulations of the Civil Service Commission.

(4) Apply to grantees, including State and local governments or subdivisions thereof, administering federally funded programs.

(5) Make available records compiled by the Department in reasonable anticipation of court litigation or formal

administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable constitutional principles, rules of discovery, and applicable regulations of the Department.

**§ 5b.3 Policy.**

It is the policy of the Department to protect the privacy of individuals to the fullest extent possible while nonetheless permitting the exchange of records required to fulfill the administrative and program responsibilities of the Department, and responsibilities of the Department for disclosing records which the general public is entitled to have under the Freedom of Information Act, 5 U.S.C. 552, and Part 5 of this title.

**§ 5b.4 Maintenance of records.**

(a) No record will be maintained by the Department unless:

(1) It is relevant and necessary to accomplish a Department function required to be accomplished by statute or Executive Order;

(2) It is acquired to the greatest extent practicable from the subject individual when maintenance of the record may result in a determination about the subject individual's rights, benefits or privileges under Federal programs;

(3) The individual providing the record is informed of the authority for providing the record (including whether the providing of the record is mandatory or voluntary, the principal purpose for maintaining the record, the routine uses for the record, what effect his refusal to provide the record may have on him), and if the record is not required by statute or Executive Order to be provided by the individual, he agrees to provide the record.

(b) No record will be maintained by the Department which describes how an individual exercises rights guaranteed by the First Amendment unless expressly authorized (1) by statute, or (2) by the subject individual, or (3) unless pertinent to and within the scope of an authorized law enforcement activity.

**§ 5b.5 Notification of or access to records.**

(a) *Times, places, and manner of requesting notification of or access to a record.* (1) Any individual may request notification of a record. He may at the same time request access to any record pertaining to him. An individual may be accompanied by another individual of his choice when he requests access to a record in person; *Provided,* That he affirmatively authorizes the presence of such other individual during any discussion of a record to which access is requested.

(2) An individual making a request for notification of or access to a record shall address his request to the responsible Department official and shall verify his identity when required in accordance with paragraph (b)(2) of this section. At the time the request is made, the individual shall specify which systems of records he wishes to have searched and the records to which he wishes to have access. He may also request that copies be made of all or any such records. An individual shall also provide the responsible Department official with sufficient particulars to enable such official to distinguish between records on subject individuals with the same name. The necessary particulars are set forth in the notices of systems of records.

(3) An individual who makes a request in person may leave with any responsible Department official a request for notification of or access to a record under the control of another responsible Department official; *Provided,* That the request is addressed in writing to the appropriate responsible Department official.

(b) *Verification of identity*—(1) *When required.* Unless an individual, who is making a request for notification of or access to a record in person, is personally known to the responsible Department official, he shall be required to verify his identity in accordance with paragraph (b)(2) of this section if:

(i) he makes a request for notification of a record and the responsible Department official determines that the mere disclosure of the existence of the record would be a clearly unwarranted invasion of privacy if disclosed to someone other than the subject individual; or,

(ii) he makes a request for access to a record which is not required to be disclosed to the general public under the Freedom of Information Act, 5 U.S.C. 552, and Part 5 of this title.

(2) *Manner of verifying identity.*

(i) An individual who makes a request in person shall provide to the responsible Department official at least one piece of tangible identification such as a driver's license, passport, alien or voter registration card, or union card to verify his identity. If an individual does not have identification papers to verify his identity, he shall certify in writing that he is the individual who he claims to be and that he understands that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act subject to a $5,000 fine.

(ii) Except as provided in paragraph (b)(2)(v) of this section, an individual who does not make a request in person shall submit a notarized request to the responsible Department official to verify his identity or shall certify in his request that he is the individual who he claims to be and that he understands that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act subject to a $5,000 fine.

(iii) An individual who makes a request on behalf of a minor or legal incompetent as authorized under § 5b.10 of this Part shall verify his relationship to the minor or legal incompetent, in addition to verifying his own identity, by providing a copy of the minor's birth certificate, a court order, or other competent evidence of guardianship to the responsible Department official; *except that,* an individual is not required to verify his relationship to the minor or legal incompetent when he is not required to verify his own identity or when evidence of his relationship to the minor or legal incompetent has been previously given to the responsible Department official.

(iv) An individual shall further verify his identity if he is requesting notification of or access to sensitive records. Any further verification shall parallel the record to which notification or access is being sought. Such further verification may include such particulars as the individual's years of attendance at a particular educational institution, rank attained in the uniformed services, date or place of birth, names of parents, or an occupation.

(v) An individual who makes a request by telephone shall verify his identity by providing to the responsible Department official identifying particulars which parallel the record to which notification or access is being sought. If the responsible Department official determines that the particulars provided by telephone are insufficient, the requester will be required to submit the request in writing or in person. Telephone requests will not be accepted where an individual is requesting notification of or access to sensitive records.

(c) *Granting notification of or access to a record.* (1) Subject to the provisions governing exempt systems in § 5b.11 of this part, a responsible Department official, who receives a request for notification of or access to a record and, if required, verification of an individual's identity, will review the

request and grant notification or access to a record, if the individual requesting access to the record is the subject individual.

(2) If the responsible Department official determines that there will be a delay in responding to a request because of the number of requests being processed, a breakdown of equipment, shortage of personnel, storage of records in other locations, etc., he will so inform the individual and indicate when notification or access will be granted.

(3) Prior to granting notification of or access to a record, the responsible Department official may at his discretion require an individual making a request in person to reduce his request to writing if the individual has not already done so at the time the request is made.

**§ 5b.7 Procedures for correction or amendment of records.**

(a) Any subject individual may request that his record be corrected or amended if he believes that the record is not accurate, timely, complete, or relevant or necessary to accomplish a Department function. A subject individual making a request to amend or correct his record shall address his request to the responsible Department official in writing; *except that,* the request need not be in writing if the subject individual makes his request in person and the responsible Department official corrects or amends the record at that time. The subject individual shall specify in each request:

(1) The system of records from which the record is retrieved;

(2) The particular record which he is seeking to correct or amend;

(3) Whether he is seeking an addition to or a deletion or substitution of the record; and,

(4) His reasons for requesting correction or amendment of the record.

(b) A request for correction or amendment of a record will be acknowledged within 10 working days of its receipt unless the request can be processed and the subject individual informed of the responsible Department official's decision on the request within that 10 day period.

(c) If the responsible Department official agrees that the record is not accurate, timely, or complete based on a preponderance of the evidence, the record will be corrected or amended. The record will be deleted without regard to its accuracy, if the record is not relevant or necessary to accomplish the Department function for which the record was provided or is maintained. In either case, the subject individual will be informed in writing of the correction, amendment, or deletion and, if accounting was made of prior disclosures of the record, all previous recipients of the record will be informed of the corrective action taken.

(d) If the responsible Department official does not agree that the record should be corrected or amended, the subject individual will be informed in writing of the refusal to correct or amend the record. He will also be informed that he may appeal the refusal to correct or amend his record § 5b.8 of this Part.

(e) Requests to correct or amend a record governed by the regulation of another government agency, *e.g.,* Civil Service Commission, Federal Bureau of Investigation, will be forwarded to such government agency for processing and the subject individual will be informed in writing of the referral.

**§ 5b.8 Appeals of refusals to correct or amend records.**

(a) *Processing the appeal.* (1) A subject individual who disagrees with a refusal to correct or amend his record may appeal the refusal in writing. All appeals shall be made to the Secretary.

(2) An appeal will be completed within 30 working days from its receipt by the appeal authority; *except that,* the appeal authority may for good cause extend this period for an additional 30 days. Should the appeal period be extended, the subject individual appealing the refusal to correct or amend the record will be informed in writing of the extension and the circumstances of the delay. The subject individual's request to amend or correct the record, the responsible Department official's refusal to correct or amend, and any other pertinent material relating to the appeal will be reviewed. No hearing will be held.

(3) If the appeal authority agrees that the record subject to the appeal should be corrected or amended, the record will be amended and the subject individual will be informed in writing of the correction or amendment. Where an accounting was made of prior disclosures of the record, all previous recipients of the record will be informed of the corrective action taken.

(4) If the appeal is denied, the subject individual will be informed in writing:

(i) Of the denial and the reasons for the denial;

(ii) That he has a right to seek judicial review of the denial; and,

(iii) That he may submit to the responsible Department official a concise statement of disagreement to be associated with the disputed record and disclosed whenever the record is disclosed.

(b) *Notation and disclosure of disputed records.* Whenever a subject individual submits a statement of disagreement to the responsible Department official in accordance with paragraph (a)(4)(iii) of this section, the record will be noted to indicate that it is disputed. In any subsequent disclosure, a copy of the subject individual's statement of disagreement, will be disclosed with the record. If the responsible Department official deems it appropriate, a concise statement of the appeal authority's reasons for denying the subject individual's appeal may also be disclosed with the record. While the subject individual will have access to this statement of reasons, such statement will not be subject to correction or amendment. Where an accounting was made of prior disclosures of the record, all previous recipients of the record will be provided a copy of the subject individual's statement of disagreement, as well as the statement, if any, of the appeal authority's reasons for denying the subject individual's appeal.

**§ 5b.9 Disclosure of records.**

(a) *Consent to disclosure by a subject individual.* (1) Except as provided in paragraph (b) of this section authorizing disclosures of records without consent, no disclosure of a record will be made without the consent of the subject individual. In each case the consent, whether obtained from the subject individual at the request of the Department or whether provided to the Department by the subject individual on his own initiative, shall be in writing. The consent shall specify the individual, organizational unit or class of individuals or organizational units to whom the record may be disclosed, which record may be disclosed and, where applicable, during which time frame the record may be disclosed (*e.g.,* during the school year, while the subject individual is out of the country, whenever the subject individual is receiving specific services). A blanket consent to disclose all of a subject individual's records to unspecified individuals or organizational units will not be honored. The subject individual's identity and, where applicable (*e.g.,* where a subject individual gives consent to disclosure of a record to a specific individual), the identity of the individual to whom the record is to be disclosed shall be verified.

(2) A parent or guardian of any minor is not authorized to give consent to a disclosure of the minor's medical record.

(b) *Disclosures without the consent of the subject individual.* The disclosures listed in this paragraph may be made

without the consent of the subject individual. Such disclosures are:

(1) To those officers and employees of the Department who have a need for the record in the performance of their duties. The responsible Department official may upon request of any officer or employee, or on his own initiative, determine what constitutes legitimate need.

(2) Required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, and Part 5 of this title.

(3) For a routine use as defined in paragraph (j) of § 5b.1. Routine uses will be listed in any notice of a system of records. Routine uses published in Appendix B are applicable to more than one system of records. Where applicable, notices of systems of records may contain references to the routine uses listed in Appendix B. Appendix B will be published with any compendium of notices of systems of records.

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 U.S.C.

(5) To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record; *Provided,* That, the record is transferred in a form that does not identify the subject individual.

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value.

(7) To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of such government agency or instrumentality has submitted a written request to the Department specifying the record desired and the law enforcement activity for which the record is sought.

(8) To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject individual.

(9) To either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee.

(10) To the Comptroller General, or any of the Comptroller General's authorized representatives, in the course of the performance of the duties of the General Accounting Office.

(11) Pursuant to the order of a court of competent jurisdiction.

(c) *Accounting of disclosures.* (1) An accounting of all disclosures of a record will be made and maintained by the Department for 5 years or for the life of the record, whichever is longer; *except that,* such an accounting will not be made:

(i) For disclosures under paragraph (b)(1) and (2) of this section; and,

(ii) For disclosures made with the written consent of the subject individual.

(2) The accounting will include:

(i) The date, nature, and purpose of each disclosure; and

(ii) The name and address of the person or entity to whom the disclosure is made.

(3) Any subject individual may request access to an accounting of disclosures of a record. The subject individual shall make a request for access to an accounting in accordance with the procedures in § 5b.5 of this part. A subject individual will be granted access to an accounting of the disclosures of a record in accordance with the procedures of this part which govern access to the related record. Access to an accounting of a disclosure of a record made under paragraph (b)(7) of this section may be granted at the discretion of the responsible Department official.

### § 5b.10 Parents and guardians.

For the purpose of this part, a parent or guardian of any minor or the legal guardian or any individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction is authorized to act on behalf of an individual or a subject individual. Except as provided in paragraph (b)(2) of § 5b.5, of this Part governing procedures for verifying an individual's identity, an individual authorized to act on behalf of a minor or legal incompetent will be viewed as if he were the individual or subject individual.

### § 5b.11 Exempt systems.

(a) *General policy.* The Act permits certain types of specific systems of records to be exempt from some of its requirements. It is the policy of the Department to exercise authority to exempt systems of records only in compelling cases.

(b) *Specific systems of records exempted.* (1) Those systems of records listed in paragraph (b)(2) of this section are exempt from the following provisions of the Act and this Part:

(i) 5 U.S.C. 552a(c)(3) and paragraph (c)(2) of § 5b.9 of this part which require a subject individual to be granted access to an accounting of disclosures of a record.

(ii) 5 U.S.C. 552a(d) (1) through (4) and (f) and §§ 5b.6, 5b.7, and 5b.8 of this part relating to notification of or access to records and correction or amendment of records.

(iii) 5 U.S.C. 552a(e)(4) (G) and (H) which require inclusion of information about Department procedures for notification, access, and correction or amendment of records in the notice for the systems of records.

(iv) 5 U.S.C. 552(e)(3) and paragraph (a)(3) of § 5b.4 of this Part which require that an individual asked to provide a record to the Department be informed of the authority for providing the record (including whether the providing of the record is mandatory or voluntary, the principal purposes for maintaining the record, the routine uses for the record, and what effect his refusal to provide the record may have on him), and if the record is not required by statute or Executive Order to be provided by the individual, he agrees to provide the record. This exemption applies only to an investigatory record compiled by the Department for criminal law enforcement purposes in a system of records exempt under subsection (j)(2) of the Act to the extent that these requirements would prejudice the conduct of the investigation.

(2) The following systems of records are exempt from those provisions of the Act and this part listed in paragraph (b)(1) of this section.

(i) Pursuant to subsection (j)(2) of the Act:

The Investigatory Material Compiled for Law Enforcement Purposes System, HEW.

(ii) [Reserved]

(iii) [Reserved]

(iv) Pursuant to subsection (k)(5) of the Act:

(A) The Investigatory Material Compiled for Security and Suitability Purposes System, HEW; and,

(B) The Suitability for Employment Records, HEW.

(c) *Notification of or access to records in exempt systems of records.* (1) Where a system of records is exempt as provided in paragraph (b) of this section, any individual may nonetheless request notification of or access to a record in that system. An individual shall make requests for notification of or access to a

record in an exempt system of records in accordance with the procedures of §§ 5b.5 and 5b.6 of this part.

(2) An individual will be granted notification of or access to a record in an exempt system but only to the extent such notification or access would not reveal the identity of a source who furnished the record to the Department under an express promise, and prior to September 27, 1975 an implied promise, that his identity would be held in confidence, if:

(i) The record is in a system of records which is exempt under subsection (k)(2) of the Act and the individual has been, as a result of the maintenance of the record, denied a right, privilege, or benefit to which he would otherwise be eligible; or,

(ii) The record is in a system of records which is exempt under subsection (k)(5) of the Act.

(3) If an individual is not granted notification of or access to a record in a system of records exempt under subsections (k) (2) and (5) of the Act in accordance with this paragraph, he will be informed that the identity of a confidential source would be revealed if notification of or access to the record were granted to him.

(d) *Discretionary actions by the responsible Department official.* Unless disclosure of a record to the general public is otherwise prohibited by law, the responsible Department official may in his discretion grant notification of or access to a record in a system of records which is exempt under paragraph (b) of this section. Discretionary notification of or access to a record in accordance with this paragraph will not be a precedent for discretionary notification of or access to a similar or related record and will not obligate the responsible Department official to exercise his discretion to grant notification of or access to any other record in a system of records which is exempt under paragraph (b) of this section.

### § 5b.12 Contractors.

(a) All contracts entered into on or after September 27, 1975 which require a contractor to maintain or on behalf of the Department to maintain, a system of records to accomplish a Department function must contain a provision requiring the contractor to comply with the Act and this part.

(b) All unexpired contracts entered into prior to September 27, 1975 which require the contractor to maintain or on behalf of the Department to maintain, a system of records to accomplish a Department function will be amended as soon as practicable to include a provision requiring the contractor to comply with the Act and this Part. All such contracts must be so amended by July 1, 1976 unless for good cause the appeal authority identified in § 5b.8 of this part authorizes the continuation of the contract without amendment beyond that date.

(c) A contractor and any employee of such contractor shall be considered employees of the Department only for the purposes of the criminal penalties of the Act, 5 U.S.C. 552a(i), and the employee standards of conduct listed in Appendix A of this part where the contract contains a provision requiring the contractor to comply with the Act and this part.

(d) This section does not apply to systems of records maintained by a contractor as a result of his management discretion, *e.g.*, the contractor's personnel records.

### § 5b.13 Fees.

(a) *Policy.* Where applicable, fees for copying records will be charged in accordance with the schedule set forth in this section. Fees may only be charged where an individual requests that a copy be made of the record to which he is granted access. No fee may be charged for making a search of the system of records whether the search is manual, mechanical, or electronic. Where a copy of the record must be made in order to provide access to the record (*e.g.*, computer printout where no screen reading is available), the copy will be made available to the individual without cost.

(b) *Fee schedule.* The fee schedule for the Department is as follows:

(1) Copying of records susceptible to photocopying—$.10 per page.

(2) Copying records not susceptible to photocopying (*e.g.*, punch cards or magnetic tapes)—at actual cost to be determined on a case-by-case basis.

(3) No charge will be made if the total amount of copying does not exceed $25.

### Appendix A

### Employee Standards of Conduct

(a) *General.* All employees are required to be aware of their responsibilities under the Privacy Act of 1974, 5 U.S.C. 552a. Regulations implementing the Act are set forth in 34 CFR 5b. Instruction on the requirements of the Act and regulation shall be provided to all new employees of the Department. In addition, supervisors shall be responsible for assuring that employees who are working with systems of records or who undertake new duties which require the use of systems of records are informed of their responsibilities. Supervisors shall also be responsible for assuring that all employees who work with such systems of records are periodically reminded of the requirements of the Act and are advised of any new provisions or interpretations of the Act.

(b) *Penalties.* (1) All employees must guard against improper disclosure of records which are governed by the Act. Because of the serious consequences of improper invasions of personal privacy, employees may be subject to disciplinary action and criminal prosecution for knowing and willful violations of the Act and regulation. In addition, employees may also be subject to disciplinary action for unknowing or unwillful violations, where the employee had notice of the provisions of the Act and regulations and failed to inform himself sufficiently or to conduct himself in accordance with the requirements to avoid violations.

(2) The Department may be subjected to civil liability for the following actions undertaken by its employees:

(a) Making a determination under the Act and section 5b.7 and 5b.8 of the regulation not to amend an individual's record in accordance with his request, or failing to make such review in conformity with those provisions;

(b) Refusing to comply with an individual's request for notification of or access to a record pertaining to him;

(c) Failing to maintain any record pertaining to any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such a record, and consequently a determination is made which is adverse to the individual; or

(d) Failing to comply with any other provision of the Act or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual.

(3) "An employee may be personally subject to criminal liability as set forth below and in 5 U.S.C. 552a (i):

(a) Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by the Act or by rules or regulations established thereunder, and who, knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000."

(b) "Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements [of the Act] shall be guilty of a misdemeanor and fined not more than $5,000."

(c) *Rules Governing Employees Not Working With Systems of Records.* Employees whose duties do not involve working with systems of records will not generally disclose to any one, without specific authorization from their supervisors, records pertaining to employees or other individuals which by reason of their official duties are available to them. Notwithstanding the above, the following records concerning Federal employees are a matter of public

record and no further authorization is necessary for disclosure:

(1) Name and title of individual.

(2) Grade classification or equivalent and annual rate of salary.

(3) Position description.

(4) Location of duty station, including room number and telephone number.

In addition, employees shall disclose records which are listed in the Department's Freedom of Information Regulation as being available to the public. Requests for other records will be referred to the responsible Department official. This does not preclude employees from discussing matters which are known to them personally, and without resort to a record, to official investigators of Federal agencies for official purposes such as suitability checks, Equal Employment Opportunity investigations, adverse action proceedings, grievance proceedings, etc.

(d) *Rules governing employees whose duties require use or reference to systems of records.* Employees whose official duties require that they refer to, maintain, service, or otherwise deal with systems of records (hereinafter referred to as "Systems Employees") are governed by the general provisions. In addition, extra precautions are required and systems employees are held to higher standards of conduct.

(1) Systems Employees shall:

(a) Be informed with respect to their responsibilities under the Act;

(b) Be alert to possible misuses of the system and report to their supervisors any potential or actual use of the system which they believe is not in compliance with the Act and regulation;

(c) Make a disclosure of records within the Department only to an employee who has a legitimate need to know the record in the course of his official duties;

(d) Maintain records as accurately as practicable.

(e) Consult with a supervisor prior to taking any action where they are in doubt whether such action is in conformance with the Act and regulation.

(2) Systems Employees shall not:

(a) Disclose in any form records from a system of records except (1) with the consent or at the request of the subject individual; or (2) where its disclosure is permitted under § 5b.9 of the regulation.

(b) Permit unauthorized individuals to be present in controlled areas. Any unauthorized individuals observed in controlled areas shall be reported to a supervisor or to the guard force.

(c) Knowingly or willfully take action which might subject the Department to civil liability.

(d) Make any arrangements for the design development, or operation of any system of records without making reasonable effort to provide that the system can be maintained in accordance with the Act and regulation.

(e) *Contracting officers.* In addition to any applicable provisions set forth above, those employees whose official duties involve entering into contracts on behalf of the Department shall also be governed by the following provisions:

(1) *Contracts for design, or development of systems and equipment.* No contract for the design or development of a system of records, or for equipment to store, service or maintain a system of records shall be entered into unless the contracting officer has made reasonable effort to ensure that the product to be purchased is capable of being used without violation of the Act or regulation. Special attention shall be given to provision of physical safeguards.

(2) *Contracts for the operation of systems and equipment.* No contract for the design or development of a system of whom he feels appropriate, of all proposed contracts providing for the operation of systems of records shall be made prior to execution of the contracts to determine whether operation of the system of records is for the purpose of accomplishing a Department function. If a determination is made that the operation of the system is to accomplish a Department function, the contracting officer shall be responsible for including in the contract appropriate provisions to apply the provisions of the Act and regulation to the system, including prohibitions against improper release by the contractor, his employees, agents, or subcontractors.

(3) *Other service contracts.* Contracting officers entering into general service contracts shall be responsible for determining the appropriateness of including provisions in the contract to prevent potential misuse (inadvertent or otherwise) by employees, agents, or subcontractors of the contractor.

(f) *Rules Governing Responsible Department Officials.* In addition to the requirements for Systems Employees, responsible Department officials shall:

(1) respond to all requests for notification of or access, disclosure, or amendment of records in a timely fashion in accordance with the Act and regulation;

(2) make any amendment of records accurately and in a timely fashion;

(3) inform all persons whom the accounting records show have received copies of the record prior to the amendments of the correction; and

(4) associate any statement of disagreement with the disputed record, and

(a) transmit a copy of the statement to all persons whom the accounting records show have received a copy of the disputed record, and

(b) transmit that statement with any future disclosure.

Appendix B

Routine Uses Applicable to More Than One System of Records Maintained by HEW

(1) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(2) Referrals may be made of assignments of research investigators and project monitors to specific research projects to the Smithsonian Institution to contribute to the Smithsonian Science Information Exchange, Inc.

(3) In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

(4) A record from this system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement records or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

(5) In the event that a system of records maintained by this agency to carry out its function indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether state or local charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(6) Where federal agencies having the power to subpoena other federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department will make such records available.

(7) Where a contract between a component of the Department and a labor organization recognized under E.O. 11491 provides that the agency will disclose personal records relevant to the organization's mission, records in this system of records may be disclosed to such organization.

(8) Where the appropriate official of the Department, pursuant to the Department's Freedom of Information Regulation determines that it is in the public interest to disclose a record which is otherwise exempt from mandatory disclosure, disclosure may be made from this system of records.

(9) The Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a

contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

(10) To individuals and organizations, deemed qualified by the Secretary to carry out specific research solely for the purpose of carrying out such research.

(11) Disclosures in the course of employee discipline or competence determination proceedings.

## PART 6—INVENTIONS AND PATENTS (GENERAL)

Sec.
6.0 General policy.
6.1 Publication or patenting of inventions.
6.3 Licensing of Government-owned patents.
6.4 Central records; confidentiality.

Authority: 5 U.S.C. 301.

### § 6.0 General policy.

Inventions developed through the resources and activities of the Department are a potential resource of great value to the public. It is the policy of the Department:

(a) To safeguard the public interest in inventions developed by Department employees, contractors and grantees with the aid of public funds and facilities;

(b) To encourage and recognize individual and cooperative achievement in research and investigations; and

(c) To establish a procedure, consistent with pertinent statutes, Executive orders and general Government regulations, for the determination of rights and obligations relating to the patenting of inventions.

### § 6.1 Publication or patenting of inventions.

It is the general policy of the Department that the results of Department research should be made widely, promptly and freely available to other research workers and to the public. This availability can generally be adequately preserved by the dedication of a Government-owned invention to the public. Determinations to file a domestic patent application on inventions in which the Department has an interest will be made where the circumstances indicate that this is desirable in the public interest, and if it is practicable to do so. Department determinations not to apply for a domestic patent on employee inventions are subject to review and approval by the Commissioner of Patents. Except where deemed necessary for protecting the patent claim, the fact that a patent application has been or may be filed will not require any departure from normal policy regarding the dissemination of the results of Department research.

### § 6.3 Licensing of Government-owned patents.

(a) Licenses to practice inventions covered by patents and pending patent applications owned by the U.S. Government as represented by this Department will generally be royalty free, revocable and nonexclusive. They will normally be issued to all applicants and will generally contain no limitations or standards relating to the quality or testing of the products to be manufactured, sold, or distributed thereunder.

(b) Where it appears however that the public interest will be served under the circumstances of the particular case by licenses which impose conditions, such as those relating to quality or testing of products, requirement of payment of royalties to the Government, etc., or by the issuance of limited exclusive licenses by the Secretary after notice and opportunity for hearing thereon, such licenses may be issued.

### § 6.4 Central records; confidentiality.

Central files and records shall be maintained of all inventions, patents, and licenses in which the Department has an interest, together with a record of all licenses issued by the Department under such patents. Invention reports required from employees or others for the purpose of obtaining determinations of ownership, and documents and information obtained for the purpose of prosecuting patent applications shall be confidential and shall be disclosed only as required for official purposes or with the consent of the inventor.

## PART 7—EMPLOYEE INVENTIONS

Sec.
7.0 Who are employees.
7.1 Duty of employee to report inventions.
7.3 Determination as to domestic rights.
7.4 Option to acquire foreign rights.
7.7 Notice to employee of determination.
7.8 Employee's right of appeal.

Authority: 5 U.S.C. 301.

### § 7.0 Who are employees.

As used in this part, the term "Government employee" means any officer or employee, civilian or military, except such part-time employees or part-time consultants as may be excluded therefrom by a determination made in writing by the head of the employee's office or constituent organization, pursuant to an exemption approved by the Commissioner of Patents that to include him or them would be impracticable or inequitable, given the reasons therefor. A person shall not be considered to be a part-time employee or part-time consultant for this purpose unless the terms of his employment contemplate that he shall work for less than the minimum number of hours per day, or less than a minimum number of days per week, or less than the minimum number of weeks per year, regularly required of full-time employees of his class.

### § 7.1 Duty of employee to report inventions.

Every Department employee is required to report to the Secretary in accordance with the procedures established therefor, every invention made by him (whether or not jointly with others) which bears any relation to his official duties or which was made in whole or in any part during working hours, or with any contribution of Government facilities, equipment, material, funds, or information, or of time or services of other Government employees on official duty.

### § 7.3 Determination as to domestic rights.

The determination of the ownership of the domestic right, title, and interest in and to an invention which is or may be patentable, made by a Government employee while under the administrative jurisdiction of the Department, will be made in writing by the Secretary in accordance with the provisions of Executive Order 10096 and Government-wide regulations issued thereunder by the Commissioner of Patents as follows:

(a) The Government as represented by the Secretary shall obtain the entire domestic right, title and interest in and to all inventions made by any Government employee (1) during working hours, or (2) with a contribution by the Government of facilities, equipment, materials, funds, or information, or of time or services of other Government employees on official duty, or (3) which bear a direct relation to or are made in consequence of the official duties of the inventor.

(b) In any case where the contribution of the Government, as measured by any one or more of the criteria set forth in paragraph (a) of this section, to the invention is insufficient equitably to justify a requirement of assignment to the Government of the entire domestic right, title and interest in and to such invention, or in any case where the Government has insufficient interest in an invention to obtain the entire domestic right, title, and interest therein (although the Government could obtain same under paragraph (a) of this section), the Department, subject to the approval of the Commissioner, shall leave title to such invention in the employee, subject, however, to the

reservation to the Government of a nonexclusive, irrevocable, royalty-free license in the invention with power to grant licenses for all governmental purposes, such reservation to appear, where practicable, in any patent, domestic or foreign, which may issue on such invention.

(c) In applying the provisions of paragraphs (a) and (b) of this section, to the facts and circumstances relating to the making of any particular invention, it shall be presumed that an invention made by an employee who is employed or assigned (1) to invent or improve or perfect any art, machine, manufacture, or composition of matter, (2) to conduct or perform research, development work, or both, (3) to supervise, direct, coordinate, or review Government financed or conducted research, development work, or both, or (4) to act in a liaison capacity among governmental or nongovernmental agencies or individuals engaged in such work, falls within the provisions of paragraph (a) of this section, and it shall be presumed that any invention made by any other employee falls within the provisions of paragraph (b) of this section. Either presumption may be rebutted by a showing of the facts and circumstances and shall not preclude a determination that these facts and circumstances justify leaving the entire right, title and interest in and to the invention in the Government employee, subject to law.

(d) In any case wherein the Government neither (1) obtains the entire domestic right, title and interest in and to an invention pursuant to the provisions of paragraph (a) of this section, nor (2) reserves a nonexclusive, irrevocable, royalty-free license in the invention, with power to grant licenses for all governmental purposes, pursuant to the provisions of paragraph (b) of this section, the Government shall leave the entire right, title and interest in and to the invention in the Government employee, subject to law.

### § 7.4 Option to acquire foreign rights.

In any case where it is determined that all domestic rights should be assigned to the Government, it shall further be determined, pursuant to Executive Order 9865 and Government-wide regulations issued thereunder, that the Government shall reserve an option to require the assignment of such rights in all or in any specified foreign countries. In case where the inventor is not required to assign the patent rights in any foreign country or countries to the Government or the Government fails to exercise its option within such period of time as may be provided by regulations issued by the Commissioner of Patents, any application for a patent which may be filed in such country or countries by the inventor or his assignee shall nevertheless be subject to a nonexclusive, irrevocable, royalty-free license to the Government for all governmental purposes, including the power to issue sublicenses for use in behalf of the Government and/or in furtherance of the foreign policies of the Government.

### § 7.7 Notice to employee of determination.

The employee-inventor shall be notified in writing of the Department's determination of the rights to his invention and of his right of appeal, if any. Notice need not be given if the employee stated in writing that he would agree to the determination of ownership which was in fact made.

### § 7.8 Employee's right of appeal.

An employee who is aggrieved by a determination of the Department may appeal to the Commissioner of Patents, pursuant to section 4(d) of Executive Order 10096, as amended by Executive Order 10930, and regulations issued thereunder, by filing a written appeal with the Commissioner, in duplicate, and a copy of the appeal with the Secretary within 30 days (or such longer period as the Commissioner may, for good cause, fix in any case) after receiving written notice of such determination.

## PART 8—INVENTIONS RESULTING FROM RESEARCH GRANTS, FELLOWSHIP AWARDS, AND CONTRACTS FOR RESEARCH

Sec.
8.0 Policy.
8.1 Conditions to be included in research grants.
8.2 Determination as to domestic rights.
8.3 Licenses to the Government.
8.4 Option to acquire foreign rights.
8.5 Fellowships.
8.6 Contracts for research.

Authority: 5 U.S.C. 301.

### § 8.0 Policy.

(a) The Department, as a matter of policy, takes the position that the results of research supported by grants of public moneys should be utilized in the manner which would best serve the public interest. It is believed that the public interest will in general be best served if inventive advances resulting therefrom are made freely available to the Government, to science, to industry, and to the general public.

(b) On the other hand, in some cases it may be advisable to permit a utilization of the patent process in order to foster an adequate commercial development to make a new invention widely available. Moreover, it is recognized that inventions frequently arise in the course of research activities which also receive substantial support from other sources, as well as from the Federal grant. It would not be consistent with the cooperative nature of such activities to attribute a particular invention primarily to support received from any one source. In all these cases the Department has a responsibility to see that the public use of the fruits of the research will not be unduly restricted or denied.

(c) The following conditions have been adopted to govern the treatment of inventions made in these various types of situations. They are designed to afford suitable protection to the public interest while giving appropriate recognition to the legitimate interests of others who have contributed to the invention.

### § 8.1 Conditions to be included in research grants.

Subject to legislative directives or Executive orders providing otherwise, all grants in aid of research shall provide as a condition that any invention arising out of the activities assisted by the grant shall be promptly and fully reported, and shall provide either:

(a) That the ownership and manner of disposition of all rights in and to such invention shall be subject to determination by the Secretary; or

(b) That the ownership and disposition of all domestic rights shall be left for determination by the grantee institution in accordance with the grantee's established policies and procedures, with such modifications as may be agreed upon and specified in the grant, provided the Secretary finds that these are such as to assure that the invention will be made available without unreasonable restrictions or excessive royalties, and provided the Government shall receive a royalty-free license, with a right to issue sublicenses as provided in § 8.3, under any patent applied for or obtained upon the invention.

(c) Wherever practicable, any arrangement with the grantee pursuant to paragraph (b) of this section shall provide in accordance with Executive Order 9865 that there be reserved to the Government an option, for a period to be prescribed, to file foreign patent applications upon the invention.

**§ 8.2 Determination as to domestic rights.**

Rights in any invention not subject to disposition by the grantee pursuant to § 8.1(b) are for determination by the Secretary as follows:

(a) If he finds that there is adequate assurance that the invention will either be effectively dedicated to the public, or that any patent which may be obtained thereunder will be generally available for royalty-free and nonexclusive licensing, the effectuation of these results may be left to the grantee.

(b) If he finds that the invention will thereby be more adequately and quickly developed for widest use and that there are satisfactory safeguards against unreasonable royalties and repressive practices, the invention may be assigned to a competent organization for development and administration for the term of the patent or such lesser period as may be deemed necessary.

(c) If he finds that the interest of another contributing Government agency is paramount to the interest of the Department of Education or when otherwise legally required or in the public interest, the invention may be left for disposition by that agency in accordance with its own policy.

(d) In all other cases, he shall require that all domestic rights in the invention shall be assigned to the United States unless he determines that the invention is of such doubtful importance or the Government's equity in the invention is so minor that protective measures, except as provided in § 8.3, are not necessary in the public interest.

**§ 8.3 Licenses to the Government.**

Any arrangement or determination as to the disposition of rights in inventions pursuant to §§ 8.1, 8.2, 8.5 or 8.6 shall require that there be reserved under any patent application or patent thereon, domestic or foreign, a nonexclusive, irrevocable, royalty-free license to the Government with power to sublicense for all governmental purposes.

**§ 8.4 Option to acquire foreign rights.**

In any case where it is determined that all domestic rights should be assigned to the Government, there shall be reserved to the Government, pursuant to Executive Order 9865 (3 CFR, 1943–1948 Comp., p. 480) and Government-wide regulations issued thereunder, an option to require the assignment of all rights in the invention in all or in any specified foreign countries. In any case where the inventor is not required to assign the patent rights in any foreign country or countries to the Government, or the Government fails to exercise its option within such period of time as may be provided by regulations issued by the Chairman of the Government Patents Board any application for a patent which may be filed in such country or countries by the inventor or his assignee shall nevertheless be subject to a nonexclusive, irrevocable, royalty-free license to the Government for all governmental purposes, including the power to sublicense for all governmental purposes.

**§ 8.5 Fellowships.**

In the discretion of the Secretary the award of a fellowship to a person not a Government employee may provide for the reporting of any invention made during the term thereof, and for its disposition in accordance with the provisions of § 8.1(a) or for its disposition by the institution at which the research was performed in accordance with its established policies, if applicable to such an invention, which meet the requirements of paragraph (b) of such section.

**§ 8.6 Contracts for research.**

(a) Contracts for research, with other than nonprofit institutions, shall provide that any invention first conceived or actually reduced to practice in the course of the performance of the contract shall be promptly and fully reported to the Secretary for determination by him as to the manner of disposition of all rights in and to such invention, including the right to require assignment of all rights to the United States or dedication to the public. In the exercise of this power the organization head will be guided by the policy specified in § 8.2 with respect to grants.

(b) Contracts for research with nonprofit institutions shall contain provisions as in paragraph (a) of this section except that, if it is determined that the institution's policies and procedures are acceptable as meeting the requirements of § 8.1(b) with respect to grants, the contract may provide, with such special stipulations in the contract as may be deemed necessary in the public interest, for leaving the ownership and disposition of all domestic rights for determination by the contracting institution in accordance with such policies and procedures.

## PART 10—DEPARTMENTAL FELLOWSHIP REVIEW PANEL

Sec.

10.1 Purpose.
10.2 Definitions.
10.3 Departmental Fellowship Review Panel; Departmental Fellowship Review Board; in general.
10.4 Procedural safeguards.
10.5 Hearing before Board or a Hearing Officer.
10.6 Preliminary decision; initial decision; final decision.
10.7 Notice to the individual concerned and opportunity to submit comment on preliminary decision and initial decision.

Authority: 5 U.S.C. 301.

**§ 10.1 Purpose.**

This part establishes a Departmental Fellowship Review Panel, from which Departmental Fellowship Review Boards will be selected, for the purpose of providing hearings where an opportunity for such hearing is provided for in cases where there is substantial reason for a belief that a fellowship (or traineeship) award should be denied or discontinued on grounds involving, in accordance with applicable criteria, the moral character or loyalty of the applicant for, or holder of, the award.

**§ 10.2 Definitions.**

(a) "Departmental Fellowship Review Panel" (also referred to as "Panel") means a panel of 12 members selected by the Secretary, for such terms as may be designated by him, which shall include at least four representatives of the legal discipline and at least four representatives of the field of higher education. At least eight members of the Panel shall be selected from sources outside the Department.

(b) "Panel Chairman" means one of the Panel members designated by the Secretary to serve as Chairman of the Panel for such time as shall be indicated in the designation.

(c) "Departmental Fellowship Review Board" (also referred to as "Board") means not less than three members of the Panel designated by the Panel Chairman for the consideration of one or more cases. At least two Board members shall be persons other than employees of the Department, and the Board shall include at least one representative of the legal discipline and one from the field of higher education. In no event shall anyone who participated in any previous consideration of a case be eligible to serve on a board in connection with its consideration of that case. The Panel Chairman may designate himself as one of the members of a Board or as the Chairman thereof.

(d) "Board Chairman" means a member of a Departmental Fellowship Review Board who has been designated as Chairman of such Board by the Panel Chairman.

(e) "Preliminary decision" means the recommended decision, including findings of fact and conclusions reached in the light of the applicable criteria,

prepared by a Hearing Officer and submitted to the Board.

(f) "Initial decision" means the recommended decision of the Board, which shall include (1) findings of fact and conclusions reached in the light of the applicable criteria and, when applicable, (2) the reasons for any changes or modifications made by the Board in a preliminary decision.

(g) The words "Department" and "Departmental" refer to the U.S. Department of Education.

(h) "Secretary" means the Secretary of Education.

**§ 10.3 Departmental Fellowship Review Panel; Departmental Fellowship Review Board; in general.**

Upon receipt of a submission of a case, the Chairman of the Departmental Fellowship Review Panel shall refer the case to a Departmental Fellowship Review Board, constituted as provided in § 10.2(c), for the purpose of recommending to the Secretary, on the basis of a preponderance of the evidence, after affording to the individual concerned an opportunity for a fair hearing, whether the fellowship (or traineeship) award should be denied or discontinued on grounds involving, in accordance with applicable criteria, the moral character or loyalty of the applicant for, or holder of the award. The Board's recommendation shall be embodied in an initial decision in accordance with § 10.2(h).

**§ 10.4 Procedural safeguards.**

The Board shall take appropriate steps to afford the individual concerned an opportunity for a fair hearing, which shall include provisions designed to assure to such individual the following:

(a) Sufficient notice of the issues to be considered;

(b) An opportunity to be represented by counsel;

(c) Disclosure of as much of all matters of an evidentiary nature as may be permitted within the framework of applicable laws, regulations, and other requirements (e.g., those pertaining to FBI reports);

(d) An opportunity to appear in person (and to present witnesses in his behalf) or, at the option of the individual concerned, to submit his case in whole or in part in writing (e.g., through interrogatories, affidavits, exhibits, etc.);

(e) An opportunity to cross-examine persons either orally or through written interrogatories, to the extent provided by Executive Order 10865 of February 20, 1960 (3 CFR, 1959–1963 Comp., p. 398; relating to safeguarding of classified information within industry), except that functions vested by that Order in the head of a department shall be performed by the head of the appropriate operating agency;

(f) An option to the individual concerned to have the hearing open or closed to the public;

(g) A determination of the place of the hearing which takes into consideration the convenience of the individual concerned and any witnesses who might be testifying at the hearing.

**§ 10.5 Hearing before Board or a Hearing Officer.**

The hearing may be conducted, as determined by the Board Chairman, before the full Board as the hearing body, or before a Hearing Officer. The Hearing Officer may be (a) one of the members of the Board or (b) a nonmember who is qualified as a Hearing Officer under the Administrative Procedure Act.

**§ 10.6 Preliminary decision; initial decision; final decision.**

When the hearing is conducted by the Board itself, it shall prepare an initial decision for submission to the Secretary. When the hearing is conducted before a Hearing Officer, the Hearing Officer shall prepare a preliminary decision for submission to the Board. The preliminary decision shall be reviewed by the Board and shall become the initial decision of the Board unless, and to the extent that, it is changed or modified by the Board. The initial decision of the Board shall be transmitted to the Secretary, and shall become the final decision of the Secretary, unless, and to the extent that, it is changed or modified by the Secretary.

**§ 10.7 Notice to the individual concerned and opportunity to submit comment on preliminary decision and initial decision.**

Copies of the preliminary decision, if any, and of the initial decision shall be mailed promptly by the Hearing Officer or the Board, as the case may be, to the individual, or his counsel, with a notice affording him an opportunity to submit written comments thereon, within a specified reasonable time, to the Board in the case of a preliminary decision, and to the Secretary in the case of an initial decision.

## PART 11—COMMITTEE MANAGEMENT

Sec.

11.1 Scope.
11.2 Definitions.
11.3 General policies.
11.4 Guidelines for the creation and renewal of advisory committees.
11.5 Operation of advisory committees.
11.6 Administrative remedies.

Authority: 86 Stat. 770, 5 U.S.C. App. I et seq.

**§ 11.1 Scope.**

(a) This part contains the Department's regulations implementing the Federal Advisory Committee Act.

(b) The regulations provided under this part apply to all advisory committees providing advice to the Department or any of its officials except to the extent that statutory provisions governing an advisory committee may specifically provide otherwise.

**§ 11.2 Definitions.**

(a) "Act" means the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. I et seq.).

(b) "Advisory committee," subject to exclusions described in paragraph (b) (3) of this section means any committee, board, commission, council, conference, panel, task force, or other similar group or any subcommittee or other subgroup thereof which is established by statute or reorganization plan; or established or utilized by the Department in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government.

(1) Although no single factor is determinative in deciding whether a group is an advisory committee, the following factors will be considered:

(i) Fixed membership including at least one person who is not a full-time Federal employee;

(ii) Establishment by a Federal official or law; or if not Federally established, the initiative for its use as an advisory body for the Federal Government comes from a Federal official rather than from a private group;

(iii) A purpose of providing advice regarding a particular subject or particular subjects;

(iv) An organizational structure (e.g.), officers and a staff;

(v) Regular or periodic meetings.

(2) The functions of an advisory committee are to be solely advisory. Where a group provides some advice to the Department, but the group's advisory function is incidental and inseparable from other (e.g., operational) functions, the provisions of this part do not apply. However, if the advisory function is separable, the group is subject to this part to the extent that the group operates as an advisory committee.

(3) Groups excluded from the effect of the provisions of this part include:

(i) Any committee which is composed wholly of full-time officers or employees of the Federal Government;

(ii) Any committee which is exclusively operational in nature (e.g.,

has functions which include making or implementing decisions, as opposed to the offerings of advice or recommendations);

(iii) Any local civic group whose primary function is that of rendering a public service with respect to a Federal program;

(iv) Any state or local committee or similar group established to advise State or local officials or agencies;

(v) The term "advisory committee" is not intended to include persons or organizations which have contractual relationships with the Department except in those cases where the criteria described in paragraph (b)(1) of this section are present.

(c) "Department" means the Department of Education.

(d) "Secretary" means the Secretary of Education.

(e) "OMB Secretariat" is the office within the Office of Management and Budget to administer the provisions of OMB Circular A-63.

(f) "Presidential advisory committee" means an advisory committee which advises the President.

(g) "Statutory advisory committee" is one established by the Congress or required to be established by the Congress.

(h) "Non-statutory advisory committee" is one established by the President or other Federal officer, including a committee which was authorized by, but not established by or required to be established by statute.

**§ 11.3 General policies.**

(a) In interpreting this part, Department officials shall be guided by the Act and the intent of Congress in enacting the Act. These considerations include:

(1) Limiting the number of advisory committees to those that are essential and terminating any committee not fulfilling its purpose;

(2) Insuring effective use of advisory committees and their recommendations, while assuring that decisionmaking authority is retained by the responsible Department officers;

(3) Providing clear goals, standards and uniform procedures with respect to creation, operation, and duration of committees;

(4) Insuring that adequate information is provided to the President, the Congress and the public regarding advisory committees;

(5) Insuring adequate opportunities for access by the public to advisory committee meetings; and

(6) Providing uniform requirements for advisory committee reports and their availability to the public.

(b) Department officials shall be guided by the ED Standards of Conduct (34 CFR 73), the Federal Personnel Manual, and the Federal Conflict of Interest statutes (18 U.S.C. 201 et seq.), in preventing conflicts of interest or appearance of conflicts of interest on the part of Department employees concerned with advisory committees, advisory committee members and staff, and consultants and experts concerned with advisory committees.

**§ 11.4 Guidelines for the creation and renewal of advisory committees.**

(a) Advisory committees shall be established by the Department only when they are determined to be essential. Their number shall be kept to the minimum necessary. They shall be terminated when they are no longer carrying out the purposes for which they were established or such purposes are no longer regarded as necessary to the operation of the department.

(b) No advisory committee shall be established or renewed unless such establishment or renewal is specifically authorized by statute, or established by statute or the President, or determined as a matter of formal record by the Secretary (after consultation with the OMB Secretariat) to be in the public interest in connection with the performance of duties imposed on the Department by law. In seeking such determination by the Secretary, the responsible official requesting establishment or continuance of an advisory committee shall make a request in writing to the Secretary. The request shall describe the nature or purpose of the proposed committee; the reasons why it is needed, including an explanation of why the functions of the proposed committee cannot be performed by Department employees, by an existing committee, or by some other means; and a description of the plan to attain balanced membership on the proposed committee in terms of the points of view to be represented, functions to be performed, and expected participation by women and minorities.

(c) No advisory committee shall meet or take any action until:

(1) In the case of establishment or renewal, in appropriate instances, the OMB Secretariat has been consulted.

(2) A formal charter has been approved by the Secretary;

(3) Public announcement of its establishment or renewal has been made in the Federal Register, at least fifteen days prior to the filing of the committee's charter.

(d) Copies of the charter shall be provided by the Department to the appropriate standing committees of the Senate and House of Representatives and to the Library of Congress. In the case of Presidential Committees a copy of the charter shall also be provided to the Office of Management and Budget. The charter shall be in a form prescribed by the Department Committee Management Officer and shall contain the following information:

(1) The committee's official designation;

(2) The committee's objectives and the scope of its activity;

(3) The period of time necessary for the committee to carry out its purpose;

(4) The official to whom the committee reports;

(5) The person responsible for providing the necessary support for the committee;

(6) A description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;

(7) The estimated annual operating costs in dollars and man-years for such committee;

(8) The estimated number and frequency of committee meetings;

(9) The committee's termination date, if less than two years from the date of the committee's establishment; and

(10) The date the charter is approved by the Secretary.

(e) With regard to subgroups, if all of its members are members of the parent committee, requisite information may be set forth in the charter of the parent committee. In the event a subgroup includes members who are not all drawn from the parent committee, it shall be separately chartered. In addition, if not incorporated in the charter of the parent committee, subgroups shall be separately chartered.

(f) No advisory committee shall be created if its functions could otherwise be performed effectively within the Department or by an existing committee.

(g) The membership of an advisory committee shall be fairly balanced in terms of the points of view represented and the committee's functions. Appropriate safeguards shall be taken to assure that an advisory committee's advice and recommendations will not be inappropriately influenced by any special interest, but shall instead be the result of the advisory committee's independent judgment.

(h) In the selection of committee members, there shall be no discrimination on the basis of race, color, national origin, religion, age, sex, or handicap.

(i) Each advisory committee shall prepare an annual report describing its membership, functions,

recommendations and other actions. A copy of the report shall be submitted to the Department Committee Management Officer who shall make copies of them available to the public, upon request. In addition, a copy of the report shall be filed with the Department's Library and made available to the public. Notice of the availability of the Annual Report shall be published in the Federal Register no later than sixty days after its completion. Such notice shall indicate its availability to the public.

(j) Unless specifically provided otherwise by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. For purposes of this provision, "Presidential directive" refers to an executive order, executive memorandum or an OMB directive.

(k) Decisions regarding actions or policies relating to matters dealt with by a Department advisory committee shall be made solely by Department officials.

(l) Except for committees created by Congress with a duration in excess of two years, no Department advisory committee shall continue in existence for a period of more than two years from its establishment unless renewed prior to the date of its scheduled termination by action of the Congress, the President, or the Secretary as appropriate. In the case of a committee continued by the Congress or the President beyond its scheduled termination date, a charter shall be approved by the Secretary and the requirements set forth in paragraph (c) of this section complied with before any meeting is held. To renew a committee the Secretary shall determine that such renewal is necessary and inform the OMB Secretariat of his determination and the reasons for it. Renewal determinations shall be made not more than sixty days before the scheduled date of termination. If the OMB Secretariat concurs, the Department Committee Management Officer shall notify the responsible Department officials who shall publish notice of the renewal in the Federal Register. A new charter shall also be approved by the Secretary.

(m) Any advisory committee which is renewed may continue for no more than a two-year period unless prior to the expiration of that period it is renewed for another two-year period in accord with the above provisions.

**§ 11.5 Operation of advisory committees.**

(a) *Meetings.* The provisions of this section shall apply to meetings of all Department advisory committees and all subgroups.

(1) *Calling of meetings and agenda.* (i) No advisory committee shall hold any meetings except at the call of or with the advance approval of the designated Department official.

(ii) No meeting shall be held in the absence of a quorum. Unless otherwise established in the charter of the committee, a quorum shall consist of a majority of the committee's authorized membership, including ex officio members. In addition, such members shall have full voting rights.

(iii) Each meeting of an advisory committee shall be conducted in accordance with an agenda approved by the designated Department official. Ordinarily, copies of the agenda shall be distributed to the members of the committee prior to the date of the meeting. The agenda shall list the matters to be considered at the meeting and shall indicate whether any part of the meeting is concerned with matters which are within the exemptions of the Freedom of Information Act, 5 U.S.C. 552(b).

(2) *Notice of meeting.* (i) Except when the Director of the Office of Management and Budget determines otherwise for reasons of national security, or except as otherwise provided herein, notice of each advisory committee meeting shall be published in the Federal Register at least fifteen days prior to the meeting. The fact that a meeting is closed to the public pursuant to paragraph 10(d) of Pub. L. 92-463 shall not affect the foregoing requirement.

(A) The notice shall state the name of the advisory committee, the time and place of the meeting, and the purposes of the meeting and shall include a summary of the agenda.

(B) The notice shall state the extent to which the public will be permitted to attend or participate in the meeting. If the meeting will be closed to the public, the notice shall also state the reasons for closing, including appropriate citation to the Freedom of Information Act.

(ii) In addition to notice in the Federal Register, the Executive Secretary of each advisory committee shall maintain a list of persons and organizations who have requested to be notified of all meetings and notify them by mail in advance of any meeting. Other forms of notice, such as press releases and notices in professional journals shall be used to the extent practicable.

(iii) Meetings may be held only in emergency situations unless notice of the meeting has been published in the Federal Register at least fifteen days prior to the meeting. Such meetings shall be kept to a minimum, and whenever feasible, rescheduled for a later date. When a meeting must be called without fifteen days notice being given, the following steps shall be taken, to the extent possible:

(A) Advance notice shall be published in the Federal Register.

(B) Other forms of notice shall be utilized whenever practicable.

(C) In the case of meeting notices published in accordance with paragraphs (a)(2)(iii) and (a) and (b) of this section, the notice shall contain an explanation for the failure to give fifteen days notice.

(3) *Public participation at meetings.* (i) Subject to the exceptions described in paragraph (a)(6) of this section each advisory committee meeting shall be open to the public, and interested persons shall be permitted to attend, appear before, or file statements with any advisory committee.

(ii) The Executive Secretary of each committee shall, with respect to any advisory committee meeting, all or part of which is open to the public, assure compliance with the following rules:

(A) Meetings shall be held at reasonable times and places that are reasonably accessible to members of the public. Whenever feasible, Government facilities shall be used and meetings held in places involving the least expense to the Department.

(B) The size of the meeting room shall be reasonable, considering such factors as the size of the advisory committee, the number of members of the public expected to seek to attend, and the resources and facilities available to the Department.

(C) Any member of the public who wishes to do so shall be permitted to file a written statement with the committee, before or after a meeting.

(D) To the extent that the time available for a meeting permits, interested persons may be permitted to present oral statements. Any person seeking to present an oral statement to a committee may be required to obtain advance approval for such participation from the committee chairman or the committee's Executive Secretary.

(E) Participation by members of the public at committee meetings or questioning of committee members or other participants shall only be permitted with the authorization of the committee chairman.

(4) *Minutes and transcripts of meetings.* (i) Detailed minutes shall be kept of each meeting of each advisory committee, including meetings of formal and informal subgroups. The Executive Secretary of each advisory committee shall keep the minutes or designate some person to keep the minutes. Minutes need not be kept if a verbatim transcript is made.

(ii) The minutes shall include at least the following: The time and place of the meeting; a list of advisory committee members and staff and full-time Federal employees present at the meeting; a detailed summary of matters discussed, including different positions advanced by members and conclusions reached by the committee; copies of all reports received, issued, or approved by the advisory committee; an explanation of the extent to which the meeting was open to the public; and explanation of the extent of public participation, including a list of members of the public who presented oral or written statements; and an estimate of the number of members of the public who attended the meeting.

(iii) Within a reasonable time after the meeting the minutes shall be completed and submitted to the chairman of the advisory committee.

(iv) Within a reasonable time after receipt of the minutes the chairman of the advisory committee shall certify to the accuracy of the minutes and submit them to the Executive Secretary for submission to the official advised by the committee.

(5) *Designated Department employee.* (i) Each advisory committee meeting shall be attended by a Department employee designated by the Department official responsible for the Committee. Ordinarily, the employee so designated shall serve the advisory committee on a continuing basis.

(ii) No advisory committee shall conduct a meeting in the absence of the designated Department employee. If simultaneous subgroup meetings are to be held, each subgroup shall have a designated Department employee in attendance.

(iii) The designated Department employee is authorized to adjourn any advisory committee meeting, whenever he determines adjournment to be in the public interest. Inter alia, the designated Department employee shall adjourn the meeting in the event of unwarranted departure from a meeting's agenda.

(6) *Closing advisory committee meetings.* (i) Subsection 10(d) of the Act provides that the provisions concerning open meetings and public participation shall not apply to any advisory committee which the President, or the head of the department to which the advisory committee reports, determines is concerned with matters listed in 5 U.S.C. 552b(c). Department officials shall be guided by the policies set forth in that regulation in making determinations to close meetings. In applying the provisions of 5 U.S.C. 552b(c) to advisory committee meetings, liberal interpretations shall be assumed with respect to the openness of such meetings. Any determination to close a meeting (or portion) shall restrict such closing to the shortest reasonable time.

(ii) When a advisory committee seeks to have a meeting (or portion) closed, the Executive Secretary shall make a request in writing for a determination by the Secretary. Such a request shall set forth the reasons why the meeting (or portion) should be closed. Whenever practical, the request shall be submitted at least sixty days before the scheduled date of the meeting.

(iii) If the Secretary finds the request to be warranted and in accord with the policy of the Act and the Freedom of Information Act, the request shall be granted. The determination made by the Secretary shall be in writing and contain specific reasons for closing the meeting (or portion).

(iv) If a meeting is to be held for the consideration of several separable matters, not all of which are within the exemptions of 5 U.S.C. 552b(c), only the portion of the meeting dealing with exempt matters may be closed.

(v) When part of a meeting is to be closed, the agenda shall be arranged to facilitate attendance by the public at the open portion of the meeting.

(vi) When a meeting (or portion) is closed, only members of the committee, its staff, and Federal employees shall be permitted to attend.

(vii) When a meeting (or portion) is closed, members of the advisory committee shall not disclose the matters discussed except to other members of the advisory committee, the staff of the advisory committee or Department employees.

(viii) The Department Committee Management Officer may review, after the meeting, the appropriateness of any determination to close a meeting (or portion) and require that corrective action be taken with respect to the particular advisory committee or general procedures concerning the closing of meetings.

(ix) When a meeting (or portion) is closed, and detailed minutes are not to be made available in their entirety to the public, the advisory committee shall prepare and make available to the public within fourteen days of the close of the meeting a summary of its activities and related matters which are informative to the public consistent with the policy of 5 U.S.C. 552b(c). Notice of the availability of such a summary shall be incorporated in the notice of the meeting published in the Federal Register.

(b) *Access to records.* (1) All records, reports, and other documents of each advisory committee shall be available for public inspection and copying pursuant to the Department's public information regulation. Documents referred to herein include the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda or other documents which were made available to or prepared for or by each advisory committee.

(2) Advisory committee records determined to be available for public inspection are to be made available for inspection and copying at a single location in the offices of the advisory committee or the Department organizational component to which the advisory committee reports. The advisory committee or appropriate Department organizational component shall make available to any person copies of transcripts of committee proceedings or meetings at cost determined in accordance with the appropriate fee schedule.

**§ 11.6 Administrative remedies.**

(a) Any person whose request for access to an advisory committee document is denied may seek administrative review in accord with the Department's Freedom of Information Act regulation.

(b) Any person whose request for access to an advisory committee meeting is denied after publication of the notice of the meeting in the Federal Register may appeal to the appropriate official designated at 34 CFR 5.82.

## PART 12—DISPOSAL AND UTILIZATION OF SURPLUS REAL PROPERTY FOR EDUCATIONAL PURPOSES

Sec.

12.1 Definitions.
12.2 Scope.
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12.6 Notice of available property.
12.7 Applications for surplus real property.
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12.9 General disposal terms and conditions.
12.10 Compliance with the National Environmental Policy Act of 1969 and other related acts (environmental impact).
12.11 Special terms and conditions.
12.12 Utilization.
12.13 Form of conveyance.
12.14 Compliance inspections and reports.
12.15 Reports to Congress.
Exhibit A Public Benefit Allowance for Transfer of Real Property for Educational Purposes.

AUTHORITY: Sec. 203, 63 Stat. 385, as amended; 40 U.S.C. 484.

**§ 12.1 Definitions.**

(a) "Act" means the Federal Property and Administrative Services Act of 1949, 63 Stat. 377 (40 U.S.C. 471 et seq.). Terms defined in the Act and not defined in

this section have the meanings given to them in the Act.

(b) "Accredited" means having the approval of a recognized accreditation board or association on a regional, State, or national level, such as a State Board of Education, State University, or the Middle States Association of College and Secondary Schools. "Approval" as used above describes the formal process carried out by State Agencies and institutions in determining that educational organizations or programs meet minimum acceptance standards. A college, university, or secondary school may be said to be accredited if the credits issued by it are and have been accepted for transfer purposes by no fewer than three accredited colleges, universities, or secondary schools not connected or associated with it.

(c) "Administrator" means the Administrator of General Services.

(d) "Assigned property" means real and related personal property which, in the discretion of the Administrator or his designee, has been made available to the Department for transfer for educational purposes.

(e) "Department" means the U.S. Department of Education.

(f) "Disposal agency" means the executive agency of the Government which has authority to assign property to the Department for transfer for educational purposes.

(g) "Excess" means any property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by the head thereof.

(h) "Fair market value" means the highest price which the property will bring by sale in the open market by a willing seller to a willing buyer.

(i) "Holding agency" means the Federal agency which has control over and accountability for the property involved.

(j) "Nonprofit institution" means any institution, organization, or association, whether incorporated or unincorporated, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held to be tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954.

(k) "Off-site property" means surplus buildings, utilities and all other removable improvements, including related personal property, to be transferred by the Department for removal and use away from the site for educational purposes.

(l) "On-site" means surplus real property, including related personal property, to be transferred by the Department for use in place for educational purposes.

(m) "Public benefit allowance" means a discount on the sale or lease price of real property transferred for educational purposes, representing any benefit determined by the Secretary which has accrued or may accrue to the United States thereby.

(n) "Related personal property" means any personal property: (1) Which is located on and is (i) an integral part of, or (ii) useful in the operation of real property; or (2) which is determined by the Administrator to be otherwise related to the real property.

(o) "Secretary" means the Secretary of Education.

(p) "State" means a State of the United States, and includes the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

(q) "Surplus" when used with respect to real property means any excess real property not required for the needs and the discharge of the responsibilities of all Federal agencies as determined by the Administrator.

### § 12.2 Scope.

This part is applicable to surplus real property located within any State which is appropriate for assignment to, or which has been assigned to, the Department for transfer for educational purposes, as provided for in section 203(k) of the Act.

### § 12.3 General Policies.

(a) It is the policy of the Department to foster and assure maximum utilization of surplus real property for educational purposes, including research.

(b) Transfers may be made only to States, their political subdivisions and instrumentalities, tax-supported educational institutions, and nonprofit educational institutions which have been held tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954.

(c) Real property will be requested for assignment only when the Department has determined that the property is suitable and needed for educational purposes. The amount of real and related personal property to be transferred shall not exceed normal operating requirements of the applicant. Such property will not be requested for assignment unless it is needed at the time of application for educational purposes or will be so needed within the immediate or foreseeable future. Where construction or major renovation is not required or proposed, the property must be placed into use within twelve (12) months from the date of transfer. When construction or major renovation is contemplated at the time of transfer, the property must be placed in use within 36 months from the date of transfer. If the applicable time limitation is not met, the transferee shall either commence payments in cash to the Department for each month thereafter during which the proposed use has not been implemented or take such other action as set forth in § 12.12 as is deemed appropriate by the Department. Such monthly payments shall be computed on the basis of the current fair market value of the property at the time of the first payment by subtracting therefrom any portion of the purchase price paid in cash at the time of transfer, and by dividing the balance by the total number of months in the period of restriction. If the facility has not been placed into use within eight (8) years of the date of the deed, title to the property will be revested in the United States, or, at the discretion of the Department, the restrictions and conditions may be abrogated in accordance with § 12.9.

(d) Transfers will be made only after the applicant has certified that the proposed program is not in conflict with State or local zoning restrictions, building codes, or similar limitations.

(e) Organizations which may be eligible include those which provide elementary, secondary, post secondary, vocational, or specialized education, public library services, or similar programs which are primarily educational in character such as child development programs and adult education programs (including such programs for older Americans). Services which have as their principal purpose the providing of custodial or domiciliary care are not eligible. The property applied for must be for a purpose which the eligible organization is authorized to carry out.

(f) An applicant's plan of operation will not be approved unless it provides that the applicant will not discriminate because of race, color, sex, handicap, or national origin in the use of the property.

### § 12.4 Limitations.

(a) Surplus property transferred pursuant to this part will be disposed of on "as is, where is," basis without warranty of any kind.

(b) Unless excepted by the Administrator in his assignment, mineral rights will be conveyed together with the surface rights.

### § 12.5 Awards.

Where there is more than one applicant for the same property, it will be awarded to the applicant having a

program of utilization which provides, in the opinion of the Department, the greatest public benefit. Where the property will serve more than one program, it will be apportioned to fit the needs of as many programs as is practicable.

**§ 12.6 Notice of available property.**

Reasonable publicity will be given to the availability of surplus real property which is suitable for assignment to the Department for transfer for educational uses. The Department will establish procedures reasonably calculated to afford all eligible users having a legitimate interest in acquiring the property for such uses an opportunity to make an application therefor. However, publicity need not be given to the availability of surplus real property which is occupied and being used for eligible educational purposes at the time the property is declared surplus, the occupant expresses interest in the property, and the Department determines that it has a continuing need therefor.

**§ 12.7 Applications for surplus real property.**

Applications for surplus real property for educational purposes shall be made to the Department in accordance with the notice of availability.

**§ 12.8 Assignment of surplus real property.**

(a) Notice of interest in a specific property for educational purposes will be furnished the Administrator by the Department at the earliest possible date.

(b) Requests to the Administrator for assignment of surplus real property to the Department for transfer for educational purposes will be based on the following conditions:

(1) The Department has an acceptable application for the property.

(2) The applicant is willing, authorized, and in a position to assume immediate care, custody, and maintenance of the property.

(3) The applicant is able, willing and authorized to pay the administrative expenses incident to the transfer.

(4) The applicant has the necessary funds, or the ability to obtain such funds, to carry out the approved program of use of the property.

**§ 12.9 General disposal terms and conditions.**

(a) Surplus real property transfers under this part will be limited to educational purposes. Transferees shall be entitled to a public benefit allowance in terms of a percentage which will be applied against the value of the property to be conveyed. Such an allowance will be computed on the basis of benefits to the United States from the use of such property for educational purposes. The computation of such public benefit allowances will be in accordance with Exhibits A and B attached hereto and made a part hereof.

(b) A transfer of surplus real property for educational purposes is subject to the disapproval of the Administrator within 30 days after notice is given to him of the proposed transfer.

(c) Transfers will be on the following terms and conditions:

(1) The transferee will be obligated to utilize the property continuously in accordance with an approved plan of operation.

(2) The transferee will not be permitted to sell, lease or sublease, rent, mortgage, encumber, or otherwise dispose of the property, or any part thereof, without the prior written authorization of the Department.

(3) The transferee will file with the Department such reports covering the utilization of the property as may be required.

(4) In the event the property is sold, leased or subleased, encumbered, disposed of, or is used for purposes other than those set forth in the approved plan without the consent of the Department, all revenues or the reasonable value of other benefits received by the transferee directly or indirectly from such use, as determined by the Department, will be considered to have been received and held in trust by the transferee for the account of the United States and will be subject to the direction and control of the Department. The provisions of this paragraph shall not impair or affect the rights reserved to the United States in paragraph (c) (6) of this section, or the right of the Department to impose conditions to its consent.

(5) Lessees will be required to carry all perils and liability insurance to protect the Government and the Government's residual interest in the property. Transferees will be required to carry such flood insurance as may be required by the Department pursuant to Pub. L. 93-234. Where the transferee elects to carry insurance against damages to or loss of on-site property due to fire or other hazards, and where loss or damage to transferred Federal surplus real property occurs, all proceeds from insurance shall be promptly used by the transferee for the purpose of repairing and restoring the property to its former condition, or replacing it with equivalent or more suitable facilities. If not so used, there shall be paid to the United States that part of the insurance proceeds that is attributable to the Government's residual interest in the property lost, damaged, or destroyed, or, in the case of leases, attributable to the fair market value of the leased facilities.

(6) With respect to on-site property, in the event of noncompliance with any of the conditions of the transfer as determined by the department, title to the property transferred and the right to immediate possession shall, at the option of the Department, revert to the Government. In the event title is reverted to the United States for noncompliance or voluntarily reconveyed, the transferee shall, at the option of the Department, be required to reimburse the Government for the decrease in value of the property not due to reasonable wear and tear or acts of God or attributable to alterations completed by the transferee to adapt the property to the educational use for which the property was transferred. With respect to leased property, in the event of noncompliance with any of the conditions of the lease, as determined by the Department, the right of occupancy and possession shall, at the option of the Department, be terminated. In the event a leasehold is terminated by the United States for noncompliance or is voluntarily surrendered, the lessee shall be required at the option of the Department to reimburse the Government for the decrease in value of the property not due to reasonable wear and tear or acts of God or attributable to alterations completed by the lessee to adapt the property to the educational use for which the property was leased. With respect to any reverter of title or termination of leasehold resulting from noncompliance, the Government shall, in addition thereto, be reimbursed for such costs as may be incurred in recovering title to or possession of the property. Any payments of cash made by the transferee against the purchase price of property transferred shall, upon a forfeiture of title to the property for breach of condition, be forfeited.

(7) With respect to off-site property, in the event of noncompliance with any of the terms and conditions of the transfer, the unearned public benefit allowance shall, at the option of the Department, become immediately due and payable or, if the property or any portion thereof is sold, leased, or otherwise disposed of without authorization from the Department, such sale, lease or sublease, or other disposal shall be for the benefit and account of the United States and the United States shall be entitled to the proceeds. In the event the transferee fails to remove the property or any portion thereof within the time

specified, then in addition to the rights reserved above, at the option of the Department, all right, title, and interest in and to such unremoved property shall be re-transferred to other eligible applicants or shall be forfeited to the United States.

(8) With respect only to on-site property which has been declared excess by the Department of Defense, such declaration having included a statement indicating the property has a known potential for use during a national emergency, the Department shall reserve the right during any period of emergency declared by the President of the United States or by the Congress of the United States to the full and unrestricted use by the Government of the surplus real property, or of any portion thereof, disposed of in accordance with the provisions of this part. Such use may be either exclusive or nonexclusive. Prior to the expiration or termination of the period of restricted use by the transferee, the Government will not be obligated to pay rent or any other fees or charges during the period of emergency, except that the Government will:

(i) Bear the entire cost of maintenance of such portion of the property used by it exclusively or over which it may have exclusive possession or control;

(ii) Pay the fair share, commensurate with the use of the cost of maintenance of such surplus real property as it may use nonexclusively or over which it may have nonexclusive possession or control;

(iii) Pay a fair rental for the use of improvements or additions to the surplus real property made by the purchaser or lessee without Government aid; and

(iv) Be responsible for any damage to the surplus real property caused by its use, reasonable wear and tear, the common enemy and acts of God excepted. Subsequent to the expiration or termination of the period of restricted use, the obligations of the Government will be as set forth in the preceding sentence and, in addition, the Government shall be obligated to pay a fair rental for all or any portion of the conveyed premises which it uses.

(9) The restrictions set forth in paragraphs (c) (1) through (7) of this section will extend for thirty (30) years for land with or without improvements; and for facilities being acquired separately from land whether they are for use on-site or off-site, the period of limitations on the use of the structures will be equal to their estimated economic life. The restrictions set forth in paragraphs (c) (1) through (7) of this section will extend for the entire initial lease period and for any renewal periods for property leased from the Department.

(d) Transferee, by obtaining the consent of the Department, may abrogate the restrictions set forth in paragraph (c) of this section for all or any portion of the property upon payment in cash to the Department of an amount equal to the then current fair market value of the property to be released, multiplied by the public benefit allowance granted at the time of conveyance, divided by the total number of months of the period of restriction set forth in the conveyance document and multiplied by the number of months that remain in the period of restriction as determined by the Department. For the purposes of abrogation payment computation, the current fair market value shall not include the value of any improvements placed on the property by the transferee.

(e) Related personal property will be transferred or leased as a part of the realty and in accordance with real property procedures. It will be subject to the same public benefit allowance granted for the real property. Where related personal property is involved in an on-site transfer, the related personal property may be transferred by a bill of sale imposing restrictions for a period not to exceed five years from the date of transfer, other terms and conditions to be the same as, and made a part of, the real property transaction.

### § 12.10 Compliance with the National Environmental Policy Act of 1969 and other related acts (environmental impact).

(a) The Department will, prior to making a final decision to convey or lease, or to amend, reform, or grant an approval or release with respect to a previous conveyance or lease of, surplus real property for educational purposes, complete an environmental assessment of the proposed transaction in keeping with applicable provisions of the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the National Archaeological Data Preservation Act, and other related acts. No permit to use surplus real property shall allow the permittee to make, or cause to be made, any irreversible change in the condition of said property, and no use permit shall be employed, for the purpose of delaying or avoiding compliance with the requirements of these Acts.

(b) Applicants shall be required to provide such information as the Department deems necessary to make an assessment of the impact of the proposed Federal action on the human environment. Materials contained in the applicant's official request, responses to a standard questionnaire prescribed by the Director of the Office of Federal Property Assistance, as well as other relevant information, will be used by the Department in making said assessment.

(c) If the assessment reveals (1) That the proposed Federal action involves properties of historical significance which are listed, or eligible for listing, in the National Register of Historic Places, or (2) that a more than insignificant impact on the human environment is reasonably foreseeable as a result of the proposed action, or (3) that the proposed Federal action could result in irreparable loss or destruction of archeologically significant items or data, the Department will, except as provided for in paragraph (d) of this section, prepare and distribute, or cause to be prepared or distributed, such notices and statements and obtain such approvals as are required by the above cited Acts.

(d) If a proposed action involves other Federal agencies in a sequence of actions, or a group of actions, directly related to each other because of their functional interdependence, the Department may enter into and support a lead agency agreement to designate a single lead agency which will assume primary responsibility for coordinating the assessment of environmental effects of proposed Federal actions, preparing and distributing such notices and statements, or obtaining such approvals, as are required by the above cited Acts. The procedures of the designated lead agency will be utilized in conducting the environmental assessment. In the event of disagreement between the Department and another Federal agency, the Department will reserve the right to abrogate its lead agency agreement with the other Federal agency.

### § 12.11 Special terms and conditions.

(a) Applicants will be required to pay all external administrative costs which will include, but not be limited to taxes, surveys, appraisals, inventory costs, legal fees, title search, certificate or abstract expenses, decontamination costs, moving costs, closing fees in connection with the transaction and service charges, if any, made by State Agencies for Federal Property Assistance under the terms of a cooperative agreement with the Department.

(b) In the case of off-site property, applicants will be required to post performance bonds, make performance guarantee deposits, or give such other assurances as may be required by the Department or the holding agency to

insure adequate site clearance and to pay service charges, if any, made by State Agencies for Federal Property Assistance under the terms of a cooperative agreement with the Department.

(c) Whenever negotiations are undertaken for disposal to private nonprofit educational organizations of any surplus real property which cost the Government $1 million or more, the Department will give notice to the Attorney General of the United States of the proposed disposal and the terms and conditions thereof. The applicant shall furnish to the Department such information and documents as the Attorney General may determine to be appropriate or necessary to enable him to give the advice as provided for by section 207 of the Act.

(d) Where an applicant proposes to acquire or lease and use in place improvements located on land which the Government does not own, he shall be required, before the transfer is consummated, to obtain a right to use the land commensurate with the duration of the restrictions applicable to the improvements, or the term of the lease. The applicant will be required to assume, or obtain release of, the Government's obligations respecting the land including but not limited to obligations relating to restoration, waste, and rent. At the option of the Department, the applicant may be required to post a bond to indemnify the Government against such obligations.

(e) The Department may require the inclusion in the transfer or lease document of any other provision deemed desirable or necessary.

(f) Where an eligible applicant for an on-site transfer proposes to construct new, or rehabilitate old facilities, the financing of which must be accomplished through issuance of revenue bonds or other financing methods having terms inconsistent with the terms and conditions of transfer prescribed in § 12.9 (c), (d), and (e) the Department may, in its discretion, impose such alternate terms and conditions of transfer in lieu thereof as may be appropriate to assure utilization of the property for educational purposes.

### § 12.12 Utilization.

(a) Where property or any portion thereof is not being used for the purposes for which transferred, the transferee will be required at the direction of the Department:

(1) To place the property into immediate use for an approved purpose;

(2) To retransfer such property to such other educational user as the Department may direct;

(3) To sell such property for the benefit and account of the United States;

(4) To return title to such property to the United States or to relinquish any leasehold interest therein;

(5) To abrogate the conditions and restrictions of the transfer, as set forth in § 12.9(d), except that, where property has never been placed in use for the purposes for which transferred, abrogation will not be permitted except under extenuating circumstances; or

(6) To make payments as provided for in § 12.3(c).

(b) Where the transferee or lessee desires to place the property in temporary use for a purpose other than that for which the property was transferred or leased, approval from the Department must be obtained, and will be conditioned upon such terms as the Department may impose.

### § 12.13 Form of conveyance.

(a) Transfers or leases of surplus real property will be on forms approved by the Office of General Counsel of the Department and will include such of the disposal or lease terms and conditions set forth in this part and such other terms and conditions as may appropriate or necessary.

(b) Transfers of on-site property will normally be by quitclaim deed without warranty of title.

### § 12.14 Compliance inspections and reports.

The Department will make or have made such compliance inspections as are necessary and will require of the transferee or lessee such compliance reports and actions as are deemed necessary.

### § 12.15 Reports to Congress.

The Secretary will make such reports of real property disposal activities as are required by section 203 of the Act and such other reports as may be required by law.

EXHIBIT A — Public Benefit Allowance for Transfer of Real Property for Educational Purposes[1]

| Classification | PERCENT ALLOWED | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Basic Public Benefit Allowance | ORGANIZATION ALLOWANCES | | | | | | | | UTILIZATION ALLOWANCES | | | | Maximum Public Benefit Allowance |
| | | Tax Support | Accreditation | Federal Impact | Public Service Training | Hardship | Inadequacy of Existing School Plant Facilities | | | Introduction Of New Instructional Programs | Student Health and Welfare | Research | Service to Handicapped | |
| | | | | | | | 10-25% | 26-50% | 51-100% | | | | | |
| Elementary and High Schools | 50 | 20 | 20 | 10 | 10 | 10 | 10 | 20 | 30 | 10 | 10 | 10 | 10 | 100 |
| Colleges and Universities | 50 | 20 | 20 | | 10 | 10 | 10 | 20 | 30 | 10 | 10 | 10 | 10 | 100 |
| Specialized Schools | 50 | 20 | 20 | | 10 | 10 | 10 | 20 | 30 | 10 | 10 | 10 | 10 | 100 |
| Research & Related Activities | 100[2] | | | | | | | | | | | | | 100[2] |
| Public Libraries & Educational Museums | 100[2] | | | | | | | | | | | | | 100[2] |
| School Outdoor Education | 50 | 20 | 20 | | | | | | | 10 | 10[3] | | | 100 |
| Central Administrative and/or Service Centers | 100 80[4] | | | | | | | | | | | | | 100 80[4] |

[1] This public benefit allowance applies only to surplus real property being sold for on-site use. When surplus real property is to be moved from the site, a basic public benefit allowance of 100% will be granted.

[2] Applicable when this is the primary use to be made of the property. The public benefit allowance for the over-all program is applicable when such facilities are conveyed as a minor component of other facilities.

[3] This 10% may include recognition of an approvable recreation program operated in such a way as to be accessible to the public yet entirely compatible with, but subordinate to, the educational program.

[4] The maximum allowance available to eligible private, non-profit institutions. Tax-supported institutions receive 100% allowance.

## PART 15—RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES

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15.3 Effective date.
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15.6 Categorical exceptions.

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15.45 Relocation assistance advisory services.

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### Subpart J—Relocation Assistance Payments as Income

15.67 Relocation payments and assistance as income or resources for purpose of other laws.

Authority: Sec. 213, 84 Stat. 1900, 42 U.S.C. 4633.

### Subpart A—General

#### § 15.1 Purpose.

The purpose of the regulations in this part is to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646) and the guidelines therefor in OMB Circular No. A-103, of May 1, 1972.

#### § 15.2 Background

The Act provides a uniform policy for the fair and equitable treatment of owners and tenants of real property who are displaced by Federal or federally assisted programs or projects or whose real property or interests in real property is taken for or as a direct result of such programs or projects. The need for such a uniform policy arises from the growing impact on such persons of such programs and projects as they evolve to meet the public needs of a growing, and increasingly urban population. Title II of the Act provides for a program of relocation payments, of relocation assistance (including advisory services), of assurances that prior to the displacement of persons comparable quality, decent, safe, and sanitary replacement housing will be available for them, and of economic adjustments and other assistance to owners and tenants displaced from their homes, businesses, or farm operations. Title III of the Act provides a uniform policy with respect to real property acquisitions for or as a direct result of Federal or federally assisted programs or projects.

#### § 15.3 Effective date.

Relocation payments and assistance provided for by title II of the Act are to be made to all persons otherwise eligible who are displaced on or after January 2, 1971; the real property acquisition policies provided by title III of the Act apply to real property acquisitions on or after January 2, 1971. Until July 1, 1972, the provisions of both those titles of the Act applied to State programs and projects receiving Federal financial assistance, to the extent that the State was under its laws able to comply with those titles. On July 2, 1972, the provisions of title II and the provisions of sections 303 and 304 of title III, relating to incidental expenses and litigation expenses in connection with real property acquisitions, became fully applicable to State programs and projects receiving Federal financial assistance; and the provisions of sections 301 and 302 of the Act, relating to real property acquisition policies and to practices relating to the acquisition of buildings, structures, and improvements, continue to guide State programs and projects receiving Federal financial assistance, but only to the greatest extent practicable under State law.

#### § 15.4 Definitions.

(a) The "Act" means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646), approved January 2, 1971 (42 U.S.C. 4601-4655).

(b) "Actually occupied" means openly and visibly occupied by the owner or tenant or his immediate family more than temporarily or casually, but does not call for constant personal presence nor foreclose temporary absence occasioned by some casualty or for business or pleasure.

(c) "Business" means any lawful activity, except a farm operation, including an activity by a nonprofit organization, conducted primarily: (1) For the purchase, sale, lease, or rental of personal or real property or for the manufacturing, processing, or marketing of products, commodities, or other items of personal property, (2) for the sale of services to the public, or (3) but solely for purposes of entitlement to the cost of actual moving and related expenses, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, other personal property, or services by the erection and maintenance of outdoor advertising displays, whether or not such displays are located on the premises on which any of such activities are conducted. The term includes only those activities which are conducted regularly on a bona fide basis, and does not include activities conducted as avocations.

(d) "The Department" means the U.S. Department of Education.

(e) "Displaced person" means any person who moves from real property, or moves his personal property from real

property, as a result of the acquisition, in whole or in part, of such real property, or as a result of the written order of the acquiring agency to vacate such real property for a program or project undertaken by the Department, or by a State agency for or as a direct result of a program or project for which it receives Federal financial assistance from the Department. It also means, but solely for purposes of entitlement to the actual cost of moving and related expenses or to a sum in lieu thereof or of entitlement to relocation assistance advisory services, such a person who so moves from other real property, or so moves his personal property from other real property, as a result of the acquisition for or as a direct result of such a program or project of, or the written order of the acquiring agency to vacate, such other real property on which such person conducts a business or farm operation.

(f) "Displacing agency" means the Department when it acquires real property or gives a written notice to a person to vacate real property for a program or project undertaken by the Department, or a State agency so acting for or as a direct result of a program or project for which financial assistance is provided by the Department and which results in the displacement of a person.

(g) "Dwelling" means the structure constituting the place of permanent, or customary and usual, abode of a person. It includes a single-family dwelling; a multifamily building; a condominium or cooperative housing project; or a mobile home or other residential unit.

(h) "Family" means two or more individuals who are related by blood, adoption, marriage, or guardianship, or one of whom stands in loco parentis to another and who live together as a family unit. However, individuals who live together as a family unit as if they were so related may be regarded as a single family.

(i) "Farm operation" means any activity conducted solely or primarily for the production of one or more raw agricultural products or commodities, including timber, for sale or home use, and customarily producing such agricultural products or commodities in quantities sufficient to be capable of contributing materially to the operator's support.

(j) "Federal financial assistance" means a grant, loan, or contribution provided by the Department, whether in the form of a grant, contract, or agreement and without regard to whether the financial assistance applies to the acquisition of real property required for, or as a direct result of, the project being assisted, but does not mean any annual payment or capital loan to the District of Columbia or any Federal guarantee or insurance.

(k) "Financial means" means the ability of a displaced person to afford the rental or price of a replacement dwelling determined to be available for rent or sale to such a displaced person. For this purpose, the rental or housing cost (e.g., mortgage payments, insurance for the dwelling unit, property taxes, and other related recurring expenses) which the displaced person will be required to pay for the replacement dwelling should not normally exceed the fair rental or value of the acquired dwelling by more than 20 percent and, for purposes of housing referrals, the rental value should not, except in unusual circumstances, exceed 25 percent of the gross income of the displaced person including supplemental payments made by public agencies.

(l) "Initiation of negotiations" means the first personal contact by or on behalf of the displacing agency with the owner of real property or with his representative at which the price of the real property is discussed.

(m) "Mortgage" means a deed of trust or lien commonly used in the State in which the real property is located to secure advances on, or the unpaid purchase price of, real property, together with the credit instruments, if any, secured thereby.

(n) "Nonprofit organization" means a partnership, corporation, or association no part of the profits of which inures, or is intended to inure, to the benefit of any private shareholder or individual.

(o) "Owner" means a person who holds a fee simple title, a life estate, or a 99-year lease in real property, or an interest in a cooperative project which includes the right of occupancy, or who is possessed of such other proprietary interest in real property as, in the judgment of the Secretary, warrants being treated as ownership. In the case of a person who has succeeded to any of the foregoing interests in real property by devise, bequest, inheritance, or operation of law, the tenure of the succeeding owner includes the tenure of the preceding owner in relation to ownership but not in relation to occupancy.

(p) "Person" means any individual, partnership, corporation, or association.

(q) "Secretary" means the U.S. Secretary of Education.

(r) "State" means any of the several States of the Union; the District of Columbia; the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, or any political subdivision thereof.

(s) "State agency" means any department, agency, or instrumentality of a State or any department, agency, or instrumentality of two or more States, and includes a State itself.

### § 15.5 Applicability.

(a) This part applies, in relation to title II of the Act, to all direct projects of the Department which have resulted in or will result in the displacement of persons or, in relation to title III of the Act, which have resulted in or will result in the acquisition of real property.

(b) This part applies, in relation to title II of the Act, to all projects of State agencies receiving financial assistance in whole or in part from the Department which projects have resulted in or will result in the displacement of persons or, in relation to title III of the Act, which have resulted in or will result in the acquisition of real property. For this purpose, it is immaterial whether Federal funds are used by the State agency for the acquisition of such real property as is required for, or as a direct result of, the project.

### § 15.6 Categorical exceptions.

This part does not apply to federally assisted projects of those entities, such as private entities, that do not meet the definition of a State agency in § 15.4(s), except when such an entity is acting as an agent or contractor of a State agency, or of the Department, in the discharge of its responsibilities.

## Subpart B—Assurances From State Agencies as a Condition Precedent to Participation in Federally Assisted Programs

### § 15.10 State agency program assurances.

(a) The Department will not approve any grant to, or contract or agreement with, a State agency under a program for which financial assistance will be available from the Department to pay all or part of the cost and which will result in the acquisition of real property or an interest therein and in the displacement on or after January 2, 1971, of any person, until satisfactory assurances are received from that State agency that fair and reasonable relocation payments and assistance will be provided by the displacing agency under title II of the Act and this part; that relocation assistance programs offering the advisory services described in section 205 of the Act and this part will be provided to such displaced persons; and in connection with individual projects that, within a reasonable period of time prior to the displacement of persons, decent, safe, and sanitary dwellings will

be available, as provided for in § 15.15 to persons so displaced by that project.

(b) In connection with programs which result in the acquisition of real property, whether or not involving the displacement of persons, the Department will also require, as a condition precedent to providing financial assistance, assurances that expenses incidental to the transfer of title, and litigation expenses in the event the real property is not in fact so acquired, will be paid as provided for in sections 303 and 304 of the Act, and that the State agency will be guided, to the greatest extent practicable under State law, by the real property acquisition policies prescribed by section 301 of the Act and by the practices relating to the acquisition of buildings, structures, and improvements prescribed by section 302 of the Act.

(c) The assurances required by this section will be required even though the financial assistance by the Department does not extend to the acquisition of the real property, whether or not such real property is furnished by the State agency as a required contribution incident to a project receiving financial assistance from the Department.

## Subpart C—Assurance of Adequate Replacement Housing Prior to Displacement By a Project

### § 15.15 Project assurance of housing availability.

(a) The Department will not proceed with any phase of a project, or authorize a State agency to proceed with any phase of a project, which will result in the displacement of any person until the Department has determined, or received from the displacing State agency (in addition to the assurances called for by § 15.10) a relocation plan containing satisfactory assurances that within a reasonable period of time prior to the displacement of such persons by that project there will be, on a basis consistent with the requirements of title VIII, Fair Housing, of Public Law 90–284 (42 U.S.C. Ch. 45), available in areas not generally less desirable in regard to public utilities and public and commercial facilities, such as schools, stores, and public transportation, and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings (as described in paragraph (d) of this section) equal to the number of, and available to, those of such displaced persons who are expected to require replacement dwellings and reasonably accessible to their places of employment. A State agency that is not required to obtain an authorization from the Department with respect to individual projects must nevertheless submit a relocation plan to the Department for approval unless the State agency determines before the project is carried out that the project will not cause the dislocation of persons.

(b) An assurance or determination called for by paragraph (a) of this section must be based upon a current survey and analysis of available replacement housing made by or on behalf of the displacing agency. Such a survey and analysis must take into account competing demands for such housing.

(c) In certain extraordinary situations, such as where immediate possession of real property is of crucial importance, the Secretary may waive or modify the requirements of paragraph (a) of this section. A request for such a waiver or modification must be supported by a documentation sufficiently substantial to show the need for such a waiver or modification.

(d) A decent, safe, and sanitary dwelling is one which is in sound, clean, and weathertight condition and which meets the applicable requirements of State and local building, plumbing, electrical, housing and occupancy codes or regulations. The following criteria, subject to adjustment for unusual circumstances or for unique geographical areas, will be applied in determining whether a dwelling is decent, safe, and sanitary:

(1) If it is a housekeeping unit it must include a kitchen with a fully usable sink; a cooking stove, or connections for one; a separate and complete bathroom; hot and cold running water in both the kitchen and bathroom; an adequate and safe wiring system for lighting and other electrical services; and such heating facilities as are required by local housing codes or are called for by climatic conditions.

(2) If it is a nonhousekeeping unit it must meet local code standards for boarding houses, hotels, or other congregate living quarters. If local codes do not include requirements relating to space and sanitary facilities, standards to be applied in that regard are subject to the approval of the Secretary.

(3) Occupancy standards must comply with local housing codes or, in the absence of such local housing codes, the requirements of the Secretary in that regard.

(e) Where local housing codes do not exist or do not contain adequate minimum standards, the Secretary will prescribe the minimum standards to be applied.

### § 15.16 Housing provided as a last resort.

The Secretary will provide for replacement housing for Federal projects, or take or approve action by a State agency to develop replacement housing for projects financially assisted by the Department. In taking or approving such action, the Secretary will be guided by the criteria and procedures prescribed by the Secretary of Housing and Urban Development and published at 37 FR 3633 on February 18, 1972 (24 CFR Part 43, Subpart A).

### § 15.17 Loans for planning and preliminary expenses.

Section 215 of the Act authorizes the making of loans, in the nature of seed money loans, for planning and obtaining federally insured mortgage financing to stimulate the construction or rehabilitation of sale and rental housing to meet the needs of displaced persons. Such loans may be made to nonprofit, limited dividend, or cooperative organizations, or to public bodies, for not more than 80 percent of the reasonable expenses, prior to construction, for activities such as preliminary surveys and analyses of market needs, preliminary site engineering and architectural fees, site title searches and appraisals, application and mortgage commitment fees and charges, legal fees, and construction loan fees and discounts. Loans to nonprofit organizations will be interest free. The making of such loans is subject to the criteria and procedures prescribed by the Secretary of Housing and Urban Development and published at 37 FR 14768 on July 25, 1972 (24 CFR Part 43, Subpart B).

## Subpart D—Actual Moving and Related Expenses and Losses.

### § 15.21 Eligibility.

All displaced persons (including one who conducted a business or farm operation on acquired property) is eligible for payment for his moving and related expenses in moving from real property acquired by or on behalf of a displacing agency. A person who conducts a business or farm operation on acquired property on which he lives or on other acquired property may be eligible for the moving and related expenses of himself and his family, and for his personal property, including personal property used in such a business or farm operation.

### § 15.22 Application.

(a) A displaced person eligible for payments under title II of the Act shall be entitled to payments or assistance under this subpart only upon application

therefor, with necessary supporting documentation, within 18 months from the date of his displacement or from the date on which the displacing agency makes final payment for the real property, whichever is later. The head of the displacing agency may extend that period upon a proper showing of good cause.

(b) Payments to a displaced person under title II of the Act shall be made promptly after he moves. Such payments may be made in advance of such a move in a hardship case justifying such an advance payment even though full documentation supporting the application has not been filed.

**§ 15.23 Allowable moving and related expenses.**

(a) Subject to the limitations in paragraph (b) of this section, the following expenses are allowable as moving and related expenses:

(1) The cost of transportation of individuals, families, and personal property to a replacement site not more than 50 miles distant except when the Secretary determines that relocation beyond 50 miles is justified under the circumstances.

(2) The cost of packing and crating, and of unpacking and uncrating, personal property.

(3) The cost of advertising for packing and crating, unpacking and uncrating, and transportation services when the Secretary determines that such advertising is necessary or desirable.

(4) The cost of storage of personal property for a period of time when the Secretary determines that storage for such a period, generally not in excess of 12 months, is necessary or desirable in connection with the relocation.

(5) The cost of premiums on insurance covering the loss of or damage to personal property while in transit or in storage authorized pursuant to paragraph (a)(4) of this section.

(6) The value of personal property lost, stolen, or damaged (other than through the fault or negligence of the displaced person or his agent or employee) in the process of moving or in storage authorized pursuant to paragraph (a)(4), of this section, if insurance to cover such a loss was not reasonably available.

(7) The cost of removal, installation, and reestablishment of, and the reconnection of utilities for, machinery, equipment, appliances, and other items not acquired as real property, including such modifications thereof as is deemed necessary by the Secretary. Prior to the payment for any such costs in relation to such property, the displaced person must agree in writing that such property is personalty and that the displacing agency is released from any liability for payment for the value of such property.

(8) Such other related expenses as the Secretary determines to be reasonable under the circumstances.

(b) When the displaced person accomplishes the move by himself or by the use of his family or employees, the amount of allowable expenses will not exceed the estimated commercial cost of such a move.

**§ 15.24 Direct losses incurred in moving or discontinuing a business or farm operation.**

(a) If a displaced person does not move personal property used in a business or farm operation but has made a bona fide effort to sell such personal property, he is entitled to payment for the loss of such personal property, and he may be reimbursed for expenses reasonably incurred in such a selling effort.

(b) If a business or farm operation is discontinued, a displaced person is entitled, with respect to personal property which was used in connection therewith, to a payment for what would have been its fair market value for its continued use at its location prior to displacement minus the net proceeds from its sale or, if abandoned after a bona fide effort to sell, to the estimated cost of moving it 50 miles, whichever is less. Payments to a displaced person shall not be offset by the cost to the displacing agency of removing such abandoned property.

(c) If a business or farm operation is reestablished, a displaced person is entitled, with respect to personal property which was used in connection therewith but which is not moved but rather is sold and promptly replaced by a comparable item, to a payment for its replacement cost minus the net proceeds from its sale or the estimated cost of moving it 50 miles, whichever is less.

(d) If personal property used in a business or farm operation to be moved is of high bulk and low value and the cost of moving it would, in the judgment of the Secretary, be disproportionate to its value, the allowable expense of moving such personal property will not exceed the cost of replacing it at the relocated premises with comparable personal property available on the market minus the estimated net amount that would have been received for such personal property on liquidation. This provision is applicable to junkyard items and to stockpiled sand, gravel, minerals, metals, or similar items of personal property.

(e) If the cost of moving or relocating an outdoor advertising display is determined by the displacing agency to be equal to or in excess of the in-place value of the display, consideration should be given to acquiring such a display as a part of the real property except when such an acquisition is prohibited by law.

**§ 15.25 Allowable expenses in connection with searching for a replacement location for a business or farm operation.**

(a) The following expenses are allowable under this subpart in connection with the searching for a replacement location for a business or farm operation:

(1) Actual travel costs but not in excess of 10 cents a mile.

(2) Cost of meals and lodging away from home.

(3) The value of time spent in searching for a replacement location for a business or farm operation, at the rate of the displaced person's salary or earnings but not in excess of $10 an hour.

(4) In the discretion of the displacing agency, such brokerage, realtor, or other professional fees in connection with relocating a business or farm operation in the area as is customary under the circumstances.

(b) The total amount allowable to a displaced person under this section will not exceed $500 unless the Secretary determines that a larger amount is justified under the circumstances.

**§ 15.26 Nonallowable moving expenses and losses.**

The following expenses are not allowable under this subpart in connection with the relocation of a business or farm operation:

(a) Additional expenses incurred because of living at a new location.

(b) The cost of moving structures or other improvements to real property as to which the displaced person reserved ownership, except as otherwise provided for by the Act.

(c) The cost of improvements to the replacement site, except as provided for in § 15.23.

(d) Interest on loans to cover moving and related expenses.

(e) Loss of goodwill.

(f) Loss of profits.

(g) Added expenses incurred because of a loss of trained employees.

(h) Expenses or losses resulting from personal injury.

(i) The cost of preparing applications for moving and related expenses and of preparing supporting documentation.

(j) The cost of the modification of personal property to adapt it to the replacement site, except when required by law.

(k) The cost of searching for a replacement dwelling.

(l) The cost of establishing a different or larger business or farm operation to the extent that such a cost exceeds the estimated cost of reestablishing the business or farm operation being discontinued.

## Subpart E—Payments in Lieu of Actual Moving and Related Expenses

### § 15.30 Use of schedules in connection with displacement from dwelling.

A person displaced from a dwelling may at his option receive, in lieu of actual moving and related expenses for himself and his family under Subpart D of this part, a moving expense allowance, not in excess of $300, determined according to schedules established by the highway department of the State in which the acquired dwelling is located and approved by the Federal Highway Administrator or, in the absence of such a highway department schedule, according to schedules established by the Federal Highway Administrator, plus a dislocation allowance of $200.

### § 15.31 Fixed payment for person displaced from his place of business or farm operation.

(a) A person displaced from his place of business or farm operation may, at his option, receive, in lieu of actual moving and related expenses in that regard under Subpart D of this part but in addition to such payments as he may be entitled to for himself and his family under Subpart D of this part or § 15.30, a fixed payment in the amount of the average annual net earning before Federal, State, and local income taxes of his bona fide business or farm operation during the 2 taxable years immediately preceding the taxable year in which the business or farm operation is moved from the acquired real property or during such other period as the head of the displacing agency determines to be more equitable for establishing such average annual net earnings, including any compensation paid by the business or farm operation to the owner or his spouse or dependents during such a base period, but not less than $2,500 nor more than $10,000 in respect of any bona fide business or farm operation, except that no payment will be made under this section with respect to a business conducted primarily for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, other personal property, or services by the erection and maintenance of outdoor advertising displays.

(b) No payment may be made pursuant to this section in respect of a business unless the Secretary determines (1) that the business cannot be relocated without a substantial loss of existing patronage and (2) that the business is not a part of an enterprise with at least one other establishment which is engaged in the same or a similar business and which is not being acquired.

(c) The determination of whether there will be a substantial loss of existing patronage is to be made, except as provided for in paragraph (d) of this section, by the displacing agency after considering all pertinent circumstances, including but not limited to the following factors:

(1) The type of business conducted by the displaced person.

(2) The nature of the clientele of the displaced person.

(3) The availability of property suitable for use as a new location on which to conduct the business.

(4) The relative importance to the business of the present location and such new locations as are available.

(d) The determinations of whether there will be a substantial loss of existing patronage of an activity conducted by a nonprofit organization and of whether the activity is a part of an enterprise with at least one other establishment which is engaged in the same or a similar activity and which is not being acquired will be made by the Secretary. For this purpose, the term "existing patronage" includes the persons, community, or clientele served or affected by the activities of the nonprofit organization.

(e) A payment will be made under this section with respect to the acquisition of a part of the property used by a person for a farm operation only when the displacing agency determines that the acquired property was in fact used for a farm operation before the taking and that the remaining property cannot be expected to be so used for a farm operation and continue to contribute substantially to the operator's support.

## Subpart F—Replacement Housing Payments

### § 15.35 Payments for replacement housing costs to homeowners.

(a) A person displaced from a dwelling actually owned and occupied by him for at least 180 days prior to the initiation of negotiations for the acquisition of that dwelling is entitled, in addition to entitlement to other payments under this part, to payment for the additional cost, if reasonable, of acquiring a comparable replacement dwelling which is decent, safe, and sanitary and which he purchases and occupies within 1 year from the date he received final payment for the dwelling from which he was displaced or from the date on which he moved therefrom, whichever is later, as well as payment for additional interest costs as provided for in § 15.37.

(b) A comparable replacement dwelling is a dwelling that is functionally equivalent to, and substantially the same as, the acquired dwelling, not excluding for this purpose newly constructed housing. Each aspect of the dwellings need not be individually compared as long as all the requirements of paragraph (c) of this section are met.

(c) The additional cost of a replacement dwelling will not be regarded as unreasonable if that additional cost results from the need for acquiring a dwelling which is decent, safe, and sanitary, which is adequate to accommodate the displaced person and his family, which is located in an area not generally less desirable in respect of neighborhood conditions such as municipal services and other environmental factors, public utilities, and public and commercial facilities, which is reasonably accessible to the displaced person's place of employment or potential place of employment, which is within the financial means of the displaced person, and which is available on the private market. If such housing is not available, the displacing agency may, for purposes of this subpart and for making housing referrals, consider housing exceeding the other basic criteria.

### § 15.36 Limitation on payments for replacement housing costs.

(a) The amount of a payment for the additional cost of a replacement dwelling to a displaced dwelling owner will not exceed the difference between the amount paid by the displacing agency for the acquired dwelling and the amount paid by the displaced dwelling owner for a comparable dwelling not in excess of a reasonable amount as determined by the schedule method described in paragraph (b) of this section, or by the comparative method described in paragraph (c) of this section, or by another method approved pursuant to paragraph (d) of this section, whichever is the least, and in no event will exceed $15,000.

(b) *Schedule method.* The Secretary may establish a schedule of reasonable acquisition costs of comparable replacement dwellings for the various types of dwellings to be acquired in the community or area involved and

meeting the conditions prescribed in § 15.15(d) as well as being open to all persons regardless of race, color, religion, or national origin consistent with the requirements of title VIII, Fair Housing, of Public Law 90–284 (42 U.S.C. ch. 45).

(c) *Comparative method.* The Secretary may determine the cost of a comparable replacement dwelling on the basis of the asking price, adjusted to reflect market experiences, of a dwelling or dwellings most representative of the dwelling acquired by the displacing agency and meeting the conditions prescribed in § 15.15(d) and paragraph (b) of this section. A single dwelling unit will be used for comparison purposes only when additional comparable dwellings are not available.

(d) *Alternative method.* The head of the displacing agency may develop criteria for computing the cost of replacement housing when the use of neither of the methods described in paragraph (b) or (c) of this section is feasible. Such an alternative method will be subject to the approval of the Secretary.

(e) For purposes of this section, the cost of a replacement dwelling includes legal, closing, and related costs such as: (1) The cost of a title search, the preparation of conveyance instruments, notarial fees, surveys, the preparation of plats, and charges incident to recordation, (2) lender's, FHA, or VA appraisal fees, (3) FHA application fee, (4) the cost of a certification of structural soundness when required by the lender, FHA, or VA, (5) the cost of a credit report, (6) the cost of a title policy or abstract of title, (7) an escrow agent's fee, and (8) the cost of revenue stamps and of sale or transfer taxes.

(f) For purposes of this section, the cost of a replacement dwelling does not include a fee, cost, charge, or expense determined to be a part of the finance charge under title I, the Truth in Lending Act, of Public Law 90–321, and Regulation "Z" (12 CFR Part 226) issued pursuant thereto by the Board of Governors of the Federal Reserve System.

**§ 15.37 Payments for additional interest costs incurred.**

(a) In addition to entitlement to the payments provided for by § 15.35, a person displaced from a dwelling actually owned and occupied by him shall be entitled to compensation for any increased interest costs with respect to the amount that is refinanced if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage for not less than 180 days prior to the initiation of negotiations for the acquisition of that dwelling.

(b) A payment under this section shall be equal to the difference between the discounted present value of the remaining interest payments that were called for by the mortgage on the acquired dwelling and the discounted present value of the interest payments, called for with respect to that amount of principal of the mortgage on the replacement dwelling that is equal to the unpaid principal of the mortgage on the acquired dwelling for the length of its remaining term. Such a payment shall also cover the cost of points paid with respect to the mortgage on the replacement dwelling and the cost of those finance charges that are referred to in § 15.36(f).

(c) For purposes of paragraph (b) of this section, discounted present value shall be calculated on the basis of the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

**§ 15.38 Mortgage insurance.**

Section 203(b) of the Act authorizes the head of any Federal agency administering a Federal mortgage insurance program, upon application by a mortgagee, to insure any mortgage (including advances during construction) executed by a person assisted under that section on a comparable replacement dwelling, which mortgage is eligible for such insurance without regard to any eligibility requirements otherwise applicable with respect to age, physical condition, or other personal characteristics of mortgagors, and to make commitments for the insurance of such a mortgage prior to the date of execution of the mortgage.

**§ 15.39 Payments to tenants and others for the rental of replacement dwellings.**

(a) A displaced tenant of a dwelling which he actually and lawfully occupied for a period of not less than 90 days prior to the initiation of negotiations for the acquisition of that dwelling by the Department or by a State agency as a direct result of a program financially assisted by the Department may be eligible for a payment under this section if he rents rather than purchases a decent, safe, and sanitary replacement dwelling.

(b) A displaced owner of a dwelling which he actually owned and occupied for a period of not less than 90 days prior to the initiation of negotiations for the acquisition of that dwelling by the Department or by a State agency as a direct result of a program financially assisted by the Department or which he so owned and occupied for a period of more than 180 days but as to which he has not purchased and occupied a decent, safe, and sanitary replacement dwelling may be eligible for a rental payment under this section.

(c) The amount of the rental payment under this section, which will not exceed $4,000 for a displaced person, will be based on the rental agreed to by the displaced person subject to a limitation determined either by the schedule method described in paragraph (d) of this section or by the comparative method described in paragraph (e) of this section.

(d) The Secretary will establish a rental schedule for renting comparable replacement dwellings (or one or more dwellings most representative of the dwelling acquired) which are available in the private market for the various types of dwellings to be acquired, based upon a current survey and analysis of the market for each type of dwelling required. Payment pursuant to such a schedule will be computed by determining the amount necessary to rent a comparable replacement dwelling for 4 years (based on the average monthly rental from the schedule) and by subtracting from that amount an amount equal to 48 times the average monthly rental, if reasonable, paid by the displaced person for the acquired dwelling over the 3 months (or more if necessary to determine a representative figure) immediately preceding the initiation of negotiations for the acquisition of that dwelling. If the average rental was unreasonably high or if the displaced person was the owner, the subtraction will be based on a rental charge that is determined would have been reasonable for the acquired dwelling. The amount subtracted will include any rent supplements supplied by others except when such a supplement is to be discontinued upon vacation of the property.

(e) When the method described in paragraph (d) of this section cannot be feasibly applied, the Secretary will apply such criteria as are reasonable and appropriate for computing the rental payment.

(f) A payment of $500 or less for rental will be made in a lump sum. All such payments aggregating in excess of $500 will be paid in semi-annual installments of $500 each except that the final installment shall be for that amount, not in excess of $500, necessary to complete the payments. Prior to making the initial payment, the displacing agency must have determined that the displaced person is occupying a decent, safe, and sanitary dwelling. The manner of making such payments may be modified

to accommodate a reasonable request of the displaced person reflecting his wishes in that regard.

**§ 15.40 Payments to tenants and others for the purchase of replacement dwellings.**

(a) A displaced tenant of a dwelling which he actually and lawfully occupied for a period of not less than 90 days prior to the initiation of negotiations for the acquisition of that dwelling by the Department or by a State agency as a direct result of a program financially assisted by the Department may be eligible for a payment sufficient for him to make a downpayment on the purchase of a decent, safe, and sanitary dwelling if he elects to purchase rather than to rent such a dwelling.

(b) A displaced owner of a dwelling which he actually owned and occupied for a period of not less than 90 days, but not more than 180 days, prior to the initiation of negotiations for the acquisition of that dwelling by the Department or by a State agency as a direct result of a program financially assisted by the Department may be eligible for a payment sufficient for him to make a downpayment on the purchase of a decent, safe, and sanitary dwelling if he elects to purchase rather than to rent such a dwelling.

(c) The amount of a payment under this section is the amount, not in excess of $4,000, necessary to enable the displaced person to make the downpayment required under a conventional loan arrangement for the purchase of a comparable replacement dwelling plus expenses incident to such a purchase, except that such a payment must be applied to the downpayment or incidental expenses as shown on the closing statement and shall be matched by the displaced person for the same purpose to the extent that such a payment exceeds $2,000.

**§ 15.41 Notice to tenants of initiation of negotiations for the property.**

When a dwelling is being acquired by the Department or by a State agency as a direct result of a program financially assisted by the Department, tenants actually and lawfully occupying such a dwelling shall promptly be advised that negotiations have been initiated for the acquisition of that property and of the date of the initiation of such negotiations.

## Subpart G—Relocation Assistance Advisory Services

**§ 15.45 Relocation assistance advisory services.**

(a) All programs of the Department or of State agencies receiving financial assistance from the Department shall provide for relocation assistance advisory services for persons displaced as a result of such programs, and for persons occupying property immediately adjacent to the real property so acquired who suffer substantial economic injury because of such an acquisition.

(b) The program of the Department for providing relocation assistance advisory services, and the programs for that purpose of State agencies receiving financial assistance for such programs from the Department will:

(1) Determine with respect to persons displaced from their dwellings, their places of business, or their farm operations their needs for relocation assistance arising from such a displacement;

(2) Provide current, complete, and continuing information on the availability, prices, and rentals, of comparable decent, safe, and sanitary dwellings for sale or rent, and of comparable commercial properties and locations for displaced businesses;

(3) Assure that suitable replacement dwellings will be available to displaced persons prior to their displacement except to the extent that that requirement is waived or modified in extraordinary situations as provided for in § 15.15(d);

(4) Assist persons displaced from a place of business or farm operation in obtaining and becoming reestablished in a suitable replacement location;

(5) Supply information to displaced persons concerning Federal and State housing programs, disaster loan programs, and other Federal and State programs offering assistance to displaced persons, business concerns, or farm operations; and

(6) Provide such other advisory services to displaced persons as are appropriate to minimize the hardships to such persons in adjusting to the place of relocation.

(c) In order to assure maximum coordination of relocation activities in a community or area, the displacing agency should consult with appropriate local officials, consistent with the procedures contained in the Office of Management and Budget Circular No. A-95 (Revised), before approving any proposed project in that community or area.

(d) A displacing agency should consider whether to contract for providing the required relocation services with the central relocation agency in such a community or area or, if necessary, with another public agency or a private organization with the capability of providing such relocation services.

## Subpart H—Federally Assisted Programs

**§ 15.50 Assurances from State agencies.**

(a) The Secretary will obtain from State agencies applying to the Department for financial assistance, or entitled by statute to an allotment or apportionment of funds from the Department for financial assistance, with respect to programs or projects which will cause the displacement of any owner or tenant of real property the following assurances:

(1) That fair and reasonable relocation payments and assistance will be provided to or for displaced persons as provided for in this part;

(2) That tenants who will be dislocated will be promptly advised in writing of the initiation of negotiations with the owner of the property occupied by them (generally not in excess of 30 days from the date of initiation of negotiations), that relocation assistance advisory programs will be available to owners and tenants displaced or to be displaced, and that information concerning applicable benefits, policies, and procedures shall be provided them upon request; and

(3) That, within a reasonable period of time prior to displacement, decent, safe, and sanitary housing will be available to persons to be displaced.

(b) In the case of each program or project involving the acquisition of real property regardless of whether it results in the dislocation of a person, the assurance shall also provide that the State agency will be guided, to the greatest extent practicable under State law, by the real property acquisition policies prescribed in Subpart I of this part and will, in any event, pay to the owner of the real property expenses incidental to the transfer of title as prescribed in said Subpart I and, in the event the real property is not finally acquired, the litigation expenses of the owner as prescribed in said Subpart I.

(c) A State agency assurance called for by paragraph (a) or (b) of this section, shall, if appropriate, be accompanied by a statement specifying those provisions of such an assurance that the State agency is unable to give, or that it is not practicable for it to give, in whole, or in part, under its State law. Such an assurance shall also be accompanied by a statement specifying that part, if any, of the payments required under the State law of eminent domain to be made to the owner of real property to be acquired which has substantially the same purpose and effect as a relocation payment called for by this part but which, without regard to this part, is chargeable to the Federal

financial assistance for the program or project involved or that no part of such payments is so chargeable. Each such statement shall be supported by an opinion of the chief or other appropriate legal officer of the State, containing an adequate discussion of any asserted legal inability or impracticability of the State agency to provide any part of the required assurances and the extent of any asserted inability of the State agency to pay for a part of the expenses called for by this part.

**§ 15.51 Unsatisfactory assurances.**

(a) If a State agency is unable to provide an assurance pursuant to § 15.50 that is satisfactory to the Secretary, the project involved shall not be financially assisted by the Department until such time as a satisfactory assurance is so provided unless other means of making the required payments and of providing the required assistance are provided for in a manner satisfactory to the Secretary.

(b) If no such assurance is provided only those projects in that State under the program involved will be financially assisted by the Department that do not involve the displacement of persons or the acquisition of land, as the case may be.

(c) If a State agency does not provide an assurance pursuant to § 15.50 because of a belief that no real property is to be acquired for or as a direct result of the project involved or that the project involved will not directly result in the dislocation of any person and if subsequently real property is in fact so acquired or a person is in fact so dislocated, the financial assistance for that project by the Department will forthwith be terminated until such time as the requisite payment or assistance is provided for to the satisfaction of the Secretary.

**§ 15.52 Records.**

Each displacing agency receiving financial assistance from the Department shall keep such records, and submit to the Secretary such reports, regarding relocation payments and assistance as may be prescribed by the Secretary. Such records shall include records of notifications to tenants to be displaced of the initiation of negotiation for the acquisition of the properties involved. Such records shall be retained for the period prescribed by the regulations for the affected program for the retention of records but in no event less than 3 years following the completion of the project involved, and shall be available for inspection by representatives of the Federal Government.

**§ 15.53 State agency contracts for relocation assistance.**

(a) A State agency whose programs or projects cause the dislocation of persons may enter into contracts with any person for providing the relocation assistance called for by this part, or may carry out its responsibilities in that regard through any Federal or State governmental agency or instrumentality having an established organization for conducting relocation assistance programs.

(b) A copy of any such contract or other agreement pursuant to this section shall be provided to the Secretary. Such a contract or other agreement shall contain such provisions as are consistent with this part, including the following provisions:

(1) Services will be provided consistent with the requirements of this part;

(2) Records will be kept and maintained as required by this part;

(3) The clauses required by Part 1000 of this title implementing title VI of the Civil Rights Act of 1964 (Public Law 88–352);

(4) Such other provisions as may from time to time be called for by the Secretary.

**§ 15.54 Appeals.**

(a) Any person aggrieved by a determination as to eligibility for, or the amount of, a payment or assistance under the regulations in this part may appeal that determination in accordance with such procedures as may be established by the agency concerned.

(b) Each agency concerned shall establish procedures for such appeals, which shall assure that the appellant be accorded a fair hearing with the right to be represented by counsel, including the opportunity for making an oral presentation, that each appeal will be decided promptly, that each appeal decision will include a statement of the basis for the decision, that the agency will for a period of 3 years retain all documents associated with an appeal, that each appellant will have a right of final appeal to the head of the agency concerned, and that any amounts determined to be due the appellant will be promptly paid.

(c) A copy of each appeal decision by a State agency shall be promptly sent to the Department.

**§ 15.55 Funding of the cost of payments and assistance.**

(a) The cost to a State agency of providing the relocation payments and assistance to a person displaced by a State agency, and of providing payments to owners for the acquisition of real property by a State agency, as a direct result of a program or project for which that State agency receives financial assistance from the Department shall be a cost chargeable in accordance with that program or project unless the Secretary determines that a payment required by a State law of eminent domain has substantially the same purpose and effect as, and would duplicate, a payment otherwise chargeable as a program or project cost by virtue of this section.

(b) Except to the extent that the costs of such payments and assistance are, by section 207 and 211(a) of the Act, made fully chargeable up to $25,000 to the financial assistance provided by the Department, such costs shall be eligible for reimbursement in the same manner and to the same extent as other costs under the program or project involved. It should be noted that the provisions of those sections authorizing the first $25,000 to be fully chargeable to Federal financial assistance expired as of July 1, 1972.

(c) To the extent that Federal funds are available for the purpose, existing grants to, or contracts or agreements with, State agencies will be amended to reflect the additional cost, if any, of providing relocation payments and services to persons displaced on or after January 2, 1971, or the date on which the Act is fully effective in the particular State, and of providing the additional payments, if any, to the owner of property acquired on or after such a date, called for by this part within the limitations provided for by the Act.

(d) Reimbursement or other participation by the Department in payments made by State agencies for relocation will be limited, except in hardship cases, to those payments which are made to persons who move, or move their personal property, as a result of the receipt of written notice to vacate (which notice may have been given before or after negotiations for the acquisition of the real property involved).

(e) State agencies receiving financial assistance from the Department for programs or projects should carefully review such programs or projects for the purpose of eliminating or lessening the extent of the dislocation of persons in order to minimize the financial and social impact of such programs and projects and to avoid significant adverse effects on the quality of the human environment.

**§ 15.56 Advance payments.**

The Secretary may advance Federal funds to a State agency for relocation payments and assistance pursuant to

this part if he determines that such an advance is necessary for the expeditious completion of the program or project.

## Subpart I—Real Property Acquisition Policies

### § 15.60 Just compensation.

When real property is acquired by the Department or by a State agency as a direct result of a program or project receiving financial assistance from the Department, the owner of such real property shall be paid as just compensation therefor by the Department, or, to the greatest extent practicable under State law, by such a State agency, not less than the approved appraisal of its fair market value in accordance with § 15.61, even if the property is not acquired by eminent domain proceeding.

### § 15.61 Negotiations for the acquisition of real property.

(a) Before negotiations are initiated for the acquisition of real property, the acquiring agency shall have the real property appraised in terms of its fair market value, and the owner thereof or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

(b) When negotiations are initiated for the acquisition of real property, the owner thereof shall be furnished a written statement concerning the proposed acquisition. Such a statement shall contain, as a minimum, the following:

(1) An identification of the real property, including the buildings, structures, and other improvements on the land, as well as fixtures, considered to be a part of the real property, and the estate or interest therein to be acquired.

(2) The amount of the estimated just compensation for the property to be acquired, which shall not be less than the agency's approved appraisal of the fair market value of the property to be acquired, and a summary of the basis for determining the amount of such just compensation. Any decrease or increase in the fair market value of the real property prior to the date of its valuation caused by the public improvement for which the real property is being acquired, or by the likelihood that the real property would be acquired for such an improvement, other than a decrease due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. In the case of a partial taking, the damages, if any, to the remaining real property shall be separately stated.

(3) Appraisals shall be conducted as nearly as practicable pursuant to the Uniform Appraisal Standards for Federal Land Acquisition published in 1972 by the Interagency Land Acquisition Conference (G.P.O. 1972).

(c) The acquiring agency shall promptly either make an offer to purchase the property at the full amount of the just compensation therefor as so determined or initiate eminent domain or other proceeding that may be required to avoid a cloud on title to the property.

### § 15.62 Notices to tenants and owners.

(a) Tenants of real property to be acquired shall be promptly notified of the initiation of negotiations for the acquisition of that real property.

(b) To the greatest extent practicable, an owner or tenant lawfully occupying real property shall not be required to move from a dwelling, or to move his business or farm operation, without at least 90 days' written notice of the date by which such a move is required. Such a notice shall be served personally or by certified (or registered) first-class mail.

### § 15.63 Payment of certain expenses.

(a) The owner of real property acquired shall be reimbursed for expenses incidental to the transfer of title to the real property, and litigation expenses incurred when real property is not acquired, as provided for in sections 303 and 304 of the Act.

(b) State agencies receiving financial assistance from the Department for a program or project involving the acquisition of real property shall otherwise be guided by the land acquisition policies enunciated in sections 301 and 302 of the Act to the greatest extent practicable under State law.

## Subpart J—Relocation Assistance Payments as Income

### § 15.67 Relocation payments and assistance as income or resources for purpose of other laws.

Section 216 of the Act provides that payments received under title II of the Act in relation to relocation assistance shall not be considered as income for the purposes of the Internal Revenue Code of 1954 or for the purposes of determining the eligibility or the extent of eligibility or any person for assistance under the Social Security Act or any other Federal law. For the treatment of such payments, particularly in relation to resources, in connection with assistance under the Social Security Act, see § 233.20 of this title (37 FR 19371, September 20, 1972).

# PART 17—RELEASE OF ADVERSE INFORMATION TO NEWS MEDIA

Sec.
17.1 Definition.
17.2 Basic policy.
17.3 Precautions to be taken.
17.4 Regulatory investigations and trial-type proceedings.
17.5 Context to be reflected.
17.6 Advance notice.
17.7 Retractions or corrections.

Authority: 5 U.S.C. 301.

### § 17.1 Definition.

Adverse information released by an agency means any statement or release by the Department made to the news media inviting public attention to an action or a finding by the Department which may adversely affect persons or organizations identified therein. This part does not apply to nor is it affected by any disclosure of records to the public in response to requests made under the Freedom of Information Act (Pub. L. 90-23). The criteria for such disclosures are set forth in the Department's Public Information Regulation (34 CFR Part 5).

### § 17.2 Basic policy.

All adverse information release to news media shall be factual in content and accurate in description. Disparaging terminology not essential to the content and purpose of the publicity shall be avoided.

### § 17.3 Precautions to be taken.

The issuing organization shall take reasonable precautions to assure that information released is accurate and that its release fulfills an authorized purpose.

### § 17.4 Regulatory investigations and trial-type proceedings.

Adverse information relating to regulatory investigations of specifically identified persons or organizations or to pending agency trial-type proceedings shall be released only in limited circumstances in accordance with the criteria outlined below:

(a) Where the Department determines that there is a significant risk that the public health or safety may be impaired or substantial economic harm may occur unless the public is notified immediately, it may release information to news media as one of the means of notifying the affected public speedily and accurately. However, where the Department determines that public harm can be avoided by immediate discontinuance of an offending practice, a respondent shall be allowed an opportunity, where feasible, to cease the practice (pending a legal test) in lieu of

release of adverse information by the agency.

(b) Where it is required in order to bring notice of pending agency adjudication to persons likely to desire to participate therein or likely to be affected by that or a related adjudication, the Department or principal operating component shall rely on the news media to the extent necessary to provide such notice even though it may be adverse to a respondent.

**§ 17.5 Context to be reflected.**

The authority for and the character of the information shall be made clear, where appropriate, the release shall explain the nature of any studies performed, the sources of relevant data, the areas in which administrative findings of fact were made, and whether the information is based on allegations subject to subsequent adjudication.

**§ 17.6 Advance notice.**

Any respondent or prospective respondent in an agency proceeding shall, if practicable and consistent with the nature of the proceeding, be given advance notice of information to be released about the proceeding and a reasonable opportunity to prepare in advance a response to the information released.

**§ 17.7 Retractions or corrections.**

Where the Secretary finds that information released by the Department was misleading or a misstatement of fact and any person named therein requests a retraction or correction, the Department shall issue a retraction or correction in the same manner to all of the media outlets that received the original information (or as many of them as is feasible).

## PART 30—CLAIMS COLLECTION

Sec.
30.1 General.
30.2 Scope of regulations.
30.3 Delegation of authority.

Authority: Sec. 3, 80 Stat. 309, 31 U.S.C. 951–953; Joint Regulations of GAO and Department of Justice, 4 CFR Ch. II Parts 101–105.

**§ 30.1 General.**

The regulations of this part adopts and supplement as necessary for Department operation all provisions of the Joint Regulations issued by the Comptroller General of the United States and the Attorney General of the United States under section 3 of the Federal Claims Collection Act of 1966, which prescribes standards for administrative collection of civil claims by the Government as well as compromise, suspension, or termination of agency collection action, with respect to claims not exceeding $20,000 exclusive of interest, and the referral to the General Accounting Office, and to the Department of Justice for litigation, of civil claims by the Government.

**§ 30.2 Scope of regulations.**

The standards set forth in this chapter are not applicable where standards are prescribed under statutes other than the Federal Claims Collection Act of 1966, for compromise or termination of collection action, or waiver in whole or in part of claims thereunder.

**§ 30.3 Delegation of authority.**

(a) The Secretary may compromise, suspend or terminate claims referred to him after administrative collection efforts have been exhausted in accordance with the provisions of this part.

(b) The appropriate office, shall take all necessary administrative action required under the Act and Joint Regulations, except that, with respect to claims of $800 or more, no compromise of a claim shall be effected, nor collection action suspended or terminated without the prior approval of the Department Claims Officer.

## PART 35—TORT CLAIMS AGAINST THE GOVERNMENT

### Subpart A—General

Sec.
35.1 Scope of regulations.

### Subpart B—Procedures

35.2 Administrative claim; when presented; place of filing.
35.3 Administrative claim; who may file.
35.4 Administrative claims; evidence and information to be submitted.
35.5 Investigation of claims.
35.6 Final denial of claim.
35.7 Payment of approved claims.
35.8 Release.
35.9 Penalties.
35.10 Limitation on Department's authority.

Authority: Sec. 1(a), 80 Stat. 306; 28 U.S.C. 2672; 28 CFR Part 14.

### Subpart A—General

**§ 35.1 Scope of regulations.**

The regulations in this part shall apply only to claims asserted under the Federal Tort Claims Act, as amended, 28 U.S.C. sections 2671–2680, for money damages against the United States for damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Department of Education while acting within the scope of his office or employment.

### Subpart B—Procedures

**§ 35.2 Administrative claim; when presented; place of filing.**

(a) For purposes of the regulations in this part, a claim shall be deemed to have been presented when the Department of Education receives, at a place designated in paragraph (b) of this section, an executed Standard Form 95 or other written notification of an incident accompanied by a claim for money damages in a sum certain for damage to or loss of property, for personal injury, or for death, alleged to have occurred by reason of the incident. A claim which should have been presented to the Department but which was mistakenly addressed to or filed with another Federal agency, shall be deemed to be presented to the Department as of the date that the claim is received by the Department. A claim mistakenly addressed to or filed with the Department shall forthwith be transferred to the appropriate Federal agency, if ascertainable, or returned to the claimant.

(b) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final action by the Secretary or prior to the exercise of the claimant's option to bring suit under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the Department shall have 6 months in which to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of an amendment.

(c) Forms may be obtained and claims may be filed, with the Department of Education Claims Officer, Washington, D.C. 20202.

**§ 35.3 Administrative claim; who may file.**

(a) A claim for injury to or loss of property may be presented by the owner of the property interest which is the subject of the claim, his duly authorized agent, or his legal representative.

(b) A claim for personal injury may be presented by the injured person, his duly authorized agent, or his legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate or by any other person legally entitled to assert such a claim under applicable state law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the insurer or the insured individually, as their respective interests appear, or jointly. Whenever an insurer presents a claim asserting the rights of a subrogee, he shall present with his claim appropriate evidence that he has the rights of a subrogee.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

**§ 35.4 Administrative claims; evidence and information to be submitted.**

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his death.

(4) Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of his death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payments for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the damages claimed.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed or designated by the Department. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request provided that claimant has, upon request, furnished the report referred to in the first sentence of this subparagraph and has made or agrees to make available to the Department any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of his claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected duration of and expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his employer showing actual time lost from employment, whether he is a full or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for damage to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, market value of the property as of date of damage, and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing either on the responsibility of the United States for the injury to or loss of property or the damages claimed.

(d) *Time limit.* All evidence required to be submitted by this section shall be furnished by the claimant within a reasonable time. Failure of a claimant to furnish evidence necessary to a determination of his claim within three months after a request therefor has been mailed to his last known address may be deemed an abandonment of the claim. The claim may be thereupon disallowed.

**§ 35.5 Investigation of claims.**

When a claim is received, the Department will make such investigation as may be necessary or appropriate for a determination of the validity of the claim.

**§ 35.6 Final denial of claim.**

(a) Final denial of an administrative claim shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the Department's action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

(b) Prior to the commencement of suit and prior to the expiration of the 6-month period after the date of mailing, by certified or registered mail of notice of final denial of the claim as provided in 28 U.S.C. 2401(b), a claimant, his duly authorized agent, or legal representative, may file a written request with the Department for reconsideration of a final denial of a claim under paragraph (a) of this section. Upon the timely filing of a request for reconsideration the Department shall have 6 months from the date of filing in which to make a final disposition of the claim and the claimant's option under 28 U.S.C. 2675(a) to bring suit shall not accrue until 6 months after the filing of a request for reconsideration. Final Department action on a request for reconsideration shall be effected in accordance with the provisions of paragraph (a) of this section.

**§ 35.7 Payment of approved claims.**

(a) Upon allowance of his claim, claimant or his duly authorized agent shall sign the voucher for payment, Standard Form 1145, before payment is made.

(b) When the claimant is represented by an attorney, the voucher for payment

(SF 1145) shall designate both the claimant and his attorney as "payees." The check shall be delivered to the attorney whose address shall appear on the voucher.

**§ 35.8 Release.**

Acceptance by the claimant, his agent or legal representative, of any award, compromise or settlement made hereunder, shall be final and conclusive on the claimant, his agent or legal representative and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

**§ 35.9 Penalties.**

A person who files a false claim or makes a false or fraudulent statement in a claim against the United States may be liable to a fine of not more than $10,000 or to imprisonment of not more than 5 years, or both (18 U.S.C. 287,1001), and, in addition, to a forfeiture of $2,000 and a penalty of double the loss or damage sustained by the United States (31 U.S.C. 231).

**§ 35.10 Limitation on Department's authority.**

(a) An award, compromise or settlement of a claim hereunder in excess of $25,000 shall be effected only with the prior written approval of the Attorney General or his designee. For the purposes of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised or settled hereunder only after consultation with the Department of Justice when, in the opinion of the Department:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and the Department is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $25,000.

(c) An administrative claim may be adjusted, determined, compromised or settled only after consultation with the Department of Justice when it is learned that the United States or an employee, agent or cost plus contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

## PART 50—U.S. EXCHANGE VISITOR PROGRAM—REQUEST FOR WAIVER OF THE TWO-YEAR FOREIGN RESIDENCE REQUIREMENT

Sec.

50.1 Authority.
50.2 Exchange Visitor Waiver Review Board.
50.3 Policy.
50.4 Procedure for submission of application to ED.
50.5 Personal hardship, persecution and visa extension considerations.
50.6 Release from foreign government.

Authority: 75 Stat. 527, 22 U.S.C. 2451 et seq.; 84 Stat. 116, 8 U.S.C. 1182(e).

**§ 50.1 Authority.**

Under the authority of the Mutual Educational and Cultural Exchange Act of 1961 (75 Stat. 527) and the Immigration and Nationality Act as amended (84 Stat. 116), the Department of Education is an "interested United States Government agency" with the authority to submit requests through the Department of State to the Attorney General for the waiver of the two-year foreign residence requirement for exchange visitors under the Mutual Educational and Cultural Exchange Program.

**§ 50.2 Exchange Visitor Waiver Review Board.**

(a) *Establishment.* The Exchange Visitor Waiver Review Board is established for the purpose of carrying out the Department's responsibilities under the Exchange Visitor Program.

(b) *Functions.* The Exchange Visitor Waiver Review Board is responsible for making thorough and equitable evaluations of applications for waiver submitted to the Department and for rendering recommendations to the Department of State on such applications on behalf of the Secretary.

(c) *Membership.* The Exchange Visitor Waiver Review Board consists of not less than five members, of whom no less than three shall consider any particular application. The Secretary designates an ex officio member of the Board who serves as Chairman of the Board. The Chairman may designate a staff member of the Office of the Secretary to serve as member and Chairman in his absence. Two regularly assigned members are appointed by the Secretary. When, in the Board's judgment, it is required, the Board may obtain expert advisory opinion from other sources.

**§ 50.3 Policy.**

(a) *Criteria and information pertaining to waivers.* The Department of Education has a stringent and restrictive policy with respect to requesting waivers for foreign visitors under the exchange visitor program. Each case is evaluated individually on the basis of the facts available. The general criteria which are applied are:

(1) The program or activity of the applicant institution or organization in which the exchange visitor is employed must be of high priority and significance in an area of interest to the Department. The Waiver Review Board will not request a waiver when the documentation clearly demonstrates that the problem is primarily one of recruitment in order to overcome a local community or institutional manpower shortage, however serious.

(2) The exchange visitor must be needed as an integral part of the program or activity, or of an essential component thereof. The Board will not request a waiver when the principal problem appears to be one of administrative or program inconvenience to the institution or other employer.

(3) The exchange visitor must possess outstanding qualifications, training, and experience. The Board will not request a waiver simply because an individual has specialized training or experience or is occupying a senior staff position in a university or other institution.

(b) *Waivers for members of exchange visitor's family.* (1) Where a decision is made to request a waiver for an exchange visitor, a waiver will also be requested for the spouse and children, if any, if they are also subject to the foreign residence requirement.

(2) In cases of married couples where one spouse is an exchange visitor, the subject of a waiver application, and the other is a citizen of the United States or resident alien, a waiver will be requested for the exchange visitor if either spouse is found to meet the strict criteria given above.

**§ 50.4 Procedure for submission of application to ED.**

(a) The applicant institution (educational institution, corporation, etc.) should send a completed application to the Exchange Visitor Waiver Review Board, Department of Education, Washington, D.C. 20202. Application forms and information may be obtained from the Executive Secretary. The application must be signed by an authorized official of the applicant institution. The information should describe in detail the

circumstances of the case involved. This should include but not be limited to:

(1) A complete description of the program or activity in which the exchange visitor is engaged; including factual evidence of the way in which the program or activity serves the national or international public interest.

(2) His or her relationship to the program, particular contribution, and other responsibilities, if any.

(3) The probable future of the program if the waiver is not granted; including specific evidence showing how the loss of the exchange visitor's services would seriously restrain the initiation, continuation, completion, or success of the program or activity, or a major part thereof.

(4) The applicant institution's longrange plans for the exchange visitor, and ways in which the visitor will contribute in the future to the activities in which he or she is employed.

(5) Specific evidence of a demonstrated unique capability of the exchange visitor to make essential contributions to the program or activity over a long period of time.

(6) The exchange visitor's curriculum vitae, bibliography, data and place of birth, present citizenship, date and port of entry and current address.

(7) Any other facts considered germane.

(b) Since the formal filing of an application for waiver with the Immigration and Naturalization Service automatically terminates the applicant's exchange visitor status, it is permissible to obtain the decision of the Exchange Visitor Waiver Review Board before filing with the Immigration and Naturalization Service.

**§ 50.5 Personal hardship, persecution and visa extension considerations.**

(a) The Department is not responsible for considering applications for waivers based on:

(1) Exceptional hardship to the exchange visitor's American or legally resident alien spouse or child; or

(2) The alien's unwillingness to return to the country of his/her nationality or last residence on the grounds that he/she or family members would be subject to persecution on account of race, religion or political opinion.

(b) Likewise, this Department is not responsible for considering requests for extension of visa.

(c) Inquiries concerning the above should be directed to the District Office of the Immigration and Naturalization Service which has jurisdiction over the exchange visitor's place of residence in the U.S.

**§ 50.6 Release from foreign government.**

The Department of State has the responsibility to consider applications for waivers which are based on a notification from the exchange visitor's country that it has no objection to a waiver (22 CFR 63.31).

## PART 63—TELECOMMUNICATIONS DEMONSTRATION PROGRAM

### Subpart A—General

Sec.

63.1 Purpose and scope.
63.2 Eligibility for award.
63.6 *Evaluation of applications.*
63.8 Supplemental Regulations.

### Subpart B—Financial Provisions

63.23 Telecommunications Demonstration Grants.

Authority: Title III, Part IV-A of the Communications Act of 1934 (47 U.S.C. 390).

### Subpart A—General

**§ 63.1 Purpose and scope.**

(a) *Applicability.* The regulations in this part apply to the Telecommunications Demonstration Program under Section 392A of the Communications Act of 1934.

(b) *Exceptions to applicability.* The award and administration of contracts shall not be covered by this part. Contracts entered into shall be subject to the regulations in 41 CFR Chapters 1 and 34.

(c) *Objectives*—The overall objective of the Telecommunications Demonstration Program is to promote the development of nonbroadcast telecommunications facilities and services for the transmission, distribution, and delivery of education information.

**§ 63.2 Eligibility for award.**

(a) *Groups and organizations eligible.* Except where otherwise prohibited by law, any public or nonprofit private agency, institution, or organization which is found by the Secretary to be authorized and qualified to carry out a proposed project in accordance with the regulations of this part shall be eligible to receive a grant under this part.

(b) *Project eligible*—Any projects which meet the special criteria in § 63.6(b) shall be eligible for a telecommunications demonstration grant.

**§ 63.6 Evaluation of applications.**

(a) *Review procedures.* All applications shall be evaluated by the Secretary with the following evaluation criteria in paragraph (b) of this section.

(b) *Criteria for Evaluation of Telecommunications Demonstrations Projects.* Review of applications for Telecommunications Demonstrations grants will take into account the factors listed in paragraphs (b) (1) through (10) of this section:

(1) That the project for which application is made demonstrates innovative methods or techniques of utilizing nonbroadcast telecommunications equipment or facilities to satisfy the purpose of this authority;

(2) That the project will have original research value which will demonstrate to other potential users that such methods or techniques are feasible and cost-effective;

(3) That the services to be provided are responsive to local needs as identified and assessed by the applicant;

(4) That the applicant has assessed existing telecommunications facilities (if any) in the proposed service area and explored their use of interconnection in conjunction with the project;

(5) That there is significant local commitment (e.g., evidence of support, participation, and contribution by local institutions and agencies) to the proposed project, indicating that it fulfills local needs, and gives some promise that operational systems will result from successful demonstrations and will be supported by service recipients or providers;

(6) That demonstrations and related activities assisted under this section will remain under the administration and control of the applicant;

(7) That the applicant has the managerial and technical capability to carry out the project for which the application is made;

(8) That the facilities and equipment acquired or developed pursuant to the applications will be used substantially for the transmission, distribution, and delivery of education information, and that use of such facilities and equipment may be shared among these and additional public or other services;

(9) That the provision has been made to submit a summary and factual evaluation of the results of the demonstration at least annually for each year in which funds are received, in the form of a report suitable for dissemination to groups representative of national education, telecommunications interests; and,

(10) That the project has potential for stimulating cooperation and sharing among institutions and agencies, both within and across disciplines.

(c) *Applicant's performance on prior award.* Where the applicant has previously received an award from the Department of Education, the applicant's compliance or

noncompliance with requirements applicable to such prior award as reflected in past written evaluation reports, memoranda on performance, and completeness of required submissions: *Provided,* That in any case where the Secretary proposes to deny assistance based upon the applicant's noncompliance with requirements applicable to a prior award, he shall do so only after affording the applicant reasonable notice and an opportunity to rebut the proposed basis for denial of assistance.

**§ 63.8 Supplemental Regulations.**

Federal financial assistance provided under this part shall be subject to 45 CFR Parts 100a and 100c, the general administrative requirements for grants by the Department of Education.

## Subpart B—Financial Provisions

**§ 63.23 Telecommunications Demonstration Grants.**

(a) Funds provided under the Telecommunications Demonstrations Program shall be available to support the planning, development, and acquisition or leasing of facilities and equipment necessary to the demonstration. However, funds shall not be available for the construction, remodeling, or repair of structures to house facilities or equipment acquired or developed with such funds, except that such funds may be used for minor remodeling which is necessary for and incident to the installation of such facilities or equipment.

(b) Funds shall not be available for the development of programming materials or content.

(c) The use of equipment in demonstration projects shall be subject to the rules and regulations of the Federal Communications Commission (FCC), and grant funds may not be expended or obligated for purchase, lease, or use of such equipment prior to appropriate and necessary coordination by the grantee with the Commission. In particular:

(1) For any project requiring a new or modification of an existing authorization(s) from the FCC, application(s) to the FCC for such authorization(s) must have been tendered for filing prior to the closing date established by any solicitation for grant applications offered under the Telecommunications Demonstration Program.

(2) If the project is to be associated with an existing telecommunications activity requiring an FCC authorization, such operating authority for that activity must be current and valid.

(3) For any project requiring a new or modification of an existing authorization(s) from the FCC, the applicant must file with the Secretary of Education a copy of each FCC application and any amendments thereto.

(4) For any project requiring a new or modification of an existing authorization(s) from the FCC, the applicant must tender for filing with the FCC a copy of the application to the Secretary for a telecommunications demonstration grant.

(5) If the applicant fails to file required applications by the closing date established for grant applications, or if the FCC returns as substantially incomplete or deficient, dismisses, or denies an application required for the project, or any part thereof, or for the operation of any facility with which the project is associated, the Secretary may return the application for Federal assistance.

(d) For the purposes of this program, the term "non-broadcast telecommunications facilities" includes but is not limited to, cable television systems, communications satellite systems and related terminal equipment, and other methods of transmitting, emitting, or receiving images and sounds or intelligence by means of wire, radio, optical, electromagnetic, and other means (including non-broadcast utilization of telecommunications equipment normally associated with broadcasting use).

# PART 64—MUSEUM SERVICES PROGRAM

Sec.

64.1 Purpose of museum services program.
64.2 Scope of this document.
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64.4 Other definitions.
64.5 Eligibility—who may apply.
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64.18 Applicable grant administration provisions.
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Authority: Secs. 201–210, Pub. L. 94–462 (20 U.S.C. 961–68)

**§ 64.1 Purpose of museum services program.**

The purpose of this program of Federal financial assistance is to ease the financial burden borne by museums as a result of their increasing use by the public and to encourage and assist them to carry out their educational and conservation roles as well as other functions and to modernize their methods and facilities.

**§ 64.2 Scope of this document.**

This document sets forth rules for the award of grants to museums from funds appropriated under the Museum Services Act including rules governing the eligibility of applicant institutions, the type of assistance which may be provided, requirements which applicants must meet and criteria to be used in judging applications.

**§ 64.3 Definition of museum.**

(a) As used in this document, "museum" means a public or private nonprofit institution which is organized on a permanent basis for essentially educational or aesthetic purposes and which, using a professional staff:

(1) Owns or uses tangible objects, whether animate or inanimate;

(2) Cares for these objects; and

(3) Exhibits them to the public on a regular basis.

(b) As used in this document, the term "museum" includes (but is not limited to) the following institutions if they satisfy the provisions of this section:

(1) Aquariums and zoological parks;

(2) Botanical gardens and arboreta;

(3) Museums relating to art, history (including historic building museums), natural history, science and technology; and

(4) Planetariums.

(c) For the purposes of this section, an institution uses a professional staff if it employs at least one staff member, whether paid or unpaid, who devotes his or her time primarily to the acquisition, care, or exhibition to the public of objects owned or used by the institution. The Institute encourages museums to use paid professional staff.

(d) An institution does not exhibit objects to the public for the purposes of this section if the display or use of the objects is incidental to an overall purpose of the institution which is other than their exhibition to the public.

(e) An institution which exhibits objects it owns through other facilities exhibits objects to the public for the purposes of this section. See § 64.12(c).

**§ 64.4 Other definitions.**

The following other definitions apply in this document:

"Act" means the Museum Services Act, Title II of the Arts, Humanities and Cultural Affairs Act of 1976, Pub. L. 94-462 (20 U.S.C. 961-968).

"Applicant" means an institution which is eligible and applies for assistance under the Act and this document.

"Board" means the National Museum Services Board established under section 204 of the Act.

"Collection" includes objects owned, used or loaned by a museum as well as literary, archival and documentary resources required for the study and interpretation of these objects.

"Conservation" includes, but is not limited to, the following functions, as applied to animate as well as inanimate objects: Technical examination of materials, techniques, and conditions; provision, insofar as practicable, of optimum environmental conditions for housing, exhibition, monitoring, nurturing and transportation of objects; the physical treatment of objects for the purpose of stabilizing, conserving and preserving their condition, removal of inauthentic additions or accretions, and compensation for losses; the systematizing of collections and development of effective data retrieval processes; research and training in conservation; and establishment of the facilities to do research in or practice conservation.

"Department" means the United States Department of Education.

"Director" means the Director of the Institute of Museum Services.

"Grantee" means the recipient of a grant under the Act.

"Institute" means the Institute of Museum Services ("IMS") established under section 203 of the Act.

"Museum services" means services provided by a museum including but not limited to preserving and maintaining its collections, exhibiting its collections to the public, and providing educational and other programs to the public through the use of its collections and other resources.

**§ 64.5 Eligibility—who may apply.**

A museum located in the fifty States of the Union, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands may apply for a grant under the Act. A public or private nonprofit agency, such as a municipality, college, or university, which is responsible for the operation of a museum may apply on behalf of the museum. A museum operated by a department or agency of the Federal Government may apply only to the extent authorized by general principles of law applicable to the receipt of Federal assistance by these departments or agencies.

**§ 64.6 Joint submissions.**

Two or more museums may submit a joint application for a grant under the Act.

**§ 64.7 General operational support.**

In order to maintain, increase or improve museum services, a museum may apply for a grant under the Act to meet its administrative, staff and operating costs.

**§ 64.8 Other types of assistance—project support.**

(a) In order to increase or improve museum services through projects which are additional to its operating program, a museum may apply for a grant to:

(1) Develop training programs for its staff;

(2) Obtain technical assistance to carry out its functions or provide technical assistance to other museums;

(3) Develop or demonstrate methods of conservation;

(4) Develop and carry out museum programs for specific segments of the public, such as persons in urban neighborhoods, rural areas, Indian reservations, penal and other State institutions, senior citizens, handicapped persons and educationally deprived or economically disadvantaged persons;

(5) Develop and carry out exemplary educational programs;

(6) Cooperate with other museums in developing traveling exhibitions, meeting transportation costs for these exhibitions, and identifying and locating collections available for loan; and

(7) Modernize or preserve its facilities or structures (except in fiscal years 1978 and 1979).

(b) By notice published in the Federal Register and applicable to a particular fiscal year, IMS may limit the types of activities to be funded under this section.

(c) An applicant may apply for one or more types of assistance under § 64.7 and this section.

**§ 64.9 Likely size of grants and allocation of funds among activities.**

(a) In view of limited funds, it is anticipated that no museum will receive more than $25,000 under the Act for fiscal year 1978 and that most museums which are funded will receive a smaller amount. For future fiscal years, similar limitations may be specified by notice published in the Federal Register.

(b) Not less than 75 percent of the funds available under the Act for grants in a fiscal year will be reserved for grants under § 64.7 (general operational support).

**§ 64.10 Allowable costs.**

(a) Determinations of costs allowable under a grant are made in accordance with government wide cost principles in Appendix C to 34 CFR Part 74 (in the case of applicants which are State or local government agencies), Appendix D (in the case of applicants which are institutions of postsecondary education), and Appendix F (in the case of applicants which are other nonprofit institutions).

(b) Costs of purchasing objects to be included in the collection of a museum are not allowable (except library, literary or archival material incident to an activity under § 64.7 or § 64.8).

**§ 64.11 Basic requirements which a museum must meet to be considered for funding.**

(a) *Application.* To apply for a grant, a museum must submit the designated application form containing the information requested in the form. Instructions as to application contents are generally contained in the program announcement published in the Federal Register when applications are invited. (For fiscal year 1978, they are contained in § 64.11 of the proposed regulations. 43 FR 13012).

(b) *IRS letter.* A museum applying as a private, nonprofit institution must supply a letter from the Internal Revenue Service indicating the applicant's eligibility for nonprofit status under section 501(c)(3) of the Internal Revenue Code of 1954.

(c) *Financial statements.* Each applicant museum must supply a financial statement for the museum's most recent completed fiscal year for which information is available (an audited statement is preferred; if the applicant has previously received an IMS Award, the statement must be audited).

(d) *Long range plan.* Each applicant museum must have a long range plan for program and financial development.

(e) *Maintenance of effort.* Each applicant museum must assure that it will maintain its fiscal effort for museum services. An applicant complies with this assurance if its aggregate expenditures for museum services (exclusive of Federal assistance) for the grant period are at least equal to those expenditures for the equivalent preceding period.

**§ 64.12 How applications are judged; priorities.**

(a) To select grantees and determine the amount of their awards, IMS rates competitive applications under the applicable criteria stated in §§ 64.13 and 64.14. Normally, these applications are first evaluated by readers, panels of experts, or both. Final determinations as to the award of grants are made by the Director after review by the Board.

(b) Priority is given to museums which have been providing museum services for at least 2 years prior to applying to IMS.

(c) In the case of applications for general operational support made after September 30, 1978, priority is given to museums which have exhibition facilities.

(d) To achieve diversity in the distribution of assistance, the Institute considers the location, size, and category of the applicant in addition to the criteria in §§ 64.13 and 64.14.

**§ 64.13 Criteria for evaluation of applications for general operational support.**

The following criteria apply to the evaluation of all applications for general operational support submitted in fiscal year 1979 and succeeding fiscal years. In applying these criteria, the total operation of the applicant museum is assessed, especially the museum's operation as it would be if the general operational support is granted. This assessment is based primarily on the information supplied in the museum's application. A positive answer to the questions below favors the applicant.

(a) *Museum services.* Are the applicant's museum services of high quality? How will their quality be improved by the general operational support requested?

(b) *Collection and exhibits.* Are the museum's collections and exhibits of high quality and importance? How will the conservation of the collections be enhanced if the general operational support is granted?

(c) *Accessibility.* How accessible to the public are the museum's services, collections, and exhibits? How accessible will they be if the general operational support is granted?

(d) *Population served.* To what extent does the museum serve persons who otherwise have limited access to the type of services which it provides?

(e) *Financial management.* What is the quality of the financial management of the museum?

(f) *Long range plans.* What is the quality of the museum's long range plans for financial and program development?

(g) *Community commitment.* How committed to the museum are its users and supporters? Does the museum have a substantial base of non-Federal support?

(h) *Use of IMS Funds (when applicable).* Has the museum used effectively its IMS funds, if it has received any?

**§ 64.14 Criteria for evaluation of applications for project support.**

The following criteria apply to the evaluation of all applications for project support submitted in fiscal year 1979 and succeeding fiscal years.

(a) To what extent does the application address a problem which is general to a number of museums but has not been adequately addressed?

(b) To what extent does the project represent a model or exemplary approach to the problem addressed? To what extent may this approach, if successful, be replicated?

(c) What is the quality of the project as measured by:

(1) The qualifications and experience of personnel designated to carry it out;

(2) The appropriateness of size and scope of the project to achieve productive results; and

(3) The reasonableness of estimated cost in relation to anticipated results?

(d) How sound is the project, taking into account:

(1) The extent to which the objectives of the project are sharply defined, clearly stated and capable of being achieved by the proposed procedures; and

(2) The extent to which provision is made for adequate evaluation of the project and for disseminating the results of the project to other interested persons.

(e) Does the applicant lack alternative sources of Federal support for the project?

**§ 64.15 Duration of grant.**

Grants under the Act normally permit the grantee to use the funds for a period of up to 12 months from the start of the grant period. The grantee may use grant funds during the period specified in the grant document unless the grant is suspended or terminated. If, in the case of a grant under § 64.8, the grantee needs additional time to complete the grant project the grantee may apply for an extension of the grant period without additional funds. The Director may approve this extension at his or her discretion. In exceptional cases, applicants may receive grants for multi-year projects in accordance with applicable procedures of the Department.

**§ 64.16 IMS share of the cost of a proposal.**

(a) Subject to § 64.9(a) and the applicable requirements in 34 CFR part 74 relating to allowable costs, a museum may receive a grant for up to 50 percent of its proposed operating or activity budget for museum services in the case of a grant under § 64.7, or up to 50 percent of its approved project costs, in the case of a grant under § 64.8. In exceptional cases, when clearly justified under the criteria in § 64.17, a museum may receive a grant for an amount in excess of this 50 percent of limitation. No more than 20 percent of funds appropriated for grants under the Act for a fiscal year may be used by IMS for grants in that fiscal year which exceed the 50 percent limitation.

(b) An applicant requesting general operational support under § 64.7 may submit a total operating budget which shows that the applicant will satisfy the requirements of paragraph (a) (relating to cost sharing) but which need not identify the particular operating costs for which IMS funds will be used. An applicant which receives general operational support on this basis must be prepared to show that its actual operation generally conformed to the operating proposal on which its application was judged.

(c) Examples include: (1) Museum X has an operating budget of $100,000. After assessing its program; Museum X concludes that adequate performance of museum services, including the exhibition of its collection to the public for an additional day each week, requires an operating budget of $120,000. Museum X applies for $20,000 of general operational support under § 64.7 to partially support this budget. Its total operating budget includes more than $40,000 of costs which are considered allowable under applicable cost principles in 34 CFR part 74. Museum X's application for $20,000 is eligible for consideration.

(2) Museum Y applies for funding a staff member for a conservation laboratory and for costs incidental to developing a new method of paper conservation. The total cost of the project is $25,000. Museum Y applies for $12,500 to cover this cost. It undertakes to furnish the other $12,500 from non-Federal sources. Its application may be considered.

**§ 64.17 Criteria for applying exceptions.**

In determining whether a proposal which has been selected for an award qualifies for Federal funds in excess of the 50 percent limitation described in § 64.16, the Director applies the following criteria:

(a) The financial condition of the museum to be assisted;

(b) The inability of the museum to obtain other funds due to factors beyond its control;

(c) The quality of the proposal;

(d) The quality of the museum's collection; and

(e) The extent to which the museum serves populations otherwise unserved by museums.

**§ 64.18 Applicable grant administration provisions.**

The provisions of Part 74 of title 34 CFR (34 CFR Part 74) and related appendices apply to the award and administration of grants under the Act. Part 74 contains general rules about fiscal and administrative matters pertaining to grants awarded by the Department, including rules about retaining records, accounting for grant-related income, cost sharing (including rules for valuation of in-kind contributions), grantee financial management systems, fiscal and performance reports, grant payment requirements, budget revisions, grant closeout, suspension and termination of a grant, preapplication and application forms, standards for procurement under grants and other pertinent matters.

**§ 64.19 Reports.**

In its final report submitted under § 74.82 of title 34, a grantee shall briefly describe how the performance of the grant has satisifed the objectives of the recipient museum as stated in its application and how assistance under the Act has served the purpose of the Act as reflected in the applicable evaluation criteria.

**§ 64.20 Applicable civil rights requirements.**

Federal financial assistance under the Act is subject to:

(a) Title VI of the Civil Rights Act of 1964 (relating to discrimination on the basis of race) and accompanying regulations (34 CFR Part 100);

(b) Title IX of the Education Amendments of 1972 (relating to discrimination on the basis of sex) and accompanying regulations (34 CFR Part 106);

(c) Section 504 of the Rehabilitation Act of 1973 (relating to discrimination on the basis of handicap) and accompanying regulations (34 CFR Part 104).

(The Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20202, sells copies of the volume of 34 CFR containing these parts and Part 74; it is also available in Federal depository libraries.)

## PART 67—STUDENT LOAN MARKETING ASSOCIATION—ISSUANCE AND TRANSFER OF COMMON STOCK

Sec.

67.1 Purpose and scope.
67.2 Definitions.
67.3 Initial issuance of common stock.
67.4 Subsequent transfer of common stock.
67.5 Registration of common stock.

Authority: Sec. 439(f), Higher Education Act of 1965 as added by sec. 133, Pub. L. 92-318, 86 Stat. 265 (20 U.S.C. 1087-2).

**§ 67.1 Purpose and scope.**

The purpose of the regulations published under this part is to prescribe the class of institutions and organizations that may acquire the common stock of the Association. The regulations deal with both the initial issuance of such stock and its subsequent transfer but are not to be deemed as exhaustive of the Secretary's authority to issue regulations pursuant to section 439 of the Higher Education Act of 1965. The sections that follow are intended to facilitate the broadest possible distribution of the common stock of the Association among lenders and educational institutions participating in or eligible to participate in programs of guaranteed student loans authorized by part B of title IV of the Higher Education Act of 1965.

**§ 67.2 Definitions.**

As used in this part—

"Act" means title IV, part B of the Higher Education Act of 1965, as amended (20 U.S.C. 1071-1087-2).

"Eligible holder" means (a) an eligible lender and (b) an eligible institution as defined in this part.

"Eligible institution" means an institution of higher education or vocational school which meets the applicable requirements of sections 435(b)-(f) of the Act.

"Eligible lender" means a financial or credit institution or other organization which (a) is party to a contract of insurance pursuant to the Act with the Secretary (b) is otherwise found by the Secretary to be an "eligible lender" under the Act, or (c) is a party to a contract of insurance with a State or a nonprofit private agency under a student loan insurance program covered by an agreement with the Secretary under section 428(b) of the Act.

"Secretary" means the Secretary of Education.

"Student Loan Marketing Association" or "Association" means the Government sponsored private corporation established by section 439 of the Act (20 U.S.C. 1087-2) for the purpose of serving as a secondary market and warehousing facility for loans to vocational students and students in institutions of higher education which have been insured pursuant to Part 177 of this title.

**§ 67.3 Initial issuance of common stock.**

In order to effect any initial issuance of shares of common stock to eligible holders, the Association may enter into a contract or contracts with security underwriters, including banks ("underwriters"), under which the underwriters will purchase and take title to such shares for the purpose of distributing them directly or through selected security dealers, including banks, to eligible holders.

**§ 67.4 Subsequent transfer of common stock.**

Any shares of common stock that have been acquired by an eligible holder may thereafter be sold and transferred only to other eligible holders or to security brokers and dealers who will acquire the shares of common stock for the purpose of making a secondary market in such shares or facilitating the sale and purchase of such shares by eligible holders.

**§ 67.5 Registration of common stock.**

Any institution or organization entitled to own shares of common stock under the provisions of this part may cause such shares of common stock as it owns to be registered on the books of the Association in its own name or, provided that the request for such registration is accompanied by evidence satisfactory to the Association that the owner is an eligible lender or an eligible institution, in the name of a nominee or in the name of a security broker or dealer, including a bank.

## PART 73—STANDARDS OF CONDUCT

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Authority: E.O. 11222 of May 8, 1965, 30 FR 6469, 3 CFR, 1965 Supp.; 5 CFR 735.104, unless otherwise noted.

## Subpart A—General Provisions

### § 73.735-101 Principles and purpose.

In order to assure that the business of this Department is conducted effectively, objectively and without improper influence or appearance thereof, all employees must be persons of integrity and observe unquestionable standards of behavior. An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government. An employee must avoid conflicts of his private interests with his public duties and responsibilities. Also, he must not do indirectly that which is improper for him to do directly. For example, members of his family may not accomplish for him that which he, himself, may not do. The propriety of any activity must be considered in relation to general ethical standards of the highest order. Certain standards are set by law. Others are set by regulation and by policy. This part references or discusses these standards and constitutes the Department's regulations on this subject. Failure to observe any of the regulations in this part is cause for disciplinary action.

### § 73.735-102 Applicability.

The regulations in this part apply to all officers and employees (including those in leave-without-pay status) of the Department, except that the regulations in this part apply to special Government employees only to the extent stated in Subpart L of this part. A special Government employee is defined by law as "* * * an officer or employee * * * who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties whether on a full-time or intermittent basis * * *."

### § 73.735-103 Responsibilities.

(a) Supervisors, because of their day-to-day relationships with employees, are responsible to a large degree for maintaining high standards of conduct. They must become familiar with the Department regulations and apply the standards to work they do and supervise. They shall inform new employees as they come on duty and make sure that all employees are kept aware of the regulations. Supervisors shall take suitable action, including disciplinary action in accordance with Subpart K of this part, when violations occur.

(b) Each employee shall be responsible for observing all generally accepted rules of conduct and the specific provisions of law and the regulations in this part. He shall secure approvals when required and file statements of outside work and financial interests as appropriate, as stated in this part. He is subject to discipline in accordance with Subpart K of this part, when he violates laws, rules or regulations on conduct or the ethical principles involved. When an employee has doubt about any provision, he shall consult his supervisor, the personnel office, the administrative office or the counselor or deputy counselor.

### § 73.735-104 Advice and guidance.

The following sources shall provide guidance and assistance as described on matters covered by the regulations in this part:

(a) Supervisors shall advise employees who come to them with questions on matters covered by the regulations in this part, or, as they consider appropriate, shall refer such questions to higher levels of management, the personnel office, or the counselor or deputy counselors who have been designated in accordance with paragraphs (b) and (c) of this section.

(b) The Secretary designates deputy counselors. Deputy counselors shall:

(1) Give authoritative advice and guidance when requested to employees, special Government employees, management officials and personnel offices within their areas of jurisdiction.

(2) Receive information on and attempt to resolve, or refer to the Department counselor, conflicts of interest or appearances of conflicts of interest in Statements of Employment and Financial Interests submitted by employees and special Government employees to whom they are required to

give advice and guidance, which are not resolved at lower levels.

(c) The Secretary designates a counselor for the Department. The counselor shall:

(1) Serve as the Department's designee to the Civil Service Commission on matters covered by the regulations in this part.

(2) Coordinate the Department's counseling services and assure that counseling and interpretations on questions of conflicts of interest and other matters covered by the regulations in this part are available as needed to deputy counselors.

(3) Render authoritative advice and guidance on matters covered by the regulations in this part which are presented to him by employees, special Government employees, and management or personnel offices in the Department.

(4) Receive information on and resolve or forward to the Secretary for consideration, conflicts or appearance of conflicts which appear in the Statements of Employment and Financial Interests submitted under Subpart J or Subpart L of this part, which are not resolved at a lower level.

(d) The names and addresses of the counselor and deputy counselors will be made available to employees by appropriate bulletins, circulars, or other releases of a current nature. Any employee may also obtain the name and address of his counselor or deputy counselor through his personnel office and may seek advice and guidance therefrom, either indirectly through his supervisory or the personnel office, or directly in person, by telephone, or by mail.

## Subpart B—Miscellaneous Statutory Provisions

### § 73.735-201 General.

Each employee and special Government employee shall acquaint himself with each statute that relates to his ethical and other conduct as an employee of the Department and the Government. These statutory provisions are referenced in Appendix A to this part and some are discussed at greater length in the various subparts of this part. The statutes will be made available for review upon the employee's request to the deputy counselor for his part of the Department or to the counselor.

## Subpart C—Gifts, Entertainment and Favors

### § 73.735-301 Accepting gifts and expenses from outside sources.

(a) Law provides that a Federal employee shall not accept anything of value for or because of any official act he has performed or will perform. (See criminal provisions in Appendix A of this part.) In this connection, an employee shall not solicit or accept directly or indirectly any gift, gratuity, favor, entertainment, loan or any other thing of monetary value from members of the public with whom he has official relationships, whether or not proffered for or because of any action or decision of the employee, such as from a person or organization that:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with his agency;

(2) Conducts operations or activities that are regulated by his agency; or

(3) Has interests that may be substantially affected by the performance or nonperformance of his official duties.

(b) The restrictions set forth in paragraph (a) of this section do not apply to:

(1) Obvious family or personal relationships such as those between the employee, his parents, children, or spouse, when the circumstances make it clear that those relationships rather than the business of the persons concerned are the motivating factors;

(2) The acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may be properly in attendance.

(3) The acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans.

(4) The acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(c) An employee may accept travel expenses from outside sources only when acceptance is approved in accordance with the provisions of the Department Travel Manual. The Travel Manual states restrictions in this connection: "Neither payment in cash nor services in kind may be accepted where an inspectional or administrative-supervisory relationship exists between the traveler and the non-Federal organization offering to pay his expenses. Examples are: staff of the Department who have responsibility for making grants to States, local governments, or institutions may not receive travel expenses in cash or kind from organizational segments of the States, local governments, or institutions to which the traveler has responsibility for making grants or assuring compliance with grant regulations; grant-in-aid auditors may not accept travel expenses in cash or kind from any organization which they have responsibility for auditing." An employee may not be reimbursed, or payment made in his behalf for excessive personal living expenses, gifts, entertainment or other personal benefits, nor be reimbursed by a person for travel or official business under agency orders when a reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967. Employees of this Department are authorized by section 211 of Public Law 85-67 (42 U.S.C. 3506) in connection with their attendance at meetings or in performing advisory services concerned with the functions or activities of the Department to accept payment in cash or in kind from non-Federal agencies, organizations, and individuals, for travel and subsistence expenses to cover the cost thereof as provided in the Department Travel Manual.

### § 73.735-302 Offers of gifts and expenses from outside sources.

Law provides criminal penalties for whoever directly or indirectly receives, gives, offers or promises anything of value for performance of or to influence the performance of an official act. (Item 2, Appendix A of this part.)

### § 73.735-303 Gifts to official superiors.

An employee shall not solicit contributions from another employee for a gift or make a donation as a gift to an employee in a superior official position. An employee in a superior official position shall not accept a gift presented as a contribution from employees receiving less salary than himself. (Item 24, Appendix A of this part.) However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

### § 73.735-304 Acceptance of awards.

(a) This subpart does not preclude an employee from accepting an award from a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit education and recreational, public service, or civic organization.

(b) An employee shall not accept a gift, present, decoration or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342 and 22 U.S.C. 2621, 2625.

**§ 73.735-305 Other prohibitions.**

An employee shall avoid any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

## Subpart D—Outside Employment

**§ 73.735-401 General provisions.**

(a) Outside employment may be appropriate when it will not adversely affect performance of an employee's official duties and will not reflect discredit on the Government or the Department. Such work may include civic, charitable, religious, and community undertakings. It may also include some paid or unpaid outside work which would contribute to technical or professional development. There are certain types of outside work, however, which give rise to a real or apparent conflict of interest. Some of these are prohibited by law as discussed in paragraph (b) of this section. Others are prohibited by Civil Service Regulation, as discussed in paragraph (c) of this section. All of these provisions are binding, but do not necessarily include all possible conflicts of interest. In all instances, good judgment must be used to insure scrupulous compliance with all provisions.

(b) Statutory provisions of Chapter 11 of title 18 of the United States Code (referenced in full in Appendix A of this part) which relate to outside work both during and after Government employment are reiterated below:

(1) An employee shall not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another (Items 3 and 4, Appendix A).

(2) A person shall not, at any time after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (Item 27, Appendix A).

(3) A person shall not, for 2 years after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility (but in which he may not have participated personally and substantially) during the last year of his Government service (Item 27, Appendix A).

(c) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his Government employment whether or not in violation of any specific provision of statute. Incompatible activities include, but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in any circumstances in which acceptance may result in, or create the appearance of, conflicts of interest;

(2) Outside employment which tends to impair his mental or physical capacity to perform his Government duties and responsibilities in an acceptable manner;

(3) Work which identifies the Department or any employee in his official capacity with any organization commercializing products relating to work conducted by the Department, or with any commercial advertising matter, or work performed under such circumstances as to give the impression that it is an official act of the Department or represents an official point of view;

(4) Outside work or activity that takes the employee's time and attention during his official work hours;

(d) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his services to the Government (Item 6, Appendix A). For example, a Department employee may be called upon, as a part of his official duties, to participate in a professional meeting sponsored by a non-Government organization, or to contribute a paper or other writing prepared on official time for publication under non-Government auspices. The employee must not accept an honorarium or fee for such services, even though the organization accepting the service customarily makes such a payment to those who participate. In some cases of this kind, the organization involved may indicate a desire or willingness to make a contribution to some charity, educational institution, or the like, in appreciation of the services furnished by the Department employee since he cannot accept the usual payment. Department standards require that all offers to make such a contribution be refused. No Department employee may suggest, or agree to a suggestion made by others, that such a contribution should be made. Any employee with whom such a question is raised shall explain that the service involved was provided as an official action of the Department and is authorized by law. Under these circumstances, it is inappropriate for any payment to be made, even indirectly and to a third party, for services which are furnished without charge by the Government.

(e) An employee who is a Presidential appointee covered by section 401(a) of Executive Order 11222 shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing or appearance, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of his agency, or which draws substantially on official data or ideas which have not or will not on request become part of the body of public information.

(f) Application of these general provisions to some specific activities is discussed in §§ 73.735-402 to 73.735-407.

**§ 73.735-402 Professional and consultative services.**

(a) Employees may engage in outside professional or consultative work only after meeting certain conditions. Except as provided in §§ 73.735-403, 73.735-404, and 73.735-405, the conditions which must be met are:

(1) The work is not to be rendered to organizations, institutions, or State or local governments with which the official duties of the employee are directly related, or indirectly related if the indirect relationship is significant enough to permit existence of conflict or apparent conflict of interest, and

(2) The work is not to be rendered for compensation to help institutions or government units prepare or aid in the preparation of grant applications, contract proposals, program reports, and other material which are designed to become the subject of dealings between the institutions or government units and the Federal Government. All requests to perform consultative services, both compensated and uncompensated, for institutions or government units which

have recently negotiated or may in the near future seek a contract or grant from the Federal Government must be carefully appraised to avoid any conflict or apparent conflict of interest.

(3) Advance administrative approval in accordance with Subpart I of this part must be obtained. Such approval is required whether or not the services are for compensation, and whether or not related to the employee's official duties.

(b) For the purpose of this section, "professional and consultative work" is work in occupations such as those listed in Appendix B to this part.

(c) Membership on a Board of Directors, Board of Regents, Board of Trustees, Planning Commission, Advisory Council, or Committee, or on any other body which provides advice, counsel, or consultation, shall be considered outside consultative services for which advance administrative approval is required.

**§ 73.735–403 Writing and editing.**

(a) *General.* Employees are encouraged to engage in outside writing and editing whether or not done for compensation, when such activity is not otherwise prohibited. Such writing and editing, though not a part of official duties, may be on a directly related subject or entirely unrelated. Certain conditions must be met in either case, however, and certain clearances or approvals are prescribed according to the content of the material as set forth in paragraphs (b) through (e) of this section.

(b) *Conditions applying to all writing and editing done not as a part of official duties.* All of the following conditions shall apply to all writing and editing whether related or unrelated to the employee's official duties:

(1) Government-financed time or supplies shall not be used by the author or by other Government employees in connection with the activity.

(2) Official support must not be expressed or implied in the material itself or advertising or promotional material, including book jackets and covers, relating to the employee and his contribution to the publication.

(3) Editing activities must not involve approval or disapproval of advertising matter.

(4) Advance administrative approval must be obtained if required by paragraph (f) of this section.

(c) *Additional conditions applying to writing and editing activities unrelated to the employee's official duties or other responsibilities and programs of the Federal Government.* In addition to observing the conditions in paragraph (b) of this section, the employee must either:

(1) Make no mention of his official title or affiliation with the Department, or

(2) Use his official title or affiliation with the Department in a way that will not suggest or convey official endorsement of the work.

(d) *Additional conditions applying to writing and editing activities related to the employee's official duties or other responsibilities and programs of the Federal Government.* In addition to observing the conditions in paragraph (b) of this section, the employee must either:

(1) Make no mention of his official title or affiliation with the Department, or

(2) Use his official title or affiliation with the Department and a disclaimer as provided in paragraph (e) of this section, or

(3) Submit his material to the Department for technical clearance and for clearance for publication. When technical clearance is denied at any lower level, the employee shall have recourse for review up to the Secretary. These two clearances by the Department will show there are no official objections to the activity and the employee may then use his official title or affiliation with the Department usually without a disclaimer. (Publications and Reports Bulletin No. 2, governs clearances necessary for writing and editing as a part of official duties.)

(e) *Disclaimers.* Disclaimers are required in writing and editing activities in accordance with the following provisions:

(1) Disclaimers shall be used in all writing and editing related to the employee's official duties or other responsibilities and programs of the Federal Government in which the employee identifies himself by official title or affiliation with the Department, except where requirement for disclaimer is waived as result of official clearance.

(2) Disclaimers shall be used in all writing and editing related to the employee's official position or other responsibilities or programs of the Federal Government, when the prominence of the employee or his position or other reason might lead the public to associate him with the Department, even without identification other than name.

(3) Disclaimers shall read as follows unless a different wording is approved: "This (article, book, etc.) was (written, edited) by (employee's name) in his private capacity. No official support or endorsement by the Department of Education is intended or should be inferred."

(f) *Advance approval.* Advance approval is required in accordance with Sub-part I of this part when one or more of the following conditions apply:

(1) Any Government information is used which is not available on request to persons outside the Government;

(2) Material is written or edited which pertains to subject matter directly related to an employee's official duties. (This includes editing for scientific or professional journals which is related to his official duties.)

(3) Material is written or edited which pertains to any Government-sponsored research or other studies for which material of a confidential nature is used or to which access is limited for persons outside the Government. Such use will not be permitted unless made under safeguards established by the Department to retain the confidentiality of the material and such use is determined to be in the public interest.

(4) Material is edited for publications organized for profit.

**§ 73.735–404 Publishing.**

Employees are encouraged to engage in publishing activities which are not part of their official duties, when all the following conditions are met:

(a) No financial profit is derived from publishing materials which are made available to the general public by this Department or which are available to the employee because of his official duties, but are not available to the general public.

(b) No financial profit is sought or derived from publishing proceedings or similar compilations of conferences, symposia, or similar gatherings:

(1) Which are sponsored by the Government, or

(2) Which involve the performance of official duties, or are directly related to official duties, or

(3) Where participation or attendance has been authorized on Government time.

(c) The publishing activities are conducted on non-Government time at no expense to the Government.

(d) The official title of the individual engaged in such publishing business is not used. If the individual is the author as well as the publisher, the provisions referred to under § 73.735–403 apply.

**§ 73.735–405 Teaching, lecturing, and speechmaking.**

(a) *Conditions that must be met.* Employees are encouraged to engage in teaching and lecturing activities which are not part of their official duties when certain conditions are met. These

conditions, which apply to outside teaching and lecturing (including giving single addresses such as commencement and Memorial Day speeches) whether or not done for compensation, are:

(1) No Government-financed time is used in connection with such activity, nor Government supplies which are not otherwise available to the public;

(2) Government travel or per diem funds are not used for obtaining or performing such teaching or lecturing;

(3) Such teaching or lecturing is not dependent on specific information which would not otherwise be available to the public;

(4) Teaching, lecturing, or writing may not be for the purpose of the special preparation of a person or class of persons for an examination of the Civil Service Commission or Board of Examiners for the Foreign Service, that depends on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the Secretary gives written authorization for use of nonpublic information on the basis that the use is in the public interest.

(5) Such activities do not involve knowingly instructing persons on dealing with specific matters pending before Government organizations with which the employee is associated in an official capacity;

(6) Advance approval is obtained when required by paragraph (b) of this section.

(b) *Advance approval.* Advance approval must be obtained in accordance with Subpart I of this part before an employee may:

(1) Teach or lecture for an institution which has or is likely to have official dealings with the Department in which he is employed;

(2) Use, for teaching or lecturing purposes, clinical case records or other material of a confidential nature or to which access is limited for persons outside the Government. Such use will not be permitted unless made under safeguards established by the Department to retain the confidentiality of the material and such use is determined to be in the public interest.

### § 73.735-406 Holding office in professional societies.

(a) Employees may be members of professional societies and be elected or appointed to office in such a society. Activity in professional associations is generally desirable from the point of view of both the Department and the employee. Employees shall avoid, however, any real or apparent conflict of interest in connection with such membership. For example, they must not:

(1) Directly or indirectly commit the Department or any portion of it on any matter;

(2) Permit their names to be attached to documents the distribution of which would be likely to embarrass the Department;

(3) Serve in capacities involving them as representatives of non-Government organizations in dealing with the Government.

(b) In undertaking any office or function beyond ordinary membership in a professional association, a Department employee must obtain advance approval in accordance with Subpart I of this part in any situation in which his responsibilities as an officer would create a real or apparent conflict of interest with his responsibilities as a Department employee. For example, advance administrative approval must be obtained:

(1) Before an employee who is responsible for review and approval of grants or contracts, or is in a supervisory position over those who conduct review and approval, may hold office, or be a trustee or member of the governing board, or the chairman or member of a committee, in any organization which has or is seeking a grant or contract with the operating agency in which he is employed;

(2) Before an employee may hold office in an organization which customarily expresses publicly views on matters of legislative or administrative policy within the areas of concern to the Department.

### § 73.735-407 Holding office under State or local government.

An employee may hold State or local office if it is compatible with his Federal employment in terms of the same criteria as for other private employment. Approval for outside employment with a State or local government may be given orally by the immediate supervisor of the employee unless written approval or approval at a higher level is required by Subpart I of this part, or as deemed desirable by the employee or his supervisor because of the nature of the part-time work.

## Subpart E—Financial Interests

### § 73.735-501 General provisions.

(a) An employee shall not have a direct or indirect financial interest that conflicts substantially or appears to conflict substantially with his Government duties and responsibilities. He shall not participate in his Government capacity in any matter in which he, his spouse, his minor child, or an outside business associate or organization (profit or non-profit) with which he is connected or is negotiating employment has a financial interest (Item 5, Appendix A). The indirect interest in business entities which the holder of shares in a widely held diversified mutual fund or other regulated investment company derives from ownership by the fund or regulated investment company of stocks in business entities is exempted from the provisions of this statutory provision as being too remote or inconsequential to affect the integrity of an officer's or employee's services, except as provided in paragraph (b) (1) and (2) of this section. In other cases, when the outside financial interest appears not substantial enough to have an effect on the integrity of his official services, the employee shall, each time a matter arises to which his financial interest relates, request administrative approval to participate in accordance with Subpart I of this part.

(b) An employee shall not engage directly or indirectly in financial transactions as a result of, or primarily relying on information obtained through his employment. For example:

(1) An employee shall not use official information not available to the public, on such matters as a successful bid on a contract, or planned Government actions for speculative stock purchases, or stock investment.

(2) An employee shall not use official information not available to the public, on the prospective location of a new Government installation to gain financial advantage in the purchase of real estate.

(3) An employee shall not use official information not available to the public, to inform friends, neighbors, etc., so they may use it for speculative or investment purposes.

### § 73.735-502 Employees in regulatory, procurement and contracting activities.

(a) Employees in procurement and contracting activities are prohibited from having certain types of financial interests, as stated below. The term "employee" as used here, includes line supervisory officials in the upward chain of authority and staff officials who advise supervisory officials.

(b) An employee who serves as a procurement or contracting officer or whose duties include authority to recommend or prepare specifications, negotiate noncompetitive contracts, or evaluate bids, shall not have financial interests in companies with which his office has any significant procurement

or contracting relationship. An insignificant relationship exists only when all the following conditions are met: (1) the company is one with which the employee would rarely or never do official business; (2) such business as he would do with the company is with respect to items of a standard type on the basis of competitive bids or regulated prices, as for utility services; and (3) the amount of the financial interest is very small in relation to the size of the company. Such an employee may not hold shares in a mutual fund or other regulated investment company that specializes in holdings in industries with which his office has any significant procurement or contracting relationship.

(c) An employee who has a direct or indirect financial interest that would be prohibited except that he believes it to be relatively "insignificant" in terms of the discussions in paragraph (b) of this section should request approval for retention by discussing the matter with his supervisor. If the supervisor approves the retention, the fact concerning such financial interest should be recorded. An employee who retains such an approved financial interest must disqualify himself from participating in his Government capacity if a matter arises involving the organization in which he has such interest. If in a special situation an exception to this rule appears desirable, administrative approval must be obtained in accordance with Subpart I of this part. Such approval extends only to the specific situation and may not be interpreted as extending to other situations, even though involving the same outside organization or similar official activities.

**§ 73.735-503 Disposition of financial interest.**

An employee who is newly assigned to a position in which the holding of stock or other financial interests is prohibited shall liquidate his interests within 90 days of entrance on duty in such position.

**§ 73.735-504 Exceptions.**

If any situation arises in which it would appear to be contrary to the best interests of the Government, or cause extreme and undue hardship to an individual to apply strictly the policies set forth in this subpart, a request for exception should be forwarded through supervisory channels to the counselor or deputy counselor for his part of the Department, for review and recommendation to the Secretary.

## Subpart F—Conduct on the Job

**§ 73.735-601 General provisions.**

An employee's conduct on the job is, in all respects, of concern to the Federal Government. Courtesy, consideration, and promptness in dealing with others must be shown in carrying out official responsibilities. In addition, specific rules and regulations have been set which must be observed as discussed in this subpart.

**§ 73.735-602 Support of Department programs.**

(a) When a Department program is based on law or Executive Order, every employee has a positive obligation to make it function as efficiently and economically as possible and to support it as long as it is a part of recognized public policy. An employee may, therefore, properly make an address explaining and interpreting such a program, citing its achievements, defending it against uninformed or unjust criticism, pointing out the need for possible improvements, or soliciting views for improving it.

(b) An employee shall not, either directly or indirectly, use appropriated funds to influence a Member of Congress to favor or oppose legislation in violation of 18 U.S.C. 1913. However, an employee is not prohibited from:

(1) Testifying as a representative of the Department on pending legislation proposals before Congressional committees on request; or

(2) Assisting Congressional Committees in drafting bills or reports on request, when it is clear that the employee is serving solely as a technical expert under the direction of committee leadership.

**§ 73.735-603 Use of Government funds.**

Several laws, referred to in Items 18-22, Appendix A to this part, carry penalties for misuse of Government funds. These apply to:

(a) Improper use of official travel;

(b) Improper use of payroll and other vouchers and documents on which Government payments are based;

(c) Taking or failing to account for funds with which an employee is entrusted in his official position;

(d) Taking other Government funds for personal use.

**§ 73.735-604 Use of Government property.**

An employee shall not directly or indirectly use, or allow the use of Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him. For example:

(a) Only official documents and materials may be processed on Government reproduction facilities. Both supervisors and employees must assure that this rule is strictly followed. (Exception for employee welfare and recreation associations is stated in Chapter 25-10, General Administration Manual. Exception for employee organizations is stated in Personnel Instruction 711-1.)

(b) Employees may drive or use Government automobiles only on official business. (See item 13 of Appendix A for penalty that attaches for incorrect use.)

**§ 73.735-605 Conduct in Federal buildings.**

(a) An employee shall not participate while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities:

(1) Necessitated by an employee's law enforcement duties; or

(2) Involving fundraising within the Federal service under section 3 of Executive Order 10927 and similar agency-approved activities.

(b) General Services Administration regulations on "Conduct on Federal Property" are applicable to all property under the control of the General Services Administration and are applied to all buildings and space under the control of this department. These regulations prohibit, among other things, gambling and consumption of intoxicating beverages on the premises. The GSA regulations are found in Subpart 101-19.3 of the GSA Regulations, 41 CFR 101-19.3.

**§ 73.735-606 Use of official information.**

The public interest requires that certain information in the possession of the Government be kept confidential, and released only with general or specific authority under Department. This is necessary because it may involve the national security or because it is private personal or business information which has been furnished to the Government in confidence (Item 19-21, Appendix A). In addition, information in the possession of the Government and not generally available may not be used for private gain. The following paragraphs set forth the rules to be followed by Department

employees in handling information in official files or documents:

(a) *Classified information.* Employees who have access to information which is classified for security reasons in accordance with Executive Order 10501, as amended, are responsible for its custody and safekeeping, and for assuring that it is not disclosed to unauthorized persons. See Security Manual, Part 3, for details.

(b) *Security and investigative information.* Security and investigative data received from Government agencies or other sources for official use only within the Department or developed under a pledge of confidence is not to be divulged to unauthorized persons or agencies.

(c) *Use of information for private gain.* Government employees are sometimes able to obtain information about some action the Government is about to take or some other matter which is not generally known. Information of this kind shall not be used by the employee to further his or someone else's private financial or other interests. Such a use of official information is clearly a violation of a public trust. Employees shall not, directly or indirectly, make use of, or permit others to make use of, for the purpose of furthering a private interest, official information not made available to the general public.

**§ 73.735-607 Nondiscrimination.**

An employee shall not be discriminated against because of race, color, religion, national origin, sex, age, politics, marital status, or on the basis of a physical handicap with respect to any position the duties of which may be efficiently performed by a person with a physical handicap. This prohibition applies to both employment and utilization of Federal employees.

**§ 73.735-608 Participation in management of employee organizations.**

Any employee has the right to be a member of an employee organization. He shall not, however, participate in the management of an employee organization as an officer of the organization or represent it in dealings with management when such activity might result in a conflict of interest or otherwise be incompatible with law or the official duties of the employee. The duties of managerial executives who determine management policies and put them into effect and of personnel employees, other than those in a purely clerical capacity, are inconsistent with participation in the management or representation of an employee organization. Determination whether such conflict exists in other cases shall be made on a case-by-case basis by management after discussion with the employee organization concerned. Guidelines for such determinations are:

(a) Conflict of interest will be deemed to exist when an employee is an officer of an employee organization or actively represents it on specific matters of direct official concern, and also has continuing responsibility as a management official for

(1) Making administrative decisions or formal recommendations on cases or policies advocated by the same or a similar employee organization, or

(2) Dealing with officers and representatives of the same or a similar employee organization.

(b) The conflict must be immediate and real, not remote and theoretical.

(c) When the conflict is temporary and may be expected to occur only rarely, the employee shall be disqualified from acting as the representative of the employee organization in the particular case.

## Subpart G—Financial Responsibility

**§ 73.735-701 General provisions.**

(a) An employee shall not by failure to meet his just financial obligations reflect adversely on the Government as his employer. He shall pay each just financial obligation in a proper and timely manner. A "just financial obligation" is one acknowledged by the employee or reduced to judgment by a court. "In a proper and timely manner" is a manner which the Department determines does not, under the circumstances, reflect adversely on the Government as his employer. The Department cannot condone laxness on the part of an employee in discharging his financial obligations, particularly those to Federal, State or local governments or to tax-supported institutions such as a city or State hospital or educational institution or in meeting his obligations for support of his family. If for some reason an employee is unable to pay these obligations promptly, he is expected to make satisfactory arrangements for payment and abide by these arrangements. It is the responsibility of the Department to help an employee who asks for advice in meeting such obligations.

(b) When an employee has handled his financial affairs in such a way that

(1) Action on complaints received from his creditors requires the use of a considerable amount of official time, or

(2) It appears that financial difficulties are impairing his efficiency on the job, or

(3) By reason of his financial irresponsibility the attitude of the general public toward the Department is adversely affected, and the employee after counseling does not make arrangements to meet his financial obligations, disciplinary action should be considered in accordance with Subpart K of this part.

(c) Where there is no judgment or acknowledgement in accordance with paragraph (a) of this section, the Department is not obligated to help creditors who have an opportunity to make an investigation before extending credit such as mercantile creditors. The Department should not act as collection agent nor arbitrator when the validity of a debt is questioned.

**§ 73.735-702 Processing indebtedness complaints.**

(a) *Tax indebtedness.* (1) When an employee cannot pay his Federal income taxes promptly he should get in touch with the local office of the Internal Revenue Service and make arrangements to pay. If he fails to make such arrangements or fails to keep the agreement, the Internal Revenue Service may place a levy against his salary. This will require the payroll office to deduct at least part of the employee's take-home pay to meet the tax obligations.

(2) When a complaint on tax indebtedness is received by a member of the personnel or administrative office or a comparable official, he will discuss it with the employee. The employee will be told that he is expected to make arrangements to pay the indebtedness and to abide by the arrangements. If a supervisor receives such a complaint, he should send it to his personnel or administrative office.

(b) *Indebtedness for family support.* A complaint that an employee has failed to meet his obligations for support of his family will be handled in the same manner as in paragraph (a)(2) of this section.

(c) *Indebtedness in mercantile cases.* When an indebtedness complaint of this type is received, the personnel or administrative office or the employee's supervisor, according to local practice, will discuss it with the employee. If more than one letter is received from the same creditor within 30 days, the additional letter or letters will not be discussed with the employee. If the supervisor holds the discussion, he will send the debt letter with a notation of the results of the discussion with the employee or the employee's statement of intention to the personnel or administrative office for filing.

**§ 73.735-703 Telephone inquiries.**

(a) Telephone inquiries to verify employment with the Department, the

amount of an employee's salary, and similar information should be referred to the personnel or administrative office. No other person or office should give out this information. Where there is question as to whether such information should be provided by telephone the caller should be asked to present his request in writing.

(b) No action will be taken on debt complaints received by telephone. When a creditor calls to make a complaint, he will be told that Department policy does not permit handling debt complaints by telephone and will be told the office to which he should direct his complaint in writing. An employee shall not be called to the telephone to discuss a debt complaint with a creditor.

## Subpart H—Political Activity

### § 73.735-801 Applicability.

(a) All employees in the Executive Branch of the Federal Government are subject to basic political activity restrictions in subchapter III of Chapter 73 of title 5, U.S.C. (the former Hatch Act) and Civil Service Rule IV. Employees are individually responsible for refraining from prohibited political activity. Ignorance of a prohibition does not excuse a violation. This subpart summarizes provisions of law and regulation concerning political activity of employees. The Federal Personnel Manual, Civil Service Pamphlet 20, and Federal Employees Facts Leaflet No. 2 contain more detailed information on this subject. These may be reviewed in the personnel office, or will be made available by the counselor or deputy counselor for that part of the Department.

(b) Intermittent employees are subject to the restrictions when in active duty status only and for the entire 24 hours of any day of actual employment.

(c) Employees on leave, on leave without pay, or on furlough or terminal leave, even though the employees' resignations have been accepted are subject to the restrictions. A separated employee who has received a lump-sum payment for annual leave, however, is not subject to the restriction during the period covered by the lump-sum payment or thereafter, provided he does not return to Federal employment during that period. An employee is not permitted to take leave of absence to work with a political candidate, committee, or organization or become a candidate for office with the understanding that he will resign his position if nominated or elected.

(d) An employee is accountable for political activity by another person acting as his agent or under the employee's direction or control if he is thus accomplishing indirectly what he may not lawfully do directly and openly.

### § 73.735-802 Restrictions.

(a) Section 7324 of title 5, U.S.C. (the former Hatch Act) provides that employees have the right to vote as they please and the right to express their opinions on political subjects and candidates. Generally, however, they are prohibited from taking an active part in political management or political campaigns or using official authority or influence to interfere with an election or affect its results. There are some exemptions from the restrictions of the statute:

(1) Employees may engage in political activity in connection with any question not specifically identified with any National or State political party. They also may engage in political activity in connection with an election if none of the candidates represents a party any of whose candidates for presidential elector received votes at the last preceding election at which presidential electors were selected.

(2) An exception relates to political campaigns in communities adjacent to the District of Columbia or in communities the majority of whose voters are employees of the Federal Government. Communities in which the exception applies are specifically designated by the Civil Service Commission. Information regarding the localities and the conditions under which the exceptions are granted may be obtained from the personnel office or the Department counselor or deputy counselor.

(3) Intermittent employees are exempt during such time as they are not in active duty status.

(4) The Secretary, Under Secretary, and Assistant Secretaries of the Department, as well as other officials appointed by the President by and with the advice and consent of the Senate, who determine policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws are exempt from the prohibitions concerning active participation in political management and political campaigns.

(b) There are restrictions other than those imposed by subchapter III of Chapter 73 of title 5, U.S.C. (former Hatch Act) and Rule IV which relate to:

(1) Political contributions and assessments.

(2) Circulars of solicitation.

(3) Solicitation in Federal buildings.

(4) Solicitation by letter.

(5) Payment by one employee to another.

(6) Discrimination because of political contributions.

(7) Purchase and sale of public office.

(8) Political recommendations and discrimination.

(9) Other criminal offenses discussed in 18 United States Code, Chapter 29.

## Subpart I—Administrative Approval for Certain Activities

### § 73.735-901 Applicability.

Administrative approval is the authorization by the Secretary (see 73.735-903 for requests on which the Secretary must act) or such person or persons as he designates for an employee to engage in certain outside activities or to participate in his Government capacity in a matter in which he has a direct or indirect financial interest. It is required in advance for:

(a) Any outside work which creates a conflict or apparent conflict of interest or about the propriety of which an employee is uncertain;

(b) Certain writing or editing activities as specified in § 73.735-403;

(c) Certain types of teaching or lecturing as specified in § 73.735-405;

(d) All professional and consultative services as specified in § 73.735-402;

(e) Any other outside activity or financial interest for which the Secretary imposes an internal requirement for administrative approval;

(f) Participation of an employee in his Government capacity in any matter in which he has a direct or indirect financial interest, on grounds that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government might expect, as specified in Subpart E of this part;

(g) Certain office-holding activities in professional societies as specified in § 73.735-406.

### § 73.735-902 Requesting approval.

Employees shall make requests for administrative approval in writing through administrative channels to the Secretary or to such person or persons as the Secretary designates. Unless the Secretary requires extra copies of the request, it shall be made in one copy only.

(a) *Outside work.* The request shall follow the format prescribed in Appendix F to this part and shall include the information shown in paragraphs (a) (1) through (7) of this section. When an employee's approved outside work changes with respect to the nature or scope of his duties or services performed or in the nature of his outside employer's business, he shall

promptly submit a revised request. If the outside work is discontinued sooner than anticipated (not merely suspended temporarily), he shall notify the officer who approved the request. At any time when the income from an employee's approved outside work changes or there is a change in the nature or scope of the duties or services performed, or the nature of his employer's business, the employee shall submit a revised request. The employee not only has a duty to keep the Department informed of a change of approved outside actions, but to inform the Department promptly. If the outside work is discontinued sooner than anticipated (not merely suspended temporarily), he shall notify the officer who approved the request.

(1) Employee's name, occupational title, grade or rank, and Federal salary;

(2) Nature of the activity, giving full description of specific duties or services for which approval is being requested. In the case of self-employment in a professional capacity, however, it is sufficient to indicate the type of service to be rendered, as medical, legal, etc.

(3) Name and business of person or organization for which work will be done, or statement that work is to be done as self-employment. If self-employment, show whether alone or with partners, giving their names, and, if such self-employment consists of professional services to a large number of clients or patients, estimate the total number rather than listing them individually.

(4) Place where work will be conducted.

(5) Estimated total time that will be devoted to the activity. (If on a continuing basis, show estimated time per year; if not, show total time and anticipated ending date.)

(6) Whether services can be performed entirely outside of usual duty hours; if not, estimated number of hours of absence from work that will be required.

(7) Method or basis of compensation (e.g., whether fee basis, per diem, per annum, or other).

(b) *Participation in a matter in which an employee has a financial interest.* The request shall include the information listed below. New approval must be sought for each dealing by an employee in his official capacity with any organization or matter in which he, his spouse, minor child, partner, organization in which serving as officer, etc., has a financial interest.

(1) Employee's name, occupational title, grade or rank and Federal salary;

(2) Full description of financial interest: including whether ownership, service as officer, partner, etc.;

(3) Business or activity in which financial interest exists;

(4) Description of official matter in which employee is requesting approval to participate;

(5) Basis for requesting determination that the interest is "not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect." (If based on a small total value of investment, supply appropriate information on total value, such as total shares held and latest quoted market price. If other basis, explain fully.)

(c) *Providing consultative or professional services to institutions or government units which have negotiated or may seek a Federal grant or contract.* The request shall include the information listed below:

(1) Employee's name, occupational title, grade or rank and Federal salary;

(2) Name and business of institution or government unit for which consultative or professional services will be rendered, giving full description of specific duties or services for which approval is being requested;

(3) Description of the Federal grants or contracts involved (type, granting or contracting department or agency, etc.). Full details must be provided on any aspect of the professional and consultative services which involves, directly or indirectly, the preparation of grant applications, contract proposals, program reports, and other material which are designed to become the subject of dealings between the institutions and government units and the Federal Government;

(4) Place where work will be conducted;

(5) Estimated total time that will be devoted to the activity. (If on continuing basis, show estimated time per year; if not, show total time and anticipated ending date.);

(6) Whether services can be performed entirely outside of usual duty hours; if not, estimated number of hours of absence from work that will be required;

(7) Method or basis of compensation (e.g. whether fee basis, per diem, per annum, or other).

(d) *Office-holding in professional societies.* The request should be submitted in memorandum form and should show all information pertinent to the activity and the reasons why the employee considers that such activity would not constitute a conflict of interest.

**§ 73.735-903 Acting on employee requests.**

(a) Requests must be thoroughly reviewed to insure that the outside activity for which approval is being sought is permissible under applicable statutes and regulations. The review should be conducted by an individual conversant with the statutes and regulations. As required, advice and guidance should be obtained from the Department Counsellor or Deputy Counsellors on employee conduct (section 73.735-104).

(b) The review should appraise the request in terms of:

(1) Compliance with statutes, regulations;

(2) Conflicts or apparent conflicts of interest; and

(3) Potential problems arising from the employee's participation in the outside activity which could result in embarrassment to the Department or the employee.

(c) The approving official must satisfy himself on all these points before granting approval. Any conflict or apparent conflict of interest questions must be resolved before action is taken. The Department Counsellor or Deputy Counsellors on employee conduct will furnish advice and assistance as needed by the approving official.

(d) The approving official should indicate his action in writing in response to the employee's written request. The record on each request should be complete and contain the written request and written notification of action taken on the request.

(e) Requests for approval to perform professional or consultative services involving institutions or government units which have recently negotiated, or may in the near future seek contracts or grants from the Federal government will be granted only after any conflict or apparent conflict of interest matters have been identified and resolved.

**§ 73.735-904 Annual reporting.**

On September 5 each year, the approving officer shall require a report from each person for whom outside work has been approved during the past year. The report shall follow the format prescribed in Appendix G to this part and shall show:

(a) *For the 12 months just past (ending August 31).* (1) Whether the anticipated work was actually performed for the person or organization named in the request for approval;

(2) Actual amount of time spent on the activity.

(b) *For the forthcoming 12 months (ending August 31).* (1) Whether it is

anticipated that the outside work will continue;

(2) Whether any change is anticipated with respect to information supplied in accordance with the original request on which approval was based.

**§ 73.735-905 Maintenance of records.**

All requests for approval of outside work or of participation in a matter in which an employee has a financial interest (or copies of such requests), a copy of the notification of approval or disapproval, and the annual report shall be filed at a level where they are readily available to the Secretary. This level shall be that of the approving official or higher. These records will be treated as Personnel-Confidential and made available only to persons specifically authorized by the Secretary.

## Subpart J—Statements of Employment and Financial Interest

**§ 73.735-1001 General.**

(a) The requirements of this subpart are in addition to and not in substitution for, the requirements of Subpart I of this part concerning administrative approval for certain activities. Also, the requirements of this subpart are in addition to and not in substitution for, or in derogation of, any similar requirement otherwise imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

**§ 73.735-1002 Applicability.**

(a) The following employees shall submit statements of employment and financial interest in accordance with the provisions of this subpart:

(1) Employees paid at a level of the Executive Schedule in subchapter II of Chapter 53 of title 5, United States Code.

(2) Employees in positions classified at GS-13 or above (or comparable pay level) specifically identified by the Secretary which have basic duties and responsibilities which require the incumbent to exercise judgment in making a Government decision or in taking Government action in regard to contracting or procurement, administering or monitoring grants or subsidies, regulating or auditing private or other non-Federal enterprise, or other activities where the decision or action has an economic impact on the interest of any non-Federal enterprise;

(3) Any other positions classified at GS-13 or above (or comparable pay level) specifically identified as positions determined by the Secretary as requiring the incumbent thereof to report employment and financial interests in order to avoid involvement in a possible conflicts-of-interest situation and to carry out the requirements and intent of standards of ethical conduct.

(4) Any other positions classified below GS-13 (or comparable pay level) specifically identified by the Secretary (and justified to and approved by the Civil Service) as requiring the incumbent thereof to report employment and financial interests in order to protect the integrity of the Government and avoid employee involvement in a possible conflicts-of-interest situation.

(b) As new positions are established or duties of other positions change to bring them within the criteria stated in paragraph (a) (2), (3), or (4) of this section they shall be identified and reported to the appropriate office for inclusion. Exclusion of such positions from this requirement may be made when the Secretary determines that the duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests by the incumbent is not necessary because of the degree of supervision and review over the incumbent and the remote and inconsequential effect on the integrity of the Government. Exclusions under this provision must be documented in writing and retained at the level of the determining official.

(c) Employees shall have the opportunity for review through the Department's grievance procedure of a complaint that his position has been improperly included under this subpart as one requiring the submission of a statement of employment and financial interests.

**§ 73.735-1003 Content of statements.**

(a) The statements of employment and financial interests shall follow the format prescribed in Appendix D to this part.

(b) The interest of a spouse, minor child, or other blood relative who is a resident of the employee's household is considered to be an interest of the employee, and shall be reported on the statement.

(c) If any information required to be included on the statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his behalf.

(d) An employee is not required to submit on the statement any information relative to his connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. Educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included.

**§ 73.735-1004 Submission and review of statements.**

(a) Officials responsible for reviewing employment and financial interests shall be the same as by those who are designated to consider requests for administrative approval as discussed in Subpart I of this part.

(b) Reviewing officials shall request that statements of employment and financial interests be submitted by employees covered by § 73.735-1002, in accordance with the following schedule:

(1) September 30, 1967, if employed before September 1, 1967; or

(2) Thirty days after he becomes subject to the reporting requirements by occupying a position covered by § 73.735-1102, if he occupies the position after August 1, 1967.

(3) Changes in, or additions to, the information contained in the statement shall be reported in a supplementary statement as of June 30, of each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest, provisions of section 208 of title 18, United States Code, or Subpart E of this part.

(c) Statements shall be submitted in one copy only.

(d) The reviewing officer shall review statements to determine whether conflicts of interest or apparent conflicts might arise from the activities reported thereon.

(e) When no conflict of interest or apparent conflict is disclosed by the review of the statements, no further action is necessary by the reviewing officer and the statements shall be filed in accordance with § 73.735-1005.

(f) When a question on conflict of interest or apparent conflict arises, the reviewing officer shall work with the employee to resolve the matter.

He shall offer the employee or special Government employee an opportunity to explain the conflict or apparent conflict. If the question cannot be resolved the matter shall be reported to the Secretary through the appropriate counselor or deputy counselor for further consideration and action.

**§ 73.735-1005 Maintenance of records.**

Statements on which questions of conflict of interest or apparent conflict have arisen shall be annotated to show the action taken. All statements and supplementary statements of employment and financial interests shall be filed at a level where they are readily available to the Secretary. This level shall be that of the approving official or higher. These records shall be treated as Personnel-Confidential and made available only as specifically authorized by the Secretary or the Civil Service Commission for good cause shown. Each employee who is responsible for reviewing or retaining statements of employment and financial interests shall maintain each such statement in confidence and shall not allow access to, or information to be disclosed from a statement except to carry out the purpose of this part.

## Subpart K—Disciplinary and Remedial Action

**§ 73.735-1101 Disciplinary action.**

(a) Violation of the regulations contained in this part may be cause for disciplinary action which may be in addition to any penalty prescribed by law.

(b) The type of disciplinary action to be taken shall be determined in relation to the specific violation. No standard table of penalties has been established for application in the Department. Those responsible for recommending and for taking disciplinary action must apply judgment to each case, taking into account the general objectives of meeting any requirements of law, deterring similar offenses by the employee and other employees and maintaining high standards of employee conduct and public confidence. Some types of disciplinary actions to be considered are:

(1) Oral admonishment.
(2) Written reprimand.
(3) Reassignment.
(4) Demotion.
(5) Suspension.
(6) Separation.

(c) Demotion, suspension, and separation are adverse actions and when taken must follow law, Civil Service Regulations and Department procedures.

**§ 73.735-1102 Remedial action.**

(a) Where the statements of employment and financial interest of employees or special Government employees, filed under the provisions of subparts J and L of this part, show a conflict of interest with their official responsibilities, consideration should be given by the agency head or his designee and the employee's supervisor to reconciling the conflict through remedial actions. The following are examples of such actions which may be appropriate:

(1) Divestment by the employee or special Government employee of his conflicting interest.

(2) Disqualification for a particular assignment.

(3) Changes in assigned duties.

(b) Remedial action shall be effected in accordance with any applicable laws, Executive orders, and regulations.

## Subpart L—Special Provisions Relating to Special Government Employees and Consultants

**§ 73.735-1201 Applicability.**

The requirements of this subpart apply to the group of employees designated by law (18 U.S.C. 202) as "special Government employees." The term includes employees who are retained, designated, appointed or employed to serve, with or without compensation, for not more than 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis. This subpart applies to all consultants (defined in § 73.735-1205) even though the consultant who works more than 130 days in 365 is subject also to the regulations in this Part 73 as a regular employee. Sections 73.735-1205 and 73.735-1206 apply only to those special Government employees indicated. Intermittent employees are subject to the political activity restrictions of subchapter III of Chapter 73 of title 5, U.S.C. (the former Hatch Act) and Civil Service Rule IV when in active duty status only and for the entire 24 hours of any day of actual employment.

**§ 73.735-1202 Ethical standards of conduct.**

(a) A special Government employee must conduct himself according to ethical behavior of the highest order. In particular,

(1) He must refrain from any use of his office which is, or appears to be, motivated by a private gain for himself or other persons, particularly those with whom he has family, business, or financial ties. The fact that the desired gain, if it materializes, will not take place at the expense of the Government makes his actions no less improper.

(2) He must conduct himself in a manner devoid of any suggestion that he is exploiting his Government employment for private advantage. He must not, on the basis of any inside information, enter into any speculation or recommend speculation to members of his family or business associates, in commodities, land, or the securities of any private company. He must obey this injunction even though his duties have no connection whatever with the Government programs or activities which may affect the value of such commodities, land, or securities. He should be careful in his personal financial activities to avoid any appearance of acting on the basis of information obtained in the course of his Government work.

(3) He must not use information not generally available to those outside the Government for the special benefit of a business or other entity by which he is employed or retained or in which he has a financial interest. Information not available to private industry should remain confidential in his hands and not divulged to his private employer or client. In cases of doubt whether information is generally available to the public, the special Government employee should confer with the person who assigns work to him, with the office having functional responsibility for a specific type of information, or, as appropriate, with the officials designated in § 73.735-104 to give interpretive and advisory service.

(4) He must, where requested by a private enterprise to act for it in a consultant or advisory capacity and the request appears motivated by the desire for inside information, make a choice between acceptance of the tendered private employment and continuation of his Government consultancy. He may not engage in both.

(5) He must not use his position in any way to coerce, or give the appearance of coercing, anyone to provide a financial benefit to him or another person, particularly one with whom he has family, business, or financial ties.

(6) He must not receive or solicit anything of value as a gift, gratuity, loan, entertainment, or favor for himself or another person, particularly one with whom he has family, business, or financial ties if the acceptance would result in loss of complete independence or impartiality in serving the Government.

(7) He may teach, lecture, publish, or write in a manner not inconsistent with the regulations in §§ 73.735-403 to

73.735–405 for such activities for regular employees.

(b) A special Government employee who has questions about conflicts of interest or the application of the regulations in this part to him or his assigned work should make inquiry of the person who assigns his work. That person will direct him to the counselor or a deputy counselor for interpretative and advisory services as provided in § 73.735–104.

**§ 73.735–1203 Statement of financial interests required.**

(a) Each special Government employee described in §§ 73.735–1205 and 73.735–1206 must submit a statement which reports:

(1) All other employment; and

(2) The financial interests which relate either directly or indirectly to his duties and responsibilities.

(b) He shall submit such statement not later than the time of employment, and shall keep it current throughout the period of employment by the submission of supplementary statements.

(c) The format prescribed in Appendix E to this part shall be used for recording the information required by paragraph (a) of this section.

(d) Officials responsible for reviewing statements of employment and financial interests shall be the same as those designated to give administrative approval to outside work or regular employees unless the Secretary designates another official to be responsible for such review. When no conflict of interest is disclosed by the review of the statements, no further action is necessary by the reviewing officer and the statement shall be filed in accordance with paragraph (e) of this section. When a question of conflict of interest arises, the reviewing officer shall work with the consultant or special Government employee to resolve the matter or shall refer the question to the appropriate counselor or a deputy counselor for further consideration and advisement.

(e) A confidential file of completed statements of employment and financial interests shall be maintained in the personnel office that maintains the official personnel folder (but not in the personnel folder), together with correspondence, memorandum, etc., relating specifically thereto. These forms and related materials are not forwarded to the Federal Records Center upon separation of the employee but are disposed of in accordance with the appropriate disposal schedule.

**§ 73.735–1204 Special Government employees who must submit statement of financial interests.**

(a) The statements of financial interests described in § 73.735–1203 must be submitted by the following special Government employees:

(1) Consultants, experts, or advisers (hereafter referred to in this subpart as consultants) described in § 73.735–1205;

(2) Such special Government employees (other than consultants) as the heads of operating agencies so determine (in accordance with § 73.735–1206).

**§ 73.735–1205 Coverage—consultants.**

(a) As used in this subpart, the term consultant refers to a person whose advice the Department obtains on a temporary (either full or part-time) or intermittent basis because of his individual qualifications, and who serves as an officer or employee of the Government for the periods during which his advice is obtained. Where this definition is met, the consultant (except for any excluded in paragraph (b) of this section) is subject to this subpart irrespective of:

(1) The title by which he is designated;

(2) The statutory authority under which his services are obtained;

(3) The duration of the period for which his services are obtained (and whether or not limited to 130 days within the period of employment);

(4) Whether his services are obtained by appointment or invitation and acceptance. (A consultant whose services are obtained by contract is also subject to this subpart if his relationship to the Department is that of an employee. Such condition will exist only through error or misunderstanding, as Department instructions require that a person whose relationship to the Department is that of an employee shall be appointed. Only where there is not to be such relationship shall a formal contract be processed.)

(5) Whether services are compensated or rendered without compensation;

(6) Whether or not services are obtained pursuant to a statute exempting persons rendering services from conflict of interest statutes.

(b) This subpart need not be applied to:

(1) Doctors, dentists, and allied medical specialists performing services for, or consulted as to the diagnosis or treatment of, individual patients;

(2) Veterinarians performing services for or consulted as to care and service to animals.

**§ 73.735–1206 Coverage—special Government employees other than consultants.**

Coverage by § 73.735–1203 requiring the submission of a statement of financial interests is waived for special Government employees (other than consultants) except those identified by the Secretary. The identification may be made because of the nature of the duties, or because of the nature of the principal employment, which is non-governmental. For example, a special Government employee, even though not a consultant, may be made subject to § 73.735–1203 if:

(a) The performance of his Department duties could directly and predictably affect a person or organization that is known to: Have a grant from this Department or contract with it; be seeking or negotiating such grant or contract; conduct an operation that is subject to regulation by the Department.

(b) His principal occupation or employment is not his Government employment and is of such nature that being made subject to § 73.735–1203 is desirable to protect him and the Department from possible conflict-of-interest situations: Viz, those whose principal non-Government occupation is: On or concerned with work for the Government or supported in whole or in part by the Government under grant or contract; on or concerned with work for which Government support is being sought; in any category of work which the Secretary determines should be subject to § 73.735–1203.

**§ 73.735–1207 Restrictions—conflict-of-interest statutes.**

(a) Each consultant and special Government employee covered by this subpart should acquaint himself in particular with sections of Title 18 numbered 203, 205, 207, and 208, all of which carry criminal penalties. The restraints imposed by the four criminal sections are summarized in paragraph (b) through (d) of this section.

(b) 18 U.S.C. 203 and 205.

(1) These two sections in general operate to preclude a regular Government employee, except in the discharge of his official duties, from representing another person before a department, agency or court, whether with or without compensation, in a matter in which the United States is a party or has a direct and substantial interest. However, the two sections impose only the following major restrictions upon a special Government employee:

(i) He may not, except in the discharge of his official duties, represent anyone else before a court or Government

agency in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he has at any time participated personally and substantially in the course of his Government employment.

(ii) He may not, except in the discharge of his official duties, represent anyone else in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and which is pending before Department. However, this restraint is not applicable if he has served the agency no more than 60 days during the past 365. He is bound by the restraint, if applicable, regardless of whether the matter is one in which he has ever participated personally and substantially. These restrictions prohibit both paid and unpaid representation and apply to a special Government employee when he does not serve the Government as well as on the days when he does.

(2) To a considerable extent the prohibitions of sections 203 and 205 are aimed at the sale of influence to gain special favors for private businesses and other organizations and at the misuse of governmental position or information. In accordance with these aims, it is desirable that a consultant or adviser or other individual who is a special Government employee, even when not compelled to do so by sections 203 and 205, should make every effort in his private work to avoid any personal contact with respect to negotiations for contracts or grants with the Department if the subject matter is related to the subject matter of his consultancy or other service. This will not always be possible to achieve where, for example, a consultant or adviser has an executive position and responsibility with his regular employer which requires him to participate personally in contract negotiations with the Department. Whenever this is the case the consultant or adviser should participate in the negotiations for his employer only with the knowledge of a responsible Government official. In other instances an occasional consultant or adviser may have technical knowledge which is indispensable to his regular employer in his efforts to formulate a research and development contract or a research grant and for the same reason, it is in the interest of the Government that he should take part in negotiations for his private employer. Again, he should participate only with the knowledge of a responsible Government official.

(3) Section 205 contains an exemptive provision dealing with a similar situation which may arise after a Government grant or contract has been negotiated. This provision in certain cases permits both the Government and the private employer of a special Government employee to benefit from his performance of work under a grant or contract for which he would otherwise be disqualified because he had participated in the matter for the Government or it is pending in an agency he had served more than 60 days in the past year. The provision gives the head of a department or agency the power, notwithstanding any prohibition in either section 203 or 205, to allow a special Government employee to represent before such department or agency either his regular employer or another person or organization in the performance of work under a grant or contract. As a basis for this action, the Secretary must first make a certification in writing, published in the Federal Register, that it is required by the national interest.

(4) Section 205 contains three other exemptive provisions, all of which apply to both special and regular Government employees. The first permits one Government employee to represent another without compensation, in a disciplinary, loyalty or other personnel matter. The second permits a Government employee to represent, with or without compensation, a parent, spouse, child, or person or estate he serves as a fiduciary, but only if he has the approval of the official responsible for appointments to his position and the matter involved is neither one in which he has participated personally or substantially, nor one under his official responsibility. The term "official responsibility" is defined in 18 U.S.C. 202 to mean, in substance, the direct administrative or operating authority to control Government action. The third provision removes any obstacle in section 205 to a Government employee's giving testimony under oath or making statements required to be made under penalty for perjury or contempt.

(c) 18 U.S.C. 207. Section 207 applies to individuals who have left Government service, including former special government employees. It prevents a former employee from representing another person in connection with certain matters in which he participated personally and substantially on behalf of the Government. The matters are those involving a specific party or parties in which the United States is also a party or has a direct and substantial interest. In addition, section 207 prevents a former employee, for a period of 2 years after his employment has ceased, from appearing personally for another person in such matters before a court, department or agency if the matters were within the area of his official responsibility (note that a consultant or adviser usually does not have "official responsibility") at any time during the last year of this Government service. The employment of a special Government employee ceases on the day his appointment expires or is otherwise terminated, as distinguished from the day on which he last performs service.

(d) 18 U.S.C. 208. This section bears on the activities of Government personnel, including special Government employees, in the course of their official duties. In general, it prevents a Government employee from participating as such in a particular matter in which, to his knowledge, he, his spouse, minor child, partner, or a profit or nonprofit enterprise with which he is connected has a financial interest. However, the section permits an employee's agency to grant him an ad hoc exemption if the interest is not so substantial as to affect the integrity of his services. Insignificant interests may also be waived by a general rule or regulation. The matters in which special Government employees are disqualified by section 208 are not limited to those involving a specific party or parties in which the United States is a party or has an interest, as in the case of sections 203, 205, and 207. Section 208 therefore undoubtedly extends to matters in addition to contracts, grants, judicial and quasi-judicial proceedings, and other matters of an adversary nature. Accordingly, a special Government employee should in general be disqualified from participating as such in a matter of any type the outcome of which will have a direct and predictable effect upon the financial interests covered by the section. However, the power of exemption may be exercised in this situation if the special Government employee renders advice of a general nature from which no preference or advantage over others might be gained by any particular person or organization. The power of exemption may of course be exercised also where the financial interests involved are minimal in value.

**§ 73.735-1208 Requesting waivers or exemptions.**

(a) A consultant or special Government employee may present in writing to the official who assigns his work requests for the waivers or exemptions discussed in §§ 73.735-1207(b), (c), and (d). That official will

take, or refer the request for, action as appropriate, and will see that the employee receives advice or decision on his request.

(b) A file of all waivers or exemptions granted shall be maintained in such manner that information can be given promptly on individual cases or statistics provided upon request. Unless the Secretary specifically provides for maintenance elsewhere, these records, together with written advice given in connection with less formal requests concerning questions of ethical standards, are kept with the employee's statement of employment and financial interests, required to be filed in the personnel office in accordance with § 73.735-1203(d).

**§ 73.735-1209 Salary from two sources.**

Special Government employees are not subject to 18 U.S.C. 209 which prohibits other employees from receiving any salary, or supplementation of Government salary from a private source as a compensation for services to the Government. As a matter of policy this Department will not knowingly pay per diem to a consultant who also receives per diem pay for the same day from another Government agency (in or outside the Department).

Appendix A—Index to Some Statutes and Executive Orders Related to Conflict of Interest and Other Prohibited Activities

Subject and Citation

A. *Relating to Present Employees.*

1. Code of Ethics for Government Service (H. Con. Res. 175, 85th Cong., 2d sess., 72 Stat. B12).

2. Acceptance of gift or favor made with intent of influencing decision or action on any official matter (18 U.S.C. 201).

3. Compensation from outside sources for services rendered in relation to any application, proceeding, contract, etc., in any matter in which the United States has a direct and substantial interest (18 U.S.C. 203).

4. Acting as agent or attorney (1) for prosecution or aiding in prosecution of any claim against the United States, or (2) for anyone before any Department, agency, court, etc., in connection with a particular matter in which the United States is a party or has a direct and substantial interest (18 U.S.C. 205).

5. Participating personally and substantially as a Government employee in any application, request for a ruling, contract or other particular matter in which he, to his knowledge, or his spouse, minor child, or any organization with which he is negotiating, has a financial interest, direct or indirect (18 U.S.C. 208).

6. Receipt of any salary or contribution to or supplementation of salary as compensation for services as a Government employee from any other source than the Government (18 U.S.C. 209).

7. Use of appropriated funds, services, or communications with intent to influence any member of Congress to favor or oppose any legislation or appropriation (18 U.S.C. 1913).

8. Participation in strike against Government (5 U.S.C. 7311, 18 U.S.C. 1918).

9. Advocating the overthrow of the constitutional form of Government in the United States or being a member of an organization that so advocates (5 U.S.C. 7311).

10. Being a member of the Communist Party of the United States of America, and contributing funds or services to that party (50 U.S.C. 784).

11. Disclosing confidential information or classified information (18 U.S.C. 798, 50 U.S.C. 783, 18 U.S.C. 1905).

12. Habitual use of intoxicants to excess (5 U.S.C. 7352).

13. Using or authorizing the use of Government automobiles for other than official purposes (13 U.S.C. 635a(c)).

14. Using official envelope or label to avoid payment of postage (18 U.S.C. 1719).

15. Deceiving in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

16. Practicing fraud or making false statements in a Government matter (18 U.S.C. 1001).

17. Mutilating or destroying a public record (18 U.S.C. 2071).

18. Falsely making, forging, or attempting to pass a forged or altered travel request (18 U.S.C. 508).

19. Taking for own use or use of another any Government record, voucher, money, or thing of value (18 U.S.C. 641.)

20. Failure to account for public money received (18 U.S.C. 643.).

21. Embezzling money or property of another person in the possession of an employee by reason of this employment (18 U.S.C. 654).

22. Taking or attempting to use vouchers or documents intended to be used to procure payments by the United States (18 U.S.C. 285).

23. Prohibition against certain political activities (subchapter III of Chapter 73 of title 5, U.S.C. (former Hatch Act) and 18 U.S.C. 602, 603, 607, and 608).

24. Making or soliciting gifts for official superiors, or accepting gifts from employees receiving a lower salary (5 U.S.C. 7351).

25. Conviction for participating in or organizing or inciting a riot or civil disorder (5 U.S.C. 7313).

26. Nondiscrimination in Government employment (E.O. 11246, 30 FR 12319).

27. Acting as an agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

B. *Relating to Former Employees.*

28. After having been employed by the United States, a. At any time after his employment has ceased, acting as agent or attorney for anyone other than the Government in connection with any application, contract, claim, proceeding or other matter against the United States, involving a specific party, in any matter in which the United States has an interest, and in which he participated personally and substantially as a Government employee.

b. Within 1 year after his employment has ceased, appearing personally before any agency in connection with any application, contract, claim, proceeding, or other matter against the United States, involving a specific party, which was under his official responsibility as a Government employee (18 U.S.C. 207).

29. Prohibits any department, agency, or officer from supervision, direction, or control over, the personnel and projects assisted by the Act (20 U.S.C. 757).

30. National Defense Education Act: Restricts the receipt of payment in salary by an appointee in Government service from any source other than the private employer of the appointee (20 U.S.C. 583(a) (b)).

31. Area Redevelopment Act: Regarding restriction of financial assistance and employment to expediters and administrative employees who have occupied positions involving discretion within certain period (42 U.S.C. 2516).

32. Officers or employees of the Department owning interest in or receiving money or services from any educational institution operated for profit in which an eligible veteran is pursuing a course of education or training under the Veterans Readjustment Assistance Act of 1952 (sec. 284 of the Veterans Readjustment Assistance Act of 1952, Public Law 550, 82d Cong.).

Appendix B—Professional Occupations

Following is a list of series of positions subject to Chapter 51 of title 5, United States Code that include professional positions. Positions not subject to that Chapter should also be considered professional if the incumbents perform duties similar to the series listed.

015 Operations Research Series.
020 Urban Planning Series.
060 Chaplain Series.
101 Social Science Series.
102 Social Administration Series.
110 Economist Series.
130 Foreign Affairs Series.
131 International Relations Series.
135 Foreign Agricultural Affairs Series.
150 Geography Series.
170 History Series.
180 Psychology Series.
184 Sociology Series.
185 Social Work Series.
190 General Anthropolgy Series.
193 Archeology Series.
195 Scientific Linguistics Series.
401 Biology Series.
403 Microbiology Series.
405 Pharmacology Series.
406 Agricultural Extension Series.
410 Zoology Series.
411 Systematic Zoology Series.
412 Parasitology Series.
413 Physiology Series.
414 Entomology Series.
415 Nematology Series.
430 Botany Series.
433 Plant Taxonomy Series.
434 Plant Pathology Series.
435 Plant Physiology Series.
436 Plant Quarantine and Pest Control Series.
437 Horticulture Series.
440 Genetics Series.
450 General Agricultural Administration Series.

451 General Agriculture Series.
452 Park Naturalist Series.
454 Range Conservation Series.
457 Soil Conservation Series.
460 Forestry Series.
470 Soil Science Series.
471 Agronomy Series.
475 Farm Management Loan Series.
480 General Fish and Wildlife Administration Series.
482 Fishery Biology Series.
484 Animal Control Biology Series.
485 Wildlife Refuge Management Series.
486 Wildlife Biology Series.
487 Husbandry Series.
493 Home Economics Series.
510 Accounting Series.
512 Internal Revenue Agent Series
601 General Health Science Series.
602 Medical Officer Series.
610 Nurse Series.
615 Public Health Nurse Series.
630 Dietitian Series.
631 Occupational Therapist Series.
633 Physical Therapist Series.
635 Corrective Therapist Series.
637 Manual Arts Therapist Series.
639 Educational Therapist Series.
644 Medical Technologist Series.
660 Pharmacist Series.
662 Optometrist Series.
665 Speech Pathology and Audiology Series.
668 Podiatrist Series.
680 Dental Officer Series.
685 Public Health Program Specialist Series.
690 Industrial Hygiene Series.
695 Food and Drug Officer Series.
696 Food and Drug Inspection Series.
701 Veterinary Medical Sciences Series.
801 General Engineering Series.
803 Safety Engineering Series.
804 Fire Prevention Engineering Series.
806 Materials Engineering Series.
807 Landscape Architecture Series.
808 Architecture Series.
810 Civil Engineering Series.
819 Sanitary Engineering Series.
830 Mechanical Engineering Series.
840 Nuclear Engineering Series.
850 Electrical Engineering Series.
855 Electronic Engineering Series.
861 Aerospace Engineering Series.
870 Marine Engineering Series.
871 Naval Architecture Series.
880 Mining Engineering Series.
881 Petroleum Production and Natural-Gas Engineering Series.
890 Agricultural Engineering Series.
892 Ceramic Engineering Series.
893 Chemical Engineering Series.
894 Welding Engineering Series.
896 Industrial Engineering Series.
905 General Attorney Series.
920 Estate Tax Examining Series.
935 Hearing Examiner Series.
942 Deportation and Exclusion Examining Series.
954 Legal Assistance Series.
960 Adjudication Series.
1015 Museum Curator Series.
1210 Copyright Examining Series.
1220 Patent Administration Series.
1221 Patent Adviser Series.
1222 Patent Attorney Series.
1223 Patent Classifying Series.
1224 Patent Examining Series.
1225 Patent Interference Examining Series.
1226 Design Patent Examining Series.
1241 Trade-Mark Examining Series.
1301 General Physical Science Series.
1306 Health Physics Series
1310 Physics Series.
1313 Geophysics Series.
1315 Hydrology Series.
1320 Chemistry Series.
1321 Metallurgy Series.
1330 Astronomy and Space Science Series.
1340 Meteorology Series.
1350 Geology Series.
1360 Oceanography Series.
1370 Cartography Series.
1372 Geodesy Series.
1373 Cadastral Surveying Series.
1380 Forest Products Technology Series.
1382 Food Technology Series.
1384 Textile Technology Series.
1390 Technology Series.
1420 Archives Series.
1510 Actuary Series.
1520 Mathematics Series.
1529 Mathematical Statistician Series.
1530 Statistician Series.
1540 Cryptography Series.
1710 Education and Vocational Training Series.
1720 Education Research and Program Series.
1725 Public Health Educator Series.

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Appendix E—Confidential Statement of Employment and Financial Interests (for Use by Special Government Employees)

Appendix F—Request for Approval of Outside Activity [1]

Appendix G—Annual Report of Outside Activity [1]

Appendix H—Code of Ethics for Government Service

Any person in Government service should:

Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

Uphold the Constitution, laws, and legal regulations of the United States and all governments therein and never be a party to their evasion.

Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.

Seek to find and employ more efficient and economical ways of getting tasks accomplished.

Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

Expose corruption wherever discovered.

Uphold these principles, ever conscious that public office is a public trust.

(This Code of Ethics was agreed to by the House of Representatives and the Senate as House Concurrent Resolution 175 in the Second Session of the 85th Congress. The Code applies to all Government Employees and Office Holders.)

[1] 35 FR 12909, Aug. 14, 1970.

## PART 74—ADMINISTRATION OF GRANTS

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Authority: 5 U.S.C. 301.

## Subpart A—General

### § 74.1 Purpose and scope of this part.

This part establishes uniform requirements for the administration of ED grants and principles for determining costs applicable to activities assisted by ED grants.

### § 74.2 Scope of subpart.

This subpart contains general rules pertaining to this Part 74 (definitions, purpose and scope, applicability, and appeals) and procedures for control of deviations from the part.

### § 74.3 Definitions.

As used in this part:

"Awarding party" means (1) with respect to a grant, ED, and (2) with respect to a subgrant, the grantee. (See § 74.4(b))

"Contract" means (except as used in the definitions for "grant" and "subgrant" in this section and except where qualified by "Federal") a procurement contract under a grant or subgrant, and "subcontract" means a procurement subcontract under such a contract.

"Cost-type contract" means a contract or subcontract in which the contractor or subcontractor is paid on the basis of the costs it incurs, but the term does not include such subcontracts under a non-cost-type contract or subcontract.

"ED" means the U.S. Department of Education.

"Expenditure report" means: (1) For nonconstruction grants, the "Financial Status Report" (or other equivalent report); (2) for construction grants, the "Outlay Report and Request for Reimbursement for Construction Programs" (or other equivalent report). (See subpart I of this part.)

"Federally recognized Indian tribal government" means the governing body

or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs. However, for policies applicable to tribal government hospitals and institutions of higher education, see § 74.4(c), "Applicability of this part."

"Government" means a State or local government or a Federally recognized Indian tribal government. However, for policies applicable to government hospitals and institutions of higher education, see § 74.4(c), "Applicability of this part."

"Grant" means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government to an eligible recipient. The term includes such financial assistance when provided by contract, but does not include any Federal procurements subject to the procurement regulations in 41 CFR, nor does it include technical assistance, which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the recipient is not required to account for on an actual cost basis.

"Grantee" means the government, nonprofit corporation, or other legal entity to which a grant is awarded and which is accountable to the Federal Government for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the award document. For example, a grant award document may name as the grantee an agency of a State, or one school or campus of a university. In these cases, the granting agency usually intends, or actually requires, that the named component assume primary or sole responsibility for administering the grant-assisted project or program. Nevertheless, the naming of a component of a legal entity as the grantee in a grant award document shall not be construed as relieving the whole legal entity from accountability to the Federal Government for the use of the funds provided. (This definition is not intended to affect the eligibility provisions of grant programs in which eligibility is limited to organizations, such as State educational agencies, which may be only components of a legal entity.) The term "grantee" does not include any secondary recipients such as subgrantees, contractors, etc., who may receive funds from a grantee pursuant to a grant.

"Local government" means a local unit of government including specifically a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), "sponsor or sponsoring local organization" of a watershed project (as defined in 7 CFR 620.2, 40 FR 12472, March 19, 1975), any other regional or interestate government entity, or any agency or instrumentality of a local government. However, for policies applicable to government hospitals and institutions of higher education, see § 74.4(c), "Applicability of this part."

"OMB" means the Office of Management and Budget within the Executive Office of the President.

"Recipient" means grantee or subgrantee. (See § 74.4(b).)

"State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. However, for policies applicable to government hospitals and institutions of higher education, see § 74.4(c), "Applicability of this part."

"Subgrant" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contract, but does not include procurements; nor does it include any form of assistance which is excluded from the definition of "grant" in this section.

"Subgrantee" means the government, nonprofit corporation, or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided. The subgrantee is the entire legal entity even if only a particular component of the entity is designated in the subgrant award document.

"Terms of a grant or subgrant" means all requirements of the grant or subgrant, whether in statute, regulations, the award document or elsewhere.

### § 74.4 Applicability of this part.

(a) *General.* Except where inconsistent with Federal statutes, regulations, or other terms of a grant, this part applies to all ED grants. However, unless expressly made applicable by ED, this part shall not apply when the grantee is a Federal agency, foreign government or organization, international organization such as the United Nations, for-profit organization, or individual.

(b) *Subgrants.* For each substantive provision in this part, either the language of the provision itself or other text in the same subpart will indicate whether the provision affects only grants, only subgrants, or both. Use of the term "recipient" (as defined in § 74.3) in a provision shall be taken as referring equally to grantees and subgrantees. Similarly, use of the term "awarding party" (as defined in § 74.3) shall be taken as referring equally to granting agencies and to grantees awarding subgrants. However, unless expressly made applicable by ED this part need not be applied by the grantee to a subgrant if the subgrantee is a Federal agency, foreign government or organization, international organization such as the United Nations, for-profit organization, or individual.

(c) *Public institutions of higher education and hospitals.* Grants and subgrants to institutions of higher education and hospitals operated by a government shall be subject only to provisions of this subpart that apply to nongovernmental organizations.

### § 74.6 Deviations.

(a) Except as provided in § 74.7, a deviation is any exception to this part not required by Federal statute without allowance of agency discretion. A deviation may be either:

(1) Use of any policy, procedure, form, standard, or grant or subgrant term which is inconsistent with an applicable provision of this part, or

(2) Failure to use any applicable policy, procedure, form, standard, or grant or subgrant term which is required by this part.

(b) In order to maintain uniformity to the greatest extent feasible, deviations shall be kept to a minimum. A deviation, whether proposed by an applicant, a recipient, or an official of ED may be authorized only when it is necessary to meet programmatic objectives, or to conserve grant funds, or when it is otherwise essential in the public interest.

(c) Except as provided in paragraph (d) of this section, a deviation from this part may be made only when authorized by the Secretary.

**§ 74.7 Special grant or subgrant conditions.**

(a) Without regard to the deviation control procedures of § 74.6, special grant conditions more restrictive than those prescribed in this part 74 may be imposed as needed when ED has determined that the grantee:

(1) Is financially unstable,

(2) Has a history of poor performance, or

(3) Has a management system which does not meet the standards of this part.

(b) When special conditions are imposed under paragraph (a) of this section, the grantee will be notified in writing:

(1) Why the special conditions were imposed and

(2) What corrective action is needed.

Furthermore, in accordance with OMB Circulars A–102 and A–110, OMB and other Federal agencies in a granting relationship with the grantee will be provided copies of the notice to the grantee.

(c) Grantees may apply the provisions of paragraphs (a) and (b) of this section to their subgrantees. Whenever they do so, a copy of the notice to the subgrantee shall be furnished to ED.

## Subpart B—Cash Depositories

**§ 74.10 Physical segregation and eligibility.**

Except as provided in § 74.11, awarding parties shall not impose grant or subgrant terms which:

(a) Require the recipient to use a separate bank account for the deposit of grant or subgrant funds, or

(b) Establish any eligibility requirements for banks or other financial institutions in which recipients deposit grant or subgrant funds.

**§ 74.11 Checks-paid basis letter of credit.**

A separate bank account shall be used when payments under letter of credit are made on a "checks-paid" basis. A checks-paid basis letter of credit is one under which funds are not drawn until the recipient's checks have been presented to its bank for payment. (See Subpart K for definition of "letter of credit.")

**§ 74.12 Minority-owned banks.**

Consistent with the national goal of expanding opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority-owned banks. Upon request, ED will furnish a list of minority-owned banks.

## Subpart C—Bonding and Insurance

**§ 74.15 General.**

In administering grants and subgrants, recipients shall observe their regular requirements and practices with respect to bonding and insurance. No additional bonding and insurance requirements, including fidelity bonds, shall be imposed by the terms of the grant or subgrant except as provided in §§ 74.16 through 74.18.

**§ 74.16 Construction and facility improvement.**

(a) *Scope of this section.* This section covers requirements for bid guarantees, performance bonds, and payments bonds when the recipient will contract for construction or facility improvement (including alterations and renovations of real property) under a grant or subgrant.

(b) *Definitions.* (1) "Bid guarantee" means a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, if its bid is accepted, execute the required contractual documents within the time specified.

(2) "Performance bond" means a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(3) "Payment bond" means a bond executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(c) *Bids and contacts of $100,000 or less.* The recipient shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds.

(d) *Bids and contracts exceeding $100,000.* The recipient may follow its own regular policy and requirements if the Secretary has determined that the Federal Government's interest will be adequately protected. If this determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to 5 percent of the bid price;

(2) A performance bond on the part of the contractor for 100 percent of the contract price; and

(3) A payment bond on the part of the contractor for 100 percent of the contract price.

**§ 74.17 Fidelity bonds.**

(a) If the grantee is not a government, ED may require it to carry adequate fidelity bond coverage where the absence of coverage for the grant-supported activity is considered as creating an unacceptable risk.

(b) If the subgrantee is not a government, ED or the grantee may require that it carry adequate fidelity bond coverage where the absence of coverage for the subgrant-supported activity is considered as creating an unacceptable risk.

(c) A fidelity bond is a bond indemnifying the recipient against losses resulting from the fraud or lack of integrity, honesty or fidelity of one or more employees, officers or other persons holding a position of trust.

**§ 74.18 Source of bonds.**

Any bonds required under §§ 74.16(d)(1) through (3) or 74.17 shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR Part 223). A list of these companies is published annually by the Department of the Treasury in its Circular 570.

## Subpart D—Retention and Access Requirements for Records

**§ 74.20 Applicability.**

(a) Except as provided in paragraph (b) of this section, this subpart applies to all financial and programmatic records, supporting documents, statistical records and other records of recipients and of contractors and subcontractors under grants and subgrants, which are:

(1) Required to be maintained by the terms of an ED grant, or

(2) Otherwise reasonably considered as pertinent to an ED grant.

(b) This subpart does not apply to records maintained by the contractor or subcontractor for any of the following types of awards it has received under a grant or subgrant:

(1) Any contract or subcontract of $10,000 or less, or

(2) Any contract or subcontract awarded using the formal advertising method of procurement, whether or not required to be so awarded, or

(3) Any subcontract awarded under a contract or subcontract described in paragraph (b)(2) of this section.

**§ 74.21 Length of retention period.**

(a) Except as provided in paragraphs (b) and (c) of this section, records shall be retained for 3-years from the starting date specified in § 74.22.

(b) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(c) In order to avoid duplicate recordkeeping, awarding parties may make special arrangements with recipients to retain any records which are continuously needed for joint use. The awarding party will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the awarding party the 3-year retention requirement is not applicable to the recipient.

**§ 74.22 Starting date of retention period.**

(a) *General.* (1) Where ED grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee submits to ED its single or last expenditure report for that period. However, if ED grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits to ED its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report to ED. If an expenditure report has been waived, the retention period starts on the day the report would have been due. "Expenditure report" is defined in § 74.3.

(2) Exceptions to this paragraph are contained in paragraphs (b) through (d) of this section.

(b) *Equipment records.* The retention period for the equipment records required by § 74.140(a) starts from the date of the equipment's disposition (§ 74.139) or replacement (§ 74.138) or transfer at the direction of the awarding party (§ 74.136).

(c) *Records for income transactions after grant or subgrant support.* (1) In some cases an ED requirement concerning the disposition of program income, as defined in subpart F of this part, will be satisfied by applying the income to costs incurred after expiration or termination of grant or subgrant support for the activity giving rise to the income. In such a case, the retention period for the records pertaining to the costs starts from the end of the recipient's fiscal year in which the costs are incurred.

(2) In some cases, there may be an ED requirement concerning the disposition of copyright royalties or other program income which is earned after expiration or termination of grant or subgrant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the recipient's fiscal year in which the income is earned. (See subpart F of this part.)

(d) *Indirect cost rate proposals, cost allocation plans, etc.*—(1) *Applicability.* This paragraph applies to the following types of documents, and their supporting records:

(i) Indirect cost rate computations or proposals;

(ii) Cost allocation plans under Appendix C to this part; and

(iii) Any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(2) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(3) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

**§ 74.23 Substitution of microfilm.**

Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

**§ 74.24 Access to records.**

(a) *Records of grantees.* The Secretary and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the grantee which are pertinent to the ED grant, in order to make audit, examination, excerpts, and transcripts.

(b) *Records of subgrantees.* The Secretary, the Comptroller General of the United States, and the grantee, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the subgrantee which are pertinent to the ED grant, in order to make audit, examination, excerpts, and transcripts.

(c) *Records of contractors and subcontractors.* Except as provided in § 74.20(b), the Secretary, the Comptroller General of the United States, the grantee, and (if the contract was awarded under a subgrant) the subgrantee, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the contractor or subcontractor which are pertinent to the ED grant, in order to make audit, examination, excerpts, and transcripts.

(d) *Expiration of right of access.* The rights of access in this section shall not be limited to the required retention period but shall last as long as the records are retained.

**§ 74.25 Restrictions on public access.**

Unless required by Federal statutes, awarding parties may not impose grant or subgrant terms which limit public access to records covered by this subpart except after a determination by ED that the records must be kept confidential and would have been excepted from disclosure under ED's "Freedom of Information" regulation (Part 5 of this title) if the records had belonged to ED. This section does not require recipients or their contractors and subcontractors to permit public access to their records.

## Subpart E—Waiver of Single State Agency Requirements

**§ 74.30 Policy.**

Requests to ED from Governors, or other duly constituted State authorities, for waiver of single State agency requirements in accordance with section 204 of the Intergovernmental Cooperation Act of 1968 will be given expeditious handling. Whenever possible, such requests will be granted.

## Subpart F—Grant-Related Income

**§ 74.40 Scope of subpart.**

This subpart contains policies and requirements relating to (a) program income and (b) interest and other investment income earned on advances of grant funds.

**§ 74.41 Meaning of program income.**

(a) Except as explained in paragraphs (b) and (c) of this section, program income means gross income earned by a recipient from activities part or all of the cost of which is either borne as a direct cost by a grant or counted as a direct cost towards meeting a cost sharing or matching requirement of a grant. It includes but is not limited to such income in the form of fees for services performed during the grant or subgrant period, proceeds from sale of tangible personal or real property, usage or rental fees, and patent or copyright royalties. If income meets this definition, it shall be considered program income regardless of the method used to calculate the amount paid to the recipient—whether, for example, by a cost-reimbursement method or fixed

price arrangement. Nor will the fact that the income is earned by the recipient from a Federal procurement contract or from a procurement contract under a Federal grant awarded to another party affect the income's classification as program income.

(b) For research grants that are subject to an institutional cost-sharing agreement, income shall be considered program income only if it is earned from an activity part or all of the cost of which is borne as a direct cost by the Federal grant funds. An institutional cost-sharing agreement is one entered into between ED and a grantee covering all of ED's research project grants to the grantee in the aggregate.

(c) The following shall not be considered program income:

(1) Revenues raised by a government recipient under its governing powers, such as taxes, special assessments, levies, and fines. (However, the receipt and expenditure of such revenues shall be recorded as a part of grant or subgrant project transactions when such revenues are specifically earmarked for the project in accordance with the terms of the grant or subgrant.)

(2) Tuition and related fees received by an institution of higher education for a regularly offered course taught by an employee performing under a grant or subgrant.

(d) For the purposes of this subpart, program income is divided into several categories. Each category is treated in a separate section of this subpart.

**§ 74.42 General program income.**

(a) *Definition.* General program income means all program income accruing to a grantee during the period of grant support or to a subgrantee during the period of subgrant support, other than the special categories of such income treated in §§ 74.43 through 74.45.

(b) *Use.* (1) General program income shall be retained by the recipient and used in accordance with one or a combination of the alternatives in paragraphs (c), (d), and (e) of this section, as follows: The alternative in paragraph (c) of this section may always be used by recipients and must be used if neither of the other two alternatives is permitted by the terms of the grant. The alternatives in paragraphs (d) or (e) of this section may be used only if expressly permitted by the terms of the grant. In specifying alternatives that may be used, the terms of the grant may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income.

(2) The terms of a subgrant may restrict the use of general program income earned by the subgrantee to only one or some of the alternatives permitted by the terms of the grant, but the alternative in paragraph (c) of this section shall always be permitted.

(c) *Deduction alternative.* (1) Under this alternative, the income is used for allowable costs of the project or program. If there is a cost-sharing or matching requirement, costs borne by the income may not count toward satisfying that requirement. Therefore, the maximum percentage of Federal participation is applied to the net amount determined by deducting the income from total allowable costs and third-party in-kind contributions. The income shall be used for current costs unless ED authorizes deferral to a later period.

(2) To illustrate this alternative, assume a project in which the grantee incurs $100,000 of allowable costs and receives no third-party in-kind contributions. If the grantee earns $10,000 in general program income and this alternative applies, that $10,000 must be deducted from the $100,000 before applying the maximum percentage of Federal participation. If that percentage is 90 percent, the most that could be paid to the grantee would therefore be $81,000 (90 percent times $90,000).

(d) *Cost-sharing or matching alternative.* (1) Under this alternative, the income is used for allowable costs of the project or program but, in this case, the costs borne by the income may count toward satisfying a cost-sharing or matching requirement. Therefore, the maximum percentage of Federal participation is applied to total allowable costs and third-party in-kind contributions. The income shall be used for current costs unless ED authorizes deferral to a later period.

(2) To illustrate this alternative, assume the same situation as in paragraph (c)(2) of this section. Under this alternative, the 90 percent maximum percentage of participation would be applied to the full $100,000, and $90,000 could therefore be paid to the grantee. (It should be noted that if $20,000 of general program income is earned, only $80,000 could be paid, since a grant cannot pay for costs which have been borne by general program income.)

(e) *Additional costs alternative.* Under this alternative, the income is used for costs which are in addition to the allowable costs of the project or program but which nevertheless further the objectives of the Federal statute under which the grant was made. Provided that the costs borne by the income further the broad objectives of that statute, they need not be of a kind that would be permissible as charges to Federal funds.

Examples of purposes for which the income may be used are:

(1) Expanding the project or program.

(2) Continuing the project or program after grant or subgrant support ends.

(3) Supporting other projects or programs that further the broad objectives of the statute.

(4) Obtaining equipment or other assets needed for the project or program or for other activities that further the statute's objectives.

**§ 74.43 Program income—proceeds from sale of real property and from sale of equipment and supplies acquired for use.**

The following kinds of program income shall be governed by subpart O of this part:

(a) Proceeds from the sale of real property purchased or constructed under a grant or subgrant.

(b) Proceeds from the sale of equipment and supplies fabricated or purchased under a grant or subgrant and intended primarily for use in the grant- or subgrant-supported project or program rather than for sale or rental.

**§ 74.44 Program income—royalties and other income earned from a copyrighted work.**

(a) This section applies to royalties, license fees, and other income earned by a recipient from a copyrighted work developed under the grant or subgrant. Income of that kind is covered by this section whether a third party or the recipient itself acts as the publisher, seller, exhibitor, or performer of the copyrighted work. In some cases the recipient incurs costs to earn the income but does not charge these costs to ED grant funds, to required cost-sharing or matching funds, or to other program income. Costs of that kind may be deducted from the gross income in order to determine how much must be treated as program income.

(b) The terms of the grant govern the disposition of income subject to this section. If the terms do not treat this kind of income, there are no ED requirements governing the disposition. A grantee is not prohibited from imposing requirements of its own on the disposition of this kind of income which is earned by its subgrantees provided those requirements are in addition to and not inconsistent with any requirements imposed by the terms of the grant.

**§ 74.45 Program income—royalties or equivalent income earned from patents or from inventions.**

Disposition of royalties or equivalent income earned on patents or inventions

arising out of activities assisted by a grant or subgrant shall be governed by determinations made or agreements entered into under ED's patent regulations. (See parts 6 and 8 of this title.) If the determination or agreement does not provide for the disposition of the royalties or equivalent income, the disposition shall be in accordance with the recipient's own policies.

**§ 74.46 Program income—income after grant or subgrant support not otherwise treated.**

(a) This section applies to program income not treated elsewhere in this part which arises from or is attributable to an activity while supported by a grant or subgrant but which does not accrue until after the period of grant or subgrant support. An example is proceeds from the sale or rental of a residual inventory of merchandise fabricated or purchased by a grant-supported workshop during the period of support.

(b) The terms of the grant govern the disposition of income subject to this section. If the terms do not treat this kind of income, there are no ED requirements governing the disposition. A grantee is not prohibited from imposing requirements of its own on the disposition of this kind of income which is earned by its subgrantees provided those requirements are in addition to and not inconsistent with any requirements imposed by the terms of the grant.

**§ 74.47 Interest earned on advances of grant funds.**

(a) Except when exempted by Federal statute (see paragraph (b) of this section for the principal exemption), grantees shall remit to the Federal Government any interest or other investment income earned on advances of ED grant funds. This includes any interest or investment income earned by subgrantees and cost-type contractors on advances to them that are attributable to advances of ED grant funds to the grantee. Unless the grantee receives other instructions from the responsible ED official, the grantee shall remit the amount due by check or money order payable to the Department of Education.

(b) In accordance with the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577), States, as defined in the act, shall not be accountable to the Federal Government for interest or investment income earned by the State itself, or by its subgrantees, where this income is attributable to grants-in-aid, as defined in the act (42 U.S.C. 4213).[1]

(c) Recipients are cautioned that they are subject to the provisions in § 74.61(e) for minimizing the time between the transfer of advances and their disbursement. Those provisions apply even if there is no accountability to the Federal Government for interest or other investment income earned on the advances.

## Subpart G—Cost Sharing or Matching

**§ 74.50 Scope of subpart.**

(a) This subpart contains rules for satisfying Federal requirements for cost sharing or matching. These rules apply whether the cost sharing or matching is required by Federal statute or by other terms of the grant.

(b) ED and a grantee may enter into an institutional cost-sharing agreement covering all of ED's research project grants to that grantee in the aggregate. Except as provided by the institutional cost-sharing agreement, this subpart applies to the satisfaction of the grantee's obligation under the agreement, as well as to the satisfaction of cost-sharing or matching requirements that apply only to a single grant.

**§ 74.51 Definitions.**

For purposes of this subpart:

"Cost sharing or matching" means the value of third-party in-kind contributions and that portion of the costs of a grant-supported project or program not borne by the Federal Government.

"Equipment" has the same meaning given to that term in § 74.132, except that instead of "acquisition cost," the words "market value at the time of donation" shall be substituted.

"Supplies" means all tangible personal property other than "equipment" as defined in this section.

"Third-party in-kind contributions" means property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant.

[1] "State" is defined in the act to include any agency or instrumentality of a State, and the definition does not exclude a hospital or institution of higher education which is such an agency or instrumentality. "Grant-in-aid" is defined in the act to exclude "payments under research and development contracts or grants which are awarded directly and on similar terms to all qualifying organizations, whether public or private." (42 U.S.C. 4201)

**§ 74.52 Basic rule: Costs and contributions acceptable.**

With the qualifications and exceptions listed in § 74.53, a cost-sharing or matching requirement may be satisfied by either or both of the following:

(a) Allowable costs incurred by the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant. This includes allowable costs borne by non-Federal grants or by other cash donations from non-Federal third parties.

(b) The value of third-party in-kind contributions applicable to the period to which the cost-sharing or matching requirement applies.

**§ 74.53 Qualifications and exceptions.**

(a) *Costs borne by other Federal grants.* (1) Except as provided by Federal statute, a cost-sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to costs borne by general program income earned from a contract awarded under another Federal grant.

(2) For the purposes of this part, general revenue sharing funds under 31 U.S.C. 1221 are not considered a Federal grant. Therefore, in the absence of any provision of Federal statute to the contrary, allowable costs borne by these funds may count towards satisfying a cost-sharing or matching requirement.

(b) *Costs or contributions counted towards other Federal cost-sharing requirements.* Neither costs nor the values of third-party in-kind contributions may count towards satisfying a cost-sharing or matching requirement of an ED grant if they have been or will be counted towards satisfying a cost-sharing or matching requirement of another Federal grant, a Federal procurement contract, or any other award of Federal funds.

(c) *Costs financed by general program income.* Costs financed by general program income, as defined in § 74.42, shall not count towards satisfying a cost-sharing or matching requirement of the ED grant supporting the activity giving rise to the income unless the terms of the grant expressly permit the income to be used for cost sharing or matching. (This is the alternative for use of general program income described in § 74.42(d).)

(d) *Records.* Costs and third-party in-kind contributions counting towards satisfying a cost-sharing or matching requirement must be verifiable from the records of recipients or cost-type contractors. These records must show how the value placed on third-party in-kind contributions was arrived at. To

the extent feasible, volunteer services shall be supported by the same methods that the organization uses to support the allocability of its regular personnel costs.

(e) *Special standards for third-party in-kind contributions.* (1) Third-party in-kind contributions shall count towards satisfying a cost-sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(2) A third-party in kind contribution shall not count as direct cost sharing or matching where, if the party receiving the contribution were to pay for it, the payment would be an indirect cost. Cost-sharing or matching credit for such contributions shall be given only if the recipient or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(3) The values placed on third-party in-kind contributions for cost-sharing or matching purposes shall conform to the rules in the succeeding sections of this subpart. If a third-party in-kind contribution is of a type not treated in those sections, the value placed upon it shall be fair and reasonable.

**§ 74.54 Valuation of donated services.**

(a) *Volunteer services.* Unpaid services provided to a recipient by individuals shall be valued at rates consistent with those ordinarily paid for similar work in the recipient's organization. If the recipient does not have employees performing similar work, the rates shall be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(b) *Employees of other organizations.* When an employer other than a recipient or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services shall be valued at the employee's regular rate of pay exclusive of the employer's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (a) of this section shall apply.

**§ 74.55 Valuation of donated supplies and loaned equipment or space.**

(a) If a third party donates supplies, the contribution shall be valued at the market value of the supplies at the time of donation.

(b) If a third party donates the use of equipment or space in a building but retains title, the contribution shall be valued at the fair rental rate of the equipment or space.

**§ 74.56 Valuation of donated equipment, buildings, and land.**

If a third party donates equipment, buildings, or land, and title passes to a recipient, the treatment of the donated property shall depend upon the purpose of the grant or subgrant, as follows:

(a) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the recipient in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(b) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, the following rules apply:

(1) If approval is obtained from the awarding party, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the ED grant may require that the approval be obtained from ED as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or buildings or a purchase or rental of the land would be approved as an allowable direct cost.

(2) If approval is not obtained under paragraph (b)(1) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third-party in-kind contributions. Instead, they are treated as costs incurred by the recipient. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in subpart Q of this part, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

**§ 74.57 Appraisal of real property.**

In some cases under §§ 74.55 and 74.56, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, ED may require that the market value or fair rental rate be established by a certified real property appraiser (or by a representative of the U.S. General Services Administration, if available) and that the value or rate be certified by a responsible official of the party to which the property or its use is donated. For subgrants, this requirement may also be imposed by the grantee.

## Subpart H—Standards for Grantee and Subgrantee Financial Management Systems

**§ 74.60 Scope of subpart.**

This subpart prescribes standards for financial management systems of grant- and subgrant-supported activities. Awarding parties shall not impose additional standards on recipients unless specifically provided for in a Federal statute (e.g. the Joint Funding Simplification Act, Pub. L. 93-510) or these regulations. However, suggestions and assistance may be provided in establishing or improving financial management systems when needed or requested.

**§ 74.61 Standards.**

Grantees and subgrantees shall meet the following standards for their grant and subgrant financial management systems.

(a) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of each project or program shall be made in accordance with the financial reporting requirements of the grant or subgrant. The terms of grants and subgrants shall not require financial reporting on the accrual basis if the recipient's accounting system is maintained on the cash basis. When accrual reporting is statutorily required, a recipient whose accounting system is not maintained on that basis shall not be required to convert it to the accrual basis; the recipient may develop the accrual information through an analysis of the documentation on hand.

(b) *Accounting records.* Records which identify adequately the source and application of funds for grant- or subgrant-supported activities shall be maintained. These records shall contain information pertaining to grant or subgrant awards, authorizations, obligations, unobligated balances, assets, outlays, income, and, if the recipient is a government, liabilities.

(c) *Internal control.* Effective control and accountability shall be maintained for all grant or subgrant cash, real and personal property covered by subpart O of this part, and other assets. Recipients shall adequately safeguard all such property and shall assure that it is used solely for authorized purposes.

(d) *Budgetary control.* The actual and budgeted amounts for each grant or subgrant shall be compared. If appropriate or specifically required, recipients shall relate financial

information to performance or productivity data, including the production of unit cost information. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(e) *Advance payments.* Procedures shall be established to minimize the time elapsing between the advance of Federal grant or subgrant funds and their disbursement by the recipient. When advances are made by a letter-of-credit method, the recipient shall make drawdowns as close as possible to the time of making disbursements. Grantees advancing cash to subgrantees shall conform sustantially to the same standards of timing and amount as apply to advances by Federal agencies to grantees, including requirements for timely reporting of cash disbursements and balances. (See subpart K of this part.)

(f) *Allowable costs.* Procedures shall be established for determining the reasonableness, allowability, and allocability of costs in accordance with the applicable cost principles prescribed by subpart Q of this part and the terms of the grant.

(g) *Source documentation.* Accounting records shall be supported by source documentation such as cancelled checks, paid bills, payrolls, contract and subgrant award documents, etc.

(h) *Audits*—(1) *General.* External or internal audits shall be made in accordance with generally accepted auditing standards, including the standards of the U.S. General Accounting Office's publication "Standards for Audit of Governmental Organizations Programs, Activities, and Functions."[1] The auditors engaged by the recipient shall meet the criteria for qualifications and independence in that publication.

(2) *Purpose and scope.* The purpose of these audits shall be to determine the effectiveness of the financial management systems and internal procedures established by the recipient to meet the terms of its grants and subgrants. The recipient's auditors need not examine every grant or subgrant awarded to the recipient. Rather, audits generally should be made on an organization-wide basis to test the fiscal integrity of financial transactions and compliance with the terms of awards. These tests would include an appropriate sampling of Federal grants and subgrants.

(3) *Frequency.* These audits shall be conducted on a continuing basis or at scheduled intervals, usually once a year, but at least every two years. The frequency shall depend on the nature, size and complexity of the recipient's grant- or subgrant-supported activities.

(4) *Relation to Federal audit.* These audits may affect the frequency and scope of Federal audit. However, nothing in this section is intended to limit the right of the Federal Government to conduct an audit of a grant- or subgrant-supported activity.

(5) *Audit resolution.* The recipient shall follow a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(6) *Copies of audit reports.* A copy of each audit report, and a description of its resolution, shall be furnished to ED.

## Subpart I—Financial Reporting Requirements

### § 74.70 Scope and applicability of subpart.

(a) This subpart prescribes requirements and forms for grantees to report financial information to ED, and to request grant payments when a letter of credit is not used.

(b) This subpart need not be applied by grantees in dealing with their subgrantees. However, grantees are encouraged not to impose on subgrantees more burdensome requirements than ED imposes on grantees.

### § 74.71 Definitions.

As used in this subpart or in the forms identified by this subpart:

"Accrued expenditures" are the charges by grantee during a given period requiring the provision of funds for: (a) Goods and other tangible property received; (b) services performed by employees, contractors, subgrantees, and other payees; and (c) amounts "becoming owed" for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"Accrued income" is the sum of (a) earnings during a given period from services performed by the grantee and from goods and other tangible property delivered to purchasers, and (b) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"Federal funds authorized" means the total amount of Federal funds obligated by the Federal Government and authorized for use by the grantee.

"In-kind contributions" means "third-party in-kind contributions" as defined in subpart G of this part.

"Obligations" are the amounts of orders placed, contracts and subgrants awarded, services received, and similar transactions during a given period, which will require payment during the same or a future period.

"Outlays" are charges made to the grant project or program. Outlays may be reported on a cash or accrual basis.

"Program income" has the same meaning it has in subpart F of this part.

"Unobligated balance" is the portion of the Federal funds authorized which has not been obligated by the grantee and is determined by deducting the grantee's cumulative obligations from the cumulative Federal funds authorized.

"Unliquidated obligations," for reports prepared on a cash basis, are the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they are the amount of obligations incurred by the grantee for which an outlay has not been recorded.

### § 74.72 General.

(a) Except as provided in paragraphs (d) and (e) of this section, grantees shall use only the forms specified in §§ 74.73 through 74.76, and such supplementary or other forms as may from time to time be authorized by ED, for:

(1) Submitting grant financial reports to granting agencies, or

(2) Requesting advances or reimbursements when letters of credit are not used.

(b) Grantees shall follow all applicable standard instructions issued by OMB for use in connection with the forms specified in §§ 74.73 through 74.76. ED may issue substantive supplementary instructions. ED may shade out or instruct the grantee to disregard any line item that ED finds unnecessary for its decision making purposes.

(c) Grantees will not be required to submit more than the original and two copies of forms required under this subpart.

(d) ED may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. ED may accept the required information from grantees in machine usable format or computer printouts instead of prescribed formats.

(e) When ED has determined that a grantee's accounting system does not meet the standards for financial management systems contained in subpart H of this part, it may require financial reports with more frequency or more detail (or both), upon written notice to the grantee (without regard to § 74.7), until such time as the standards are met.

[1] Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(f) ED may waive any report required by this subpart if not needed.

(g) ED may extend the due date for any financial report upon receiving a justified request from the grantee.

**§ 74.73 Financial Status Report.**

(a) *Form.* Grantees shall use Standard Form 269, Financial Status Report, to report the Status of funds for all nonconstruction grants.

(b) *Accounting basis.* Each grantee shall report program outlays and program income on the same accounting basis, i.e., cash or accrued expenditure (accrual), which it uses in its accounting system.

(c) *Frequency.* ED may prescribe the frequency of the report for each project or program. However, the report shall not be required more frequently than quarterly except as provided in §§ 74.7 and 74.72(e). If ED does not specify the frequency of the report, it shall be submitted annually. A final report shall be required upon expiration or termination of grant support.

(d) *Due date.* When reports are required on a quarterly or semiannual basis, they shall be due 30 days after the reporting period. When required on an annual basis, they shall be due 90 days after the grant year. Final reports shall be due 90 days after the expiration or termination of grant support.

**§ 74.74 Federal Cash Transactions Report.**

(a) *Form.* (1) For grants paid by letters of credit (or Treasury check advances) through any ED payment office except the Departmental Federal Assistance Financing System (DFAFS), the grantee shall submit to the payment office Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a. For grants paid by DFAFS, the grantee shall submit DFAFS Report 27, Recipient Report of Expenditures, to DFAFS.

(2) These reports will be used by the ED payment office to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment: *Provided,* That the information to be submitted is not changed in substance.

(b) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(c) *Cash in hands of secondary recipients.* When considered necessary and feasible by the ED payment office, grantees may be required to report the amount of cash subadvances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(d) *Frequency and due date.* Grantees shall submit the report no later than 15 working days following the end of each quarter. However, where a letter of credit authorizes advances at an annualized rate of one million dollars or more, the ED payment office may require the report to be submitted within 15 working days following the end of each month.

**§ 74.75 Request for Advance or Reimbursement.**

(a)(1) *Advance payments.* Requests for Treasury check advance payments shall be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form is not used for drawdowns under a letter of credit or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under non-construction grants shall also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see § 74.76(a).)

(b) The frequency for submitting payment requests is treated in § 74.96.

**§ 74.76 Outlay report and request for reimbursement for construction programs.**

(a) *Construction grants paid by reimbursement method.* (1) Requests for reimbursement under construction grants shall be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. ED may, however, prescribe the Request for Advance or Reimbursement form specified in § 74.75 instead of this form.

(2) The frequency for submitting reimbursement requests is treated in § 74.96.

(b) *Construction grants paid by letter of credit or Treasury check advance.* (1) When a construction grant is paid by letter of credit or Treasury check advances, the grantee shall report its outlays to ED using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. ED will provide any necessary special instruction. However, frequency and due date shall be governed by § 74.73 (c) and (d).

(2) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances shall be requested on the form specified in § 74.75.

(3) ED may substitute the Financial Status Report specified in § 74.73 for the Outlay Report and Request for Reimbursement.

(c) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 74.73(b).

## Subpart J—Monitoring and Reporting of Program Performance

**§ 74.80 Scope of subpart.**

This subpart sets forth the procedures for monitoring and reporting program performance of recipients. These procedures are designed to place reliance on recipients to manage the day-to-day operations of their grant- and subgrant-supported activities.

**§ 74.81 Monitoring by recipients.**

Recipients shall monitor the performance of grant- and subgrant-supported activities. They shall review each program, function, or activity to assure that adequate progress is being made towards achieving the goals of the grant or subgrant.

**§ 74.82 Performance reports under nonconstruction grants.**

(a) Where ED determines that performance information sufficient to meet its programmatic needs will be available from subsequent applications, ED will require the grantee to submit a performance report only upon expiration or termination of grant support. This report will be due on the same date as the final financial Status Report unless waived by ED. Note that the "Application for Federal Assistance (Nonconstruction Programs)" prescribed by subpart N of this part, when used to request continued support, provides information substantially equivalent to a performance report.

(b) Except as provided in paragraph (a) of this section, grantees shall submit annual performance reports unless ED requires quarterly or semiannual reports. Annual reports shall be due 90 days after the grant year; quarterly or semiannual reports shall be due 30 days after the reporting period. A final performance report shall be due 90 days after the expiration or termination of grant support. ED may extend the due date for any performance report upon receiving a justified request from the grantee. In addition, ED may waive the requirement for any performance report which is not needed.

(c) The content of performance reports shall conform to any instructions issued by the granting agency, including, to the

extent appropriate to the particular grant, a brief presentation of the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the goals established for the period. Where the output of the project or program can be readily expressed in numbers, a computation of the cost per unit of output may be required if that information will be useful.

(2) The reasons for slippage if established goals were not met.

(3) Other pertinent information including, when appropriate, analysis and explanation of unexpectedly high overall or unit costs.

(d) Grantees will not be required to submit more than the original and two copies of performance reports.

(e) Grantees shall adhere to the standards in paragraphs (a) through (d) of this section in prescribing performance reporting requirements for subgrantees.

**§ 74.83 Performance reports under construction grants.**

In general, awarding parties rely heavily on on-site technical inspection and certified percentage-of-completion data to keep themselves informed as to progress under construction grants and subgrants. Formal performance reports to supplement those sources of information shall be required only if considered necessary by the awarding party, and in no case more frequently than quarterly.

**§ 74.84 Significant developments between scheduled reporting dates.**

Between the scheduled performance reporting dates, events may occur which have significant impact upon the grant- or subgrant-supported activity. In such cases, the recipient shall inform the awarding party as soon as the following types of conditions become known:

(a) Problems, delays, or adverse conditions which will materially impair the ability to attain the objective of the award. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(b) Favorable developments which enable meeting time schedules and goals sooner or at less cost than anticipated or producing more beneficial results than originally projected.

**§ 74.85 Site visits.**

Site visits may be made as necessary by representatives of ED to:

(a) Review program accomplishments and management control systems.

(b) Provide such technical assistance as may be required.

## Subpart K—Grant and Subgrant Payment Requirements

**§ 74.90 Scope of subpart.**

This subpart prescribes the basic standard and the methods under which ED will make grant payments to grantees, and grantees will make subgrant payments to their subgrantees.

**§ 74.91 Definitions.**

As used in this subpart:

"Advance by Treasury check" is a payment made by a Treasury check to a grantee, upon its periodic request or through the use of predetermined payment schedules, before payments are made by the grantee.

"Letter of credit" is an instrument certified by an authorized official which authorizes a recipient to draw funds needed for immediate disbursement in accordance with Treasury Circular No. 1075.

"Percentage of completion method" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's rate of disbursements.

**§ 74.92 Basic standard.**

Methods and procedures for making payments to recipients shall minimize the time elapsing between the transfer of funds and the recipient's disbursements.

**§ 74.93 Payment methods under nonconstruction grants.**

(a) Letters of credit will be used to pay ED grantees when all of the following conditions exist:

(1) There is or will be a continuing relationship between the grantee and the ED payment office for at least a year and the total amount of advances to be received from the ED payment office is $120,000 or more per year,

(2) The grantee has maintained, or demonstrated to ED the willingness and ability to maintain, procedures that minimize the time elapsing between the transfer of funds from the Treasury and their disbursement by the grantee, and

(3) The grantee's financial management system meets the standards for fund control and accountability in Subpart H of this part.

(b) Advances by Treasury check will be used, in accordance with Treasury Circular No. 1075, when the grantee does not meet the requirements in paragraph (a)(1) of this section but does meet the requirements in paragraphs (a)(2) and (3) of this section.

(c) Reimbursement by Treasury check will be preferred method when the requirements of either paragraph (a)(2) or paragraph (a)(3) of this section are not met. This method may also be used when the major portion of the program is accomplished through private market financing or Federal loans, and the Federal grant assistance constitutes a minor portion of the program.

**§ 74.94 Payment methods under construction grants.**

(a) Reimbursement by Treasury check shall be the preferred method when the grantee does not meet the requirements specified in § 74.93(a) (2) or (3), and may be used for any ED construction grant unless ED has entered into an agreement with the grantee to use a letter of credit for all ED grants, including construction grants.

(b) When the reimbursement by Treasury check method is not used, § 74.93 (a) and (b) shall apply to the construction grant. Implementing procedures under § 74.93 (a) and (b) will be insofar as possible the same for construction grants as for nonconstruction grants awarded to the same grantee.

(c) ED will not use the percentage of completion method to pay its construction grants. The grantee may use that method to pay its construction contractor, but if it does, ED's payments to the grantee will nevertheless be based on the grantee's actual rate of disbursements.

**§ 74.95 Withholding of payments.**

(a) Unless otherwise required by Federal statute, payments for proper charges incurred by grantees will not be withheld unless (1) the grantee has failed to comply with Federal reporting requirements or (2) the grant is suspended pursuant to § 74.114 or (3) the grantee owes money to the United States and collection of the debt by withholding grant payments will not impair the accomplishment of the objectives of any grant program sponsored by the United States.

(b) Cash withheld for failure to comply with reporting requirements but without suspension of the grant will be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 74.114. When a debt is to be collected, ED may withhold payments or require appropriate accounting adjustments to recorded grant cash balances for which the grantee is accountable to the Federal Government, in order to liquidate the indebtedness.

**§ 74.96 Requesting advances or reimbursements.**

(a) If advances are made by Treasury check and the advances are not prescheduled, the grantee shall submit its requests for payment monthly. Less frequent requests are not permitted because they would result in advances covering excessive periods of time.

(b) If payments are made through reimbursement by Treasury check, the grantee may submit its requests for reimbursement monthly and may submit them more often if authorized. The grantee will be paid as promptly as possible, ordinarily within 30 days after receipt of a proper request for reimbursement.

(c) The forms for requesting advances or reimbursements are identified in subpart I of this part.

**§ 74.97 Payments to subgrantees.**

Grantees shall observe the requirements of this subpart in making (or withholding) payments to subgrantees, with the following exceptions:

(a) Advance payment by check may be used instead of letter of credit;

(b) The forms specified in subpart I of this part for requesting advances and reimbursements are not required to be used by subgrantees; and

(c) The reimbursement by check method may be used to pay any construction subgrant, whether or not ED has agreed to use a letter of credit for all direct ED grants to that same recipient.

## Subpart L—Programmatic Changes and Budget Revisions

**§ 74.100 Scope and applicability of this subpart.**

(a) *Scope.* This subpart deals with prior approval requirements for post-award programmatic changes and budget revisions by recipients.

(b) *Exemption of mandatory grants.* Sections 74.103 through 74.106 do not apply to programmatic changes or budget revisions made by grantees under State plan or other grants which ED is required by law to award if the applicant meets all applicable requirements for entitlement. (These are generally called "mandatory" or "formula" grants.)

(c) *Exemption of certain subgrants.* Sections 74.103 through 74.106 do not apply to subgrants from States to their local governments under a mandatory or formula grant, if the local government is not required to apply for the subgrant on a project basis. Generally, such exempt subgrants will occur under a State plan which provides for local administration of a State-wide program under State supervision.

**§ 74.101 Relationship to cost principles.**

The cost principles in Appendices C, D, and F to this part contain requirements for prior approval of certain types of costs (see § 74.176). Except when waived, those requirements apply to all grants and subgrants even if §§ 74.103 through 74.106 do not.

**§ 74.102 Prior approval procedures.**

(a) *For grants.* When requesting a prior approval required by this subpart, grantees shall address their requests to the responsible ED grants officer. Approvals shall not be valid unless they are in writing and signed by the authorized ED official.

(b) *For subgrants.* Grantees shall be responsible for reviewing requests from their subgrantees for the approvals required by this subpart and for giving or denying the approval. A grantee shall not approve any action which is inconsistent with the purpose or terms of the Federal grant. If an action by a subgrantee will result in a change in the overall grant project or budget requiring ED approval, the grantee shall obtain that approval before giving its approval to the subgrantee. Approvals shall not be valid unless they are in writing and signed by an authorized official of the grantee.

(c) *Timing.* Within 30 days from the date of receipt of a request for approval, the approval authority shall review the request and notify the recipient of its decision. If the request for approval is still under consideration at the end of 30 days, the approval authority shall inform the recipient in writing as to when to expect the decision.

**§ 74.103 Programmatic changes.**

(a) *Scope.* This section contains requirements for prior approval of departures, other than budget revisions, from approved project plans. In addition to the requirements in this section, awarding parties may require prior approval for other kinds of programmatic changes to an approved grant or subgrant project.

(b) *Changes to project scope or objectives.* The recipient shall obtain prior approval for any change to the scope or objectives of the approved project. (For construction projects, any material change in approved space utilization or functional layout shall be considered a change in scope.)

(c) *Changes in key people.* The recipient of a grant or subgrant for research (or any other kind of grant or subgrant if the terms of the award make this rule applicable) shall obtain prior approval:

(1) To continue the project during any continuous period of more than 3 months without the active direction of an approved project director or principal investigator; or

(2) To replace the project director or principal investigator (or any other persons named and expressly identified as key project people in the notice of grant or subgrant award) or to permit any such people to devote substantially less effort to the project than was anticipated when the grant or subgrant was awarded.

(d) *Other programmatic changes.* The following shall require prior approval except to the extent explicitly included in the project plan as approved by the awarding party at the time of award:

(1) Providing financial assistance to a third party by subgranting or any other means.

(2) Tranferring to a third party, by contracting or any other means, the actual performance of the substantive programmatic work. The term "substantive programmatic work" means activities which are central to carrying out the purpose of the project, and not merely incidental. Transfer of substantive programmatic work does not include purchase of supplies, materials, or equipment; acquisition of general or incidental support services; obtaining advice; or transfer of activities whose cost is treated as an indirect cost.

(3) Providing medical care to individuals under research grants.

**§ 74.104 Budgets generally.**

(a) *Definitions.* In this subpart:

(1) "Budget" means the recipient's financial plan for carrying out the project or program.

(2) "Approved budget" means a budget (including any revised budget) which has been approved by the awarding party.

(b) *Research project budgets.* For research projects, approved budgets shall not include the recipient's share of project costs.

(c) *Non-research project budgets.* For non-research projects which involve cost sharing or matching, approved budgets shall ordinarily consist of a single set of figures covering total project cost (the sum of the awarding party's share and the recipient's share). However, the awarding party may specify that the recipient's share not be included in the approved budget. In no case, however, shall the approved budget be in the form of a separate set of figures for each share.

(d) *Subdivision by programmatic segments.* Some grants and subgrants

encompass two or more programmatic segments (such as discrete programs, projects, functions, or types of activities). In these cases, the awarding party may require that the approved budget be subdivided to show the anticipated cost of each programmatic segment.

**§ 74.105 Budget revisions—nonconstruction projects.**

(a) Except as provided in paragraph (b) of this section, the recipient of a grant or subgrant having an approved budget shall obtain prior approval for any budget revision which will:

(1) Involve transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or

(2) Involve transfer of amounts previously budgeted for student support (tuition waivers, stipends, and other payments to or for trainees), or

(3) Result in a need for the award of additional funds, e.g., an increase in the base upon which indirect costs are calculated which will increase allocable indirect costs and result in a claim for a supplementary award.

(b) Any or all of the prior approval requirements in paragraph (a) of this section may be waived by the awarding party.

(c) Except as provided in §§ 74.107 and 74.176, other budget changes under nonconstruction grants do not require approval.

**§ 74.106 Budget revisions—construction projects.**

Unless provided otherwise by the terms of the grant or subgrant, revisions to construction project budgets do not require approval.

**§ 74.107 Construction and nonconstruction work under the same grant or subgrant.**

When a grant or subgrant provides support for both construction and nonconstruction work, the awarding party may require prior approval before any fund or budget transfers between the two types of work.

**§ 74.108 Authorized funds exceeding needs.**

The recipient shall notify the awarding party promptly whenever the amount of grant or subgrant authorized funds is expected to exceed needs by more than $5,000 or 5 percent of the grant or subgrant, whichever is greater. This notification will not be required under continuing grants or subgrants if the application for the next period's funding will include an estimate of what the unobligated balance of authorized funds will be at the end of the current period.

## Subpart M—Grant and Subgrant Closeout, Suspension, and Termination

**§ 74.110 Definitions.**

"Grant closeout" means the process by which ED determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and ED.

"Suspension" of a grant means temporary withdrawal of the grantee's authority to obligate grant funds pending corrective action by the grantee or a decision to terminate the grant.

"Termination" of a grant means permanent withdrawal of the grantee's authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee.

"Termination" does not include:

(a) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;

(b) Refusal by ED to extend a grant or award additional funds (such as refusal to make a competing or noncompeting continuation, renewal, extension, or supplemental award);

(c) Withdrawal of the unobligated balance as of the expiration of a grant;

(d) Annulment, i.e., voiding, of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

**§ 74.111 Closeout.**

(a) Each grant shall be closed out as promptly as is feasible after expiration or termination.

(b) In closing out ED grants, the following shall be observed:

(1) Upon request, ED shall promptly pay the grantee for any allowable reimbursable costs not covered by previous payments.

(2) The grantee shall immediately refund or otherwise dispose of, in accordance with instructions from ED, any unobligated balance of cash advanced to the grantee.

(3) The grantee shall submit, within 90 days of the date of expiration or termination, all financial, performance, and other reports required by the terms of the grant. ED may extend the due date for any report upon receiving a justified request from the grantee, and may waive any report which is not needed.

(4) ED shall make a settlement for any upward or downward adjustment of the Federal share of costs, to the extent called for by the terms of the grant.

(c)(1) The closeout of a grant does not affect the retention period for, or Federal rights of access to, grant records. See subpart D of this part.

(2) If a grant is closed out without audit, ED retains the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

(3) The closeout of a grant does not affect the grantee's responsibilities with respect to property under subpart O of this part, or with respect to any program income for which the grantee is still accountable under subpart F of this part.

**§ 74.112 Amounts payable to the Federal Government.**

For each grant, the following sums shall constitute a debt or debts owed by the grantee to the Federal Government, and shall, if not paid upon demand, be recovered from the grantee or its successor or assignees by set-off or other action as provided by law:

(a) Any grant funds paid to the grantee by the Federal Government in excess of the amount to which the grantee is finally determined to be entitled under the terms of the grant;

(b) Any interest or other investment income earned on advances of grant funds which is due the Federal Government pursuant to § 74.47;

(c) Any royalties or other special classes of program income which, under the terms of the grant, are required to be remitted to the Federal Government (see Subpart F of this part);

(d) Any amounts due the Federal Government under Subpart O of this part; and

(e) Any other amounts finally determined to be due the Federal Government under the terms of the grant.

**§ 74.113 Violation of terms.**

(a) When a grantee has materially failed to comply with the terms of a grant, ED may suspend the grant, in accordance with § 74.114, terminate the grant for cause, as provided in § 74.115, or take such other remedies as may be legally available and appropriate in the circumstances.

(b) If a project or program is supported over two or more funding periods, a grant may be suspended or terminated in the current period for failure to submit a report still due from a prior period.

**§ 74.114 Suspension.**

(a) When a grantee has materially failed to comply with the terms of a grant, ED may, upon reasonable notice to the grantee, suspend the grant in whole or in part. The notice of suspension will state the reasons for the

suspension, any corrective action required of the grantee, and the effective date. The suspension may be made effective at once if a delayed effective date would be unreasonable considering ED's responsibilities to protect the Federal Government's interest. Suspensions shall remain in effect until the grantee has taken corrective action satisfactory to ED or given evidence satisfactory to ED that such corrective action will be taken, or until ED terminates the grant.

(b) New obligations incurred by the grantee during the suspension period will not be allowed unless ED expressly authorizes them in the notice of suspension or an amendment to it. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension or termination. At the discretion of ED, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

(c) Appropriate adjustments to payments under the suspended grant will be made either by withholding subsequent payments or by not allowing the grantee credit for disbursements made in payment of unauthorized obligations incurred during the suspension period.

**§ 74.115 Termination.**

(a) *Termination for cause.* ED may terminate any grant in whole, or in part, at any time before the date of expiration, whenever ED determines that the grantee has materially failed to comply with the terms of the grant. ED shall promptly notify the grantee in writing of the determination and the reasons for the termination, together with the effective date.

(b) *Termination on other grounds.* Except as provided in paragraph (a) of this section, grants may be terminated in whole or in part only as follows:

(1) By ED with the consent of the grantee, in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial terminations, the portion to be terminated, or

(2) By the grantee, upon written notification to ED, setting forth the reasons for such termination, the effective date, and in the case of partial terminations, the portion to be terminated. However, if, in the case of a partial termination, ED determines that the remaining portion of the grant will not accomplish the purposes for which the grant was made, ED may terminate the grant in its entirety under either paragraph (a) or paragraph (b)(1) of this section.

(c) *Termination settlements.* When a grant is terminated, the grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. ED will allow full credit to the grantee for the Federal share of the noncancellable obligations properly incurred by the grantee prior to termination.

**§ 74.116 Applicability to subgrants.**

Grantees shall adhere to the same standards regarding closeout, suspension, and termination of subgrants as are prescribed in this subpart for ED.

## Subpart N—Forms for Applying for Grants

**§ 74.120 Scope of subpart.**

(a) This subpart prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying to ED for grants. This subpart is not applicable, however, to mandatory or formula grant programs which do not require applicants to apply to ED for funds on a project basis.

(b) This subpart permits ED to prescribe the form of applications by nongovernmental organizations (including hospitals and institutions of higher education operated by a government), but prescribes the use of a standard facesheet for certain of these applications.

(c) This subpart applies only to applications for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged not to adopt more detailed or burdensome application requirements for subgrants.

**§ 74.121 Authorized forms and instructions for governmental organizations.**

(a) In applying to ED for grants, governments shall use only the forms specified in §§ 74.122 through 74.126, and such supplementary or other forms as may from time to time be prescribed by ED.

(b) Governments will not be required to submit more than the original and two copies of their applications.

(c) Governments shall follow all applicable standard instructions promulgated by OMB for use in connection with the forms specified in §§ 74.122 through 74.126. ED may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of the Secretary. For any form, ED may shade out or instruct the applicant to disregard any line item that is not needed.

(d) When a government applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the facesheet and any other affected pages need be submitted. Previously submitted pages whose information is still current need not be resubmitted.

**§ 74.122 Preapplications for Federal assistance for governmental organizations.**

(a) When a preapplication is submitted by a government, the preapplication for Federal assistance form prescribed by OMB Circular A-102 shall be used. The purposes of preapplications shall be to:

(1) Establish communication between the applicant and ED;

(2) Determine the applicant's eligibility;

(3) Determine how well the project can compete with similar applications from others in order to discourage proposals which have little or no chance for Federal funding before applicants incur significant expenditures for preparing an application.

(b) Preapplication shall be mandatory when the potential applicant is a government and the proposed project (1) is for construction, land acquisition, or land development, and (2) would require more than $100,000 of Federal funding. The Secretary may require preapplications regardless of the type of project and regardless of the estimated amount of Federal funding. In addition, any government may submit a preapplication even when not required by ED.

**§ 74.123 Notice of preapplication review action for governmental organizations.**

The notice of preapplication review action form prescribed by attachment M of OMB Circular No. A-102 will be used by ED to inform governmental applicants of the results of the review of the preapplications submitted to them. ED will send a notice to the applicant ordinarily within 45 days of the receipt of the preapplication form. If the review cannot be made within 45 days, the applicant will be informed by letter as to when the review will be completed.

**§ 74.124 Application for Federal assistance (nonconstruction programs) for governmental organizations.**

The applicant for Federal assistance (nonconstruction programs) form prescribed by attachment M of OMB Circular No. A–102 shall be used by governments in applying for any grant to which this subpart is applicable except where a form specified in § 74.125 or § 74.126 is to be used.

**§ 74.125 Application for Federal assistance (for construction programs) for governmental organizations.**

The applicant for Federal assistance (for construction programs) form prescribed by attachment M of OMB Circular No. A–102 shall be used by governments in applying for any grant whose purpose is soley or primarily construction, land acquisition, or land development.

**§ 74.126 Application for Federal assistance (short form) for governmental organizations.**

The applicant for Federal assistance (short form) form prescribed by attachment M of OMB Circular No. A–102 shall be used by governments in applying for any single-purpose one-time grant of less than $10,000 not requiring clearinghouse review, an environmental impact statement, or the relocation of persons, businesses, or farms. ED may authorize or prescribe this form for applications for larger amounts.

**§ 74.127 Authorized forms and instructions for nongovernmental organizations.**

Nongovernmental organizations shall use application forms and instructions prescribed by ED, except that the facesheet of such applications shall be standard form 424 for grants under programs covered by attachment A. part I, of OMB Circular No. A–95.

## Subpart O—Property

### General

**§ 74.130 Scope and applicability of this subpart.**

(a) Except as explained in paragraphs (c), (d), and (e) of this section this subpart applies to real property, equipment, and supplies acquired with grant support. To be considered acquired with grant support, some or all of the property's acquisition cost must be a direct cost under the grant, a subgrant, or a cost-type contract and must be either borne by grant funds or counted toward satisfying a grant cost-sharing or matching requirement.

(b) This subpart also deals with inventions, patents, and copyrights arising out of activities assisted by a grant or subgrant.

(c) This subpart does not apply to—

(1) Property for which only depreciation or use allowances are charged;

(2) Property donated entirely as a third-party in-kind contribution (as defined in § 74.51); or

(3) Equipment or supplies acquired primarily for sale or rental rather than for use.

(d) Equipment or supplies acquired by a contractor under a grant or subgrant shall be subject to this subpart only if, by terms of the contract, title vests in the grantee or subgrantee.

(e) For research grants that are subject to an institutional cost-sharing agreement (see § 74.50(b)), real property, equipment, and supplies shall be subject to this subpart only if at least some part of the acquisition cost is borne as a direct cost by Federal grant funds.

**§ 74.131 Prohibition against additional requirements.**

Recipients may follow their own property management policies and procedures: *Provided,* They observe the requirements of this subpart. Awarding parties may not impose on recipients property requirements (including property reporting requirements) not authorized by this subpart, unless specifically required by Federal statutes or Executive Orders.

**§ 74.132 Definitions.**

As used in this subpart:

"Acquisition" of property includes purchase, construction, or fabrication of property, but does not include rental of property or alterations and renovations of real property.

"Acquisition cost" of an item of purchased equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance shall be included in or excluded from the unit acquisition cost in accordance with the regular accounting practices of the organization purchasing the equipment. If the item is acquired by trading in another item and paying an additional amount, "acquisition cost" means the amount received for trade-in plus the additional outlay.

"Amount received for trade-in" of an item of equipment traded in for replacement equipment means the amount that would have been paid for the replacement equipment without a trade-in minus the amount paid with the trade-in. The term refers to the actual difference, not necessarily the trade-in value shown on an invoice.

"Equipment" means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit except that organizations subject to Cost Accounting Standards Board (CASB) regulations may use the CASB standard of $500 or more per unit and useful life of two years. An organization may use its own definition of equipment: *Provided,* That such definition would at least include all tangible personal property as defined herein.

"Personal property" means property of any kind except real property. It may be tangible—having physical existence, or intangible—having no physical existence, such as patents, inventions, and copyrights.

"Real property" means land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

"Replacement equipment" means property acquired to take the place of other equipment. To qualify as replacement equipment, it must serve the same function as the equipment replaced and must be of the same nature or character, although not necessarily the same model, grade, or quality.

"Supplies" means all tangible personal property other than equipment.

**§ 74.133 Title to real property, equipment, and supplies.**

Subject to the obligations and conditions set forth in this subpart, title to real property, equipment, and supplies acquired under a grant or subgrant shall vest, upon acquisition, in the grantee or subgrantee respectively.

### Real Property

**§ 74.134 Real property.**

Except as otherwise provided by federal statutes, real property to which this subpart applies shall be subject to the following requirements, in addition to any other requirements imposed by the terms of the grant:

(a) *Use.* The property shall be used for the originally authorized purpose as long as needed for that purpose. When no longer so needed, approval of the Secretary may be requested to use the property for other purposes. Use for other purposes shall be limited to:

(1) Projects or programs supported by other Federal grants or assistance agreements.

(2) Activities not supported by other Federal grants or assistance agreements but having, nevertheless, purposes consistent with those of the legislation

under which the original grant was made.

(b) *Transfer of title.* Approval may be requested from ED to transfer title to an eligible third party for continued use for authorized purposes in accordance with paragraph (a) of this section. If approval is permissable under Federal statutes and is given, the terms of the transfer shall provide that the transferee shall assume all the rights and obligations of the transferor set forth in this subpart or in other terms of the grant or subgrant.

(c) *Disposition.* When the real property is no longer to be used as provided in paragraphs (a) and (b) of this section, the disposition instructions of ED shall be followed. Those instructions will provide for one of the following alternatives:

(1) The property shall be sold and the Federal Government shall be paid an amount computed by multiplying the Federal share of the property (see § 74.142) times the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). Proper sales procedures shall be used that provide for competition to the extent practicable and result in the highest possible return.

(2) The recipient shall have the option either of selling the property in accordance with paragraph (c)(1) of this section or of retaining title. If title is retained, the Federal Government shall be paid an amount computed by multiplying the market value of the property by the Federal share of the property.

(3) The recipient shall transfer the title to either the Federal Government or an eligible non-Federal party named by ED. The grantee shall be entitled to be paid an amount computed by multiplying the market value of the property by the non-Federal share of the property. If the property belonged to a subgrantee, see § 74.143 for subgrantee's share.

Equipment and Supplies

**§ 74.135 Exemptions for equipment and supplies subject to certain statutes.**

(a) Some Federal statutes, in certain circumstances, permit title to equipment or supplies acquired with grant funds to vest in the recipient without further obligation to the Federal Government or on such terms and conditions as deemed appropriate. An example of such a statute is the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95-224, which provides this authority for equipment and supplies purchased with the funds of grants (and Federal contracts and cooperative agreements) for the conduct of basic or applied scientific research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research.

(b) If equipment is subject to a statute of the kind described in paragraph (a) of this section, it shall be exempt from the requirements in the remaining sections of this subpart. However, an item of such equipment having a unit acquisition cost of $1,000 or more shall be subject to § 74.136, concerning rights to require transfer, and, while subject to such a right, to the rules on replacement in § 74.138.

(c) If supplies are subject to a statute of the kind described in paragraph (a) of this section, they shall be exempt from all provisions of the remainder of this subpart which would otherwise apply.

**§ 74.136 Rights to require transfer of equipment.**

(a) *ED right.* For items of equipment having a unit acquisition cost of $1,000 or more, ED shall have the right to require transfer of the equipment (including title) to the Federal Government or to an eligible non-Federal party named by ED. This right will normally be exercised by ED only if the project or program for which the equipment was acquired is transferred from one grantee to another. The right shall be subject to the following conditions:

(1) In order for ED to exercise the right, a specific notice that it is exercising the right or considering doing so must be issued no later than the 120th day after the end of ED grant support for the project or program for which the equipment was acquired. Furthermore:

(i) If the equipment is eligible for the exemptions in § 74.135 and ceases to be needed for the project or program for which it was acquired while the project or program is still being performed by the recipient, the notice must have been received by the grantee while the equipment was still needed for that project or program.

(ii) If the equipment is not eligible for those exemptions, the notice must have been received by the grantee before other permissible disposition of the equipment took place in accordance with § 74.139.

(2) If the right is exercised, the grantee shall be entitled to be paid any reasonable, resulting shipping or storage costs incurred, plus an amount computed by multiplying the market value of the equipment by the non-Federal share of the equipment. (See §§ 74.142 and 74.143.)

(b) *Right of parties awarding subgrants.* When a grantee awards a subgrant, it may reserve for itself a right similar to that in paragraph (a) of this section for items of equipment having a unit acquisition cost of $1,000 or more which are acquired under that subgrant. Without the approval of ED the right may be exercised only if the project or program for which the equipment was acquired is transferred to another subgrantee and only for the purpose of transferring the equipment to the new subgrantee for continued use in the project or program.

(c) *Equipment lists.* If at any time an awarding party is considering exercising its right to require transfer of equipment, it may require the recipient to furnish it a listing of all items of equipment that are subject to the right. This will enable the awarding party to determine which items, if any, should be transferred.

**§ 74.137 Use of equipment.**

(a) *Basic rule.* Equipment which has not been transferred under § 74.136 shall be used by the recipient in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original project or program, the recipient shall use the equipment, if needed, in other projects or programs currently or previously sponsored by the Federal Government, in the following order of priority:

(1) Projects or programs currently or previously sponsored by ED.

(2) Projects or programs currently or previously sponsored by other Federal agencies.

(b) *Shared use.* If equipment is being used less than full time in the project or program for which it was originally acquired, the recipient shall make it available for use in other projects or programs currently or previously sponsored by the Federal Government: *Provided,* Such other use will not interfere with the work on the original project or program. First preference for such other use shall be given to other projects or programs sponsored by ED.

(c) *Use by other recipients.* When the recipient can no longer use the equipment as required by paragraph (a) of this section, it may voluntarily make the equipment available for use on projects or programs currently or previously sponsored by the Federal Government which the recipient is supporting through subgrants or through non-Federal grants. If the recipient is a subgrantee, it may also voluntarily make the equipment available for use on projects or programs currently or previously sponsored by the Federal Government which are being conducted or supported by the grantee.

(d) *Other uses.* Unless ED provides otherwise, while equipment is being used as described in the preceding paragraphs of this section, it may also be used part time for other purposes. However, use as described in those paragraphs shall be given priority over other uses.

**§ 74.138 Replacement of equipment.**

(a) Equipment may be exchanged for replacement equipment if needed. The replacement may take place either through trade-in or through sale and application of the proceeds to the acquisition cost of the replacement equipment. In either case, the transaction must be one which a prudent person would make in like circumstances.

(b) If an additional outlay to acquire the replacement equipment is charged as a direct cost to either Federal funds or required cost-sharing or matching under a Federal award, the replacement equipment shall be subject to whatever property requirements or exemptions are applicable to that award. If the award is a grant from ED the full acquisition cost of the replacement equipment shall determine which provisions of this subpart apply.

(c) For any replacement not covered by paragraph (b) of this section, the provisions of this subpart applicable to the equipment replaced shall carry over to the replacement equipment. However, none of the provisions of this subpart shall carry over if (1) the Federal share of the equipment replaced was 10 percent or less or (2) the product of that share times the amount received for trade-in or sale is $100 or less.

**§ 74.139 Disposition of equipment.**

When original or replacement equipment is no longer to be used in projects or programs currently or previously sponsored by the Federal Government, disposition of the equipment shall be made as follows:

(a) *Equipment with a unit acquisition cost of less than $1,000 and equipment with no further use value.* The equipment may be retained, sold, or otherwise disposed of, with no further obligation to the Federal Government.

(b) *All other equipment.* (1) The equipment may be retained or sold, and the Federal Government shall have a right to an amount calculated by multiplying the current market value or the proceeds from sale by the Federal share of the equipment (see § 74.142). If part of the Federal share in the equipment came from an award under which the exemptions in § 74.135 were applicable, the amount due shall be reduced pro rata. In any case, if the equipment is sold, $100 or 10 percent of the total sales proceeds, whichever is greater, may be deducted and retained from the amount otherwise due for selling and handling expenses.

(2) If the grantee's project or program for which or under which the equipment was acquired is still receiving grant support from the same Federal program and if ED approves, the net amount due may be used for allowable costs of that project or program. Otherwise, the net amount must be remitted to the granting agency by check.

**§ 74.140 Equipment management requirements.**

Procedures for managing equipment (including replacement equipment) until transfer, replacement, or disposition takes place shall, as a minimum, meet the following requirements:

(a) Property records shall be maintained accurately. (Retention and access requirements for these records are explained in Subpart D of this part.) For each item of equipment, the records shall include:

(1) A description of the equipment, including manufacturer's model number, if any.

(2) An identification number, such as the manufacturer's serial number.

(3) Identification of the grant under which the recipient acquired the equipment.

(4) The information needed to calculate the Federal share of the equipment. (See § 74.142.)

(5) Acquisition date and unit acquisition cost.

(6) Location, use, and condition of the equipment and the date the information was reported.

(7) All pertinent information on the ultimate transfer, replacement, or disposition of the equipment.

(b) A physical inventory of equipment shall be taken and the results reconciled with the property records at least once every 2 years to verify the existence, current utilization, and continued need for the equipment. A statistical sampling basis is acceptable. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the differences.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Where equipment is to be sold and the Federal Government is to have a right to part or all of the proceeds, selling procedures shall be established which will provide for competition to the extent practicable and result in the highest possible return.

**§ 74.141 Supplies.**

(a) If supplies exceeding $1,000 in total aggregate market value are left over upon termination or expiration of the grant or subgrant for which they were acquired and the supplies are not needed for any project or program currently or previously sponsored by the Federal Government, the grant shall be credited by an amount computed by multiplying the Federal share of the supplies times the current market value or, if the supplies are sold, the proceeds from sale. If the supplies are sold, 10 percent of the proceeds may be deducted and retained from the credit, for selling and handling expenses.

(b) For possible exemptions from this section, see § 74.135.

**Federal Share of Real Property, Equipment, and Supplies**

**§ 74.142 Federal share of property.**

Several sections of this subpart require a determination of the Federal (or non-Federal) share of real property, equipment, or supplies. In making such a determination, the following principles shall be observed:

(a) *General.* (1) Except as explained in the succeeding paragraphs of this section, the Federal share of the property shall be the same percentage as the Federal share of the acquiring party's total costs under the grant during the grant or subgrant year (or other funding period) to which the acquisition cost of the property was charged. For this purpose, "costs under the grant" means allowable costs which are either borne by the grant or counted towards satisfying a cost-sharing or matching requirement of the grant. Only costs are to be counted—not the value of third-party in-kind contributions. Moreover, if the property was acquired by a grantee that awarded subgrants, costs incurred by its subgrantees shall be included only to the extent borne by the subgrants. (For example, if a subgrantee incurred $200,000 of project costs, of which $150,000 was borne by the subgrant, only the $150,000 shall be included in the grantee's costs.)

(2) If the property is acquired by a subgrantee, the Federal share of the subgrantee's costs under the grant and hence of the property shall be calculated by multiplying the Federal share of the grantee's costs by the latter's share of

the subgrantee's costs. For example, if the Federal share of a grantee's costs is 50 percent and the subgrant bears only 50 percent of a subgrantee's costs, then the Federal share of that subgrantee's costs (and of the property acquired by that subgrantee) is 25 percent.

(b) *Property acquired only partly under a grant.* (1) Sometimes only a part of the acquisition cost of an item of property is borne as a direct cost by the grant or counted as a direct cost towards a cost-sharing or matching requirement. The remainder might, for example, represent voluntary cost sharing or matching, or it might be charged to a different activity. Occasionally, the amount paid for the property is only a part of its value, and the remainder is donated as an in-kind contribution by the party that provided the property.

(2) To calculate the Federal share of such property, first determine the Federal share of the acquiring party's total costs under the grant, as explained in the paragraph (a) of this section. Then multiply that share by the percentage of the property's acquisition cost (or its market value, if the item was partly donated) which was borne as a direct cost by the grant or counted as a direct cost towards a cost-sharing or matching requirement.

(c) *Replacement equipment.* The Federal share of replacement equipment shall be calculated as follows:

(1) *Step 1.* Determine the Federal share (percentage) of the equipment replaced.

(2) *Step 2.* Determine the percentage of the replacement equipment's cost that was covered by the amount received for trade-in or the sales proceeds from the equipment replaced.

(3) *Step 3.* Multiply the step 1 percentage by the step 2 percentage.

(4) *Step 4.* If an additional outlay for the replacement equipment was charged as a direct cost either to ED grant funds or to required cost-sharing or matching funds, calculate the Federal share attributable to that additional outlay as explained in paragraph (b)(2) of this section. Add that additional percentage to the step 3 percentage.

(d) *Institutional cost-sharing agreements.* If a grant is subject to an institutional cost-sharing agreement (see § 74.130(e)), the Federal share of property acquired under the grant shall be calculated as though there were no cost-sharing requirement applicable to the grant (that is, as if all the grantee's cost sharing were voluntary).

**§ 74.143 Subgrantee's share of market value or sales proceeds.**

Where this subpart requires a sharing of the market value or sales proceeds of property acquired under a subgrant, the non-Federal share shall be proportionally divided between the grantee and the subgrantee. The subgrantee shall be entitled to the amount it would have received or retained if the award to it had been made directly by the Federal Government. The remainder of the non-Federal share shall belong to the grantee.

### Intangible Personal Property

**§ 74.144 Inventions and patents.**

ED's regulations on inventions and patents arising out of activities assisted by a grant are set forth in parts 6 and 8 of this title.

**§ 74.145 Copyrights.**

(a) *Works under grants.* Unless otherwise provided by the terms of the grant, when copyrightable material is developed in the course of or under a grant, the grantee is free to copyright the material or permit others to do so.

(b) *Works under subgrants.* Unless otherwise provided by the terms of the grant or subgrant, when copyrightable material is developed in the course of or under a subgrant, the subgrantee is free to copyright the material or permit others to do so.

(c) *ED rights.* If any copyrightable material is developed in the course of or under an ED grant or subgrant, ED shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Federal Government purposes. A grantee awarding a subgrant may reserve a similar right for itself with respect to copyrightable material developed under that subgrant.

(d) *Exemption of student-developed works.* ED awards training grants and other kinds of grants under which individuals are provided stipends or other financial assistance for the primary purpose of aiding them to further their education or training. Except as provided by the terms of the grant, copyrightable material developed by an individual or group of individuals in the course of education or training pursued with such assistance shall not be subject to the ED right described in paragraph (c) of this section, unless the development of the material also receives other forms of support under the same or another ED grant (such as a research grant).

## Subpart P—Procurement Standards

**§ 74.160 Scope of subpart; terminology.**

(a) This subpart contains standards for use by recipients in establishing procedures for the procurement of supplies, equipment, construction, and other services whose cost is borne in whole or in part as a direct cost by Federal grant funds.

(b) No additional procurement standards or requirements shall be imposed by awarding parties upon recipients unless specifically required by Federal statutes or Executive Orders.

(c) As used in this subpart:

(1) "Formal advertising" refers to that procurement method which involves adequate purchase description, sealed bids, and public opening of bids.

(2) "Negotiation" refers to any method of procurement other than formal advertising.

**§ 74.161 General.**

(a) Recipients may use their own procurement policies: *Provided,* That procurements subject to this subpart are made in accordance with the standards in this subpart.

(b) The standards in this subpart do not relieve the recipient of the contractual responsibilities arising under its contracts. The recipient is the responsible authority, without recourse to ED, regarding issues arising out of its procurements. This includes but is not limited to: Disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State, or Federal authority as may have proper jurisdiction.

**§ 74.162 Code of conduct.**

(a) The recipient shall maintain a code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts that are subject to this subpart. The code or standards shall provide for disciplinary actions to be applied for violations of the code or standards by the recipient's officers, employees, or agents. For governmental recipients, such disciplinary actions are required only to the extent otherwise permissible under the Government's laws, rules, or regulations. To the extent permissible under its laws, rules, or regulations, the governmental recipient shall also provide for actions to be taken against contractors or their agents who wrongfully take part in a violation of the code or standards of conduct.

(b) The recipient's officers, employees or agents shall neither solicit nor accept

gratuities, favors, or anything of monetary value from contractors or potential contractors. This is not intended to preclude bona-fide institutional fund-raising activities.

(c) No employee, officer, or agent of a nongovernmental recipient shall participate in the selection, award, or administration of a contract subject to this subpart where, to his or her knowledge, any of the following has a financial interest in that contract:

(1) The employee, officer, or agent;

(2) Any member of his or her immediate family;

(3) His or her partner;

(4) An organization in which any of the above is an officer, director, or employee;

(5) A person or organization with whom any of the above individuals is negotiating or has any arrangement concerning prospective employment.

**§ 74.163 Free competition.**

(a) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practicable, open and free competition.

(b) The recipient should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In particular, a contractor that develops or drafts specifications, requirements, a statement of work, an invitation for bids or a request for proposals for a particular procurement by a nongovernmental recipient should be excluded from competing for that procurement except when, upon request of the recipient, ED waives this requirement for a particular procurement.

(c) Solicitations shall clearly set forth all requirements that the bidder/offerer must fulfill in order for his bid/offer to be evaluated. Awards shall be made to the responsible bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the recipient, price and other factors considered. Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid. Any and all bids/offers may be rejected when it is in the recipient's interest to do so, and, in the case of governmental recipients, such rejections are in accordance with the government's applicable law, rules, or regulations.

**§ 74.164 Procedural requirements.**

The recipient shall establish procurement procedures which provide for, as a minimum, the following:

(a) Proposed procurement actions shall follow a procedure to assure that unnecessary or duplicative items are not purchased. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(b) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and when so used the specific features of the named brand which must be met by bidders/offerors should be clearly specified.

(c) Where applicable, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) shall be observed.

(d) Positive efforts shall be made by procuring parties to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts subject to this subpart.[1]

(e) The type of procuring instruments used—e.g., fixed-price contracts, cost reimbursable contracts, purchase orders, incentive contracts—shall be determined by the recipient but must be appropriate for the particular procurement and for promoting the best interest of the grant project or program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(f) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

(g) The terms of the grant may require that the following be submitted for prior approval of ED if the aggregate expenditure is expected to exceed $5,000: (1) Any proposed sole source contract and (2) any contract which a nongovernmental recipient proposes to award after seeking competition but receiving only one bid or proposal.

(h) Nongovernmental recipients should make some form of price or cost analysis in connection with every negotiated procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost proposed by the offeror to determine reasonableness, allocability and allowability.

(i) Procurement records and files for purchases in excess of $10,000 shall include the following:

(1) Basis for contractor selection;

(2) Justification for lack of competition when competitive bids or offers are not obtained;

(3) Basis for award cost or price.

(j) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions and specifications of the contract, and to ensure adequate and timely followup of all purchases.

**§ 74.165 Requirement for governments to use formal advertising.**

(a) Except as provided in paragraph (b) of this section, in making procurements that are subject to this subpart, governmental recipients shall use formal advertising.

(b) Procurements may be negotiated if it is not practicable or feasible to use formal advertising. Generally, such procurements may be negotiated if one or more of the following conditions prevail:

(1) The public exigency will not permit the delay incident to advertising.

(2) The material or service to be procured is available from only one person or firm.

(3) The aggregate amount involved does not exceed $10,000.

(4) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institution.

(5) The material or services are to be procured and used outside the limits of the United States and its possessions.

(6) No acceptable bids have been received after formal advertising.

(7) The purchases are for highly perishable materials or medical supplies, for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, or for technical or

[1] Advice and assistance regarding the use of small or minority businesses may be obtained from the following Federal organizations:

1. The Small Business Administration and its field offices.

2. The Office of Minority Business Enterprise, Department of Commerce.

3. The Office for Civil Rights, ED.

specialized supplies requiring substantial intitial investment for manufacture.

(8) Formal advertising is otherwise not practicable or feasible, and negotiation is authorized by applicable law, rules, or regulations.

(c) Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(d) For every negotiated procurement in excess of $10,000 by a governmental recipient, written justification for the use of negotiation in lieu of formal advertising shall be included in the government's procurement records and files, in addition to the information required by § 74.164(i). The justification may be on a class basis, i.e., covering a group of related or similar contracts, or it may be on an individual-contract basis.

**§ 74.166 Contract provisions.**

(a) *Scope.* This section contains requirements relating to provisions that must be included in contracts that are subject to this part. The requirements shall also apply to subcontracts of any tier under such contracts, and the term "contracts" in this section shall be construed as including subcontracts.

(b) *General.* All contracts shall contain sufficient provisions to define a sound and complete agreement.

(c) *Administrative remedies for violations.* Contracts in excess of $10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual or legal remedies in instances in which contractors violate or breach contract terms, and provide for such remedial actions as appropriate.

(d) *Termination provisions.* Contracts in excess of $10,000 shall contain suitable provisions for termination by the party awarding the contract, including the manner by which termination will be effected and the basis for settlement. These contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(e) *Executive Order 11246.* Where applicable, construction contracts in excess of $10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

(f) *Copeland Act.* Contracts in excess of $2,000 for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick-Back Act" (18 U.S.C. 874) as supplemented in Department of Labor regulation (29 CFR Part 3). All suspected or reported violations shall be reported to the granting agency by the grantee.

(g) *Davis-Bacon Act.* When required by the Federal legislation governing the grant program, all construction contracts in excess of $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). All suspected or reported violations shall be reported to the granting agency by the grantee.

(h) *Contract Work Hours and Safety Standards Act.* All contracts subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) shall include a provision requiring the contractor to comply with the applicable sections of the act and the Department of Labor's supplementing regulations (29 CFR Parts 5 and 1926).

(i) *Inventions and patents.* Contracts which may give rise to inventions subject to parts 6 and 8 of this title shall include a provision requiring compliance with those parts.

(j) *Access to Records.* Contracts that are subject to Subpart D of this part shall include a provision reflecting § 74.24(c) on rights of access to the contractor's records.

(k) *Clean Air and Water Acts.* Contracts in excess of $100,000 shall contain provisions requiring compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act as amended (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported in writing to the appropriate regional office of the Environmental Protection Agency, and a copy of the report shall be submitted to the granting agency. (See 40 CFR Part 15 for relevant regulations of the Environmental Protection Agency.)

## Subpart Q—Cost Principles

**§ 74.170 Scope of subpart.**

This subpart identifies the principles to be used in determining costs applicable to grants, subgrants, and cost-type contracts under grants and subgrants.

**§ 74.171 Governments.**

The principles to be used in determining the allowable costs of activities conducted or administered by governments are in Appendix C to this part.

**§ 74.172 Institutions of higher education.**

(a) *Research and development.* The principles for determining the allowable costs of research and development work performed by institutions of higher education (other than for-profit institutions) are in part I of Appendix D to this part.

(b) *Training and other educational services.* The principles for determining the allowable costs of training and other educational services provided by institutions of higher education (other than for-profit institutions) are in part II of Appendix D to this part.

(c) *Other activities.* Appendix D to this part shall be used as a guide for determining the allowable costs of other activities conducted by institutions of higher education (other than for-profit institutions).

**§ 74.173 Hospitals.**

(a) *Research and development.* The principles for determining the allowable costs of research and development work performed by hospitals are in Appendix E to this part.

(b) *Other activities.* Appendix E to this part shall be used as a guide for determining the allowable costs of other activities conducted by hospitals.

**§ 74.174 Other nonprofit organizations.**

(a) *Nonconstruction awards.* Under nonconstruction awards, the principles for determining the allowable costs of activities conducted by nonprofit organizations other than institutions of higher education, hospitals, and governmental organizations are in Appendix F to this part.

(b) *Construction awards.* Appendix F to this part shall be used as a guide for determining the allowable costs of work under construction awards to nonprofit organizations (other than institutions of higher education, hospitals and governmental organizations).

**§ 74.175 Subgrants and cost-type contracts.**

(a) The cost principles applicable to a subgrantee or cost-type contractor under an HEW grant will not necessarily be the same as those applicable to the grantee. For example, where a State government awards a subgrant or cost-type contract to an institution of higher education, Appendix D to this part would apply to the costs incurred by the institution of higher education, even though Appendix C would apply to the costs incurred by the State.

(b) The principles to be used in determining the allowable costs of work performed by for-profit organizations under cost-type contracts awarded to

them under ED grants are in 41 CFR Chapter 34.

**§ 74.176 Costs allowable with approval.**

Each set of cost principles identifies certain costs that, in order to be allowable, must be approved by the awarding party. Other costs do not require approval. The following procedures govern approval of these costs.

(a) When costs are treated as indirect costs (or are allocated pursuant to a government-wide cost allocation plan), acceptance of the costs as part of the indirect cost rate or cost allocation plan shall constitute approval.

(b)(1) When the costs are treated as direct costs, they must be approved in advance by the awarding party.

(2) If the costs are specified in the budget, approval of the budget shall constitute approval of the costs.

(3) If the costs are not specified in the budget, or there is no approved budget, the recipient shall obtain specific prior approval in writing from the awarding party. For this purpose the prior approval procedures of § 74.102 shall be followed, except that for formula or mandatory grants, ED's written approval may be signed by any authorized ED official.

(c) The awarding party may waive or conditionally waive the requirement for its approval of the costs. Such a waiver shall apply only to the requirement for approval. If, upon audit or otherwise, it is determined that the costs do not meet other requirements or tests for allowability specified by the applicable cost principles, such as reasonableness and necessity, the costs may be disallowed.

(d) In the case of subgrants and cost-type contracts, no approval shall be given which is inconsistent with the purpose or the terms of the Federal grant.

Appendix A [Reserved]

Appendix B [Reserved]

**Appendix C—Principles for Determining Costs Applicable to Grants and Contracts With State and Local Governments**

**Part I—General**

**A. Purpose and Scope**

1. *Objectives.* This appendix sets forth principles for determining the allowable costs of programs administered by State and local governments under grants from and contracts with the Federal Government. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of a particular grant. They are designed to provide that federally assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

2. *Policy guides.* The application of these principles is based on the fundamental premises that:

a. State and local governments are responsible for the efficient and effective administration of grant and contract programs through the application of sound management practices.

b. The grantee or contractor assumes the responsibility for seeing that federally assisted program funds have been expended and accounted for consistent with underlying agreements and program objectives.

c. Each grantee or contractor organization, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration.

3. *Application.* These principles will be applied in determining costs incurred by State and local governments under Federal grants and cost reimbursement type contracts (including subgrants and subcontracts) except those with publicly financed educational institutions subject to Appendix D to this part.

**B. Definitions**

1. *Approval or authorization of the grantor Federal agency* means documentation evidencing consent prior to incurring specific cost.

2. *Cost allocation plan* means the documentation identifying, accumulating, and distributing allowable costs under grants and contracts together with the allocation methods used.

3. *Cost,* as used herein, means cost as determined on a cash, accrual, or other basis acceptable to the Federal grantor agency as a discharge of the grantee's accountability for Federal funds.

4. *Cost objective* means a pool, center, or area established for the accumulation of cost. Such areas include organizational units, functions, objects or items of expense, as well as ultimate cost objectives including specific grants, projects, contracts, and other activities.

5. *Federal agency* means the Department of Education.

6. *Grant* means an agreement between the Federal Government and a State or local government whereby the Federal Government provides funds or aid in kind to carry out specified programs, services, or activities. The principles and policies stated in this appendix as applicable to grants in general also apply to any federally sponsored cost reimbursement type of agreement performed by a State or local government, including contracts, subcontracts and subgrants.

7. *Grant program* means those activities and operations of the grantee which are necessary to carry out the purposes of the grant, including any portion of the program financed by the grantee.

8. *Grantee* means the department or agency of State or local government which is responsible for administration of the grant.

9. *Local unit* means any political subdivision of government below the State level.

10. *Other State or local agencies* means departments or agencies of the State or local unit which provide goods, facilities, and services to a grantee.

11. *Services,* as used herein, means goods and facilities, as well as services.

12. *Supporting services* means auxiliary functions necessary to sustain the direct effort involved in administering a grant program or an activity providing service to the grant program. These services may be centralized in the grantee department or in some other agency, and include procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting budgeting, auditing, mail and messenger service, and the like.

**C. Basic Guidelines**

1. *Factors affecting allowability of costs.* To be allowable under a grant program, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient administration of the grant program, be allocable thereto under these principles, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State or local governments.

b. Be authorized or not prohibited under State or local laws or regulations.

c. Conform to any limitations or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items.

d. Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the grantee is a part.

e. Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

f. Not be allocable to or included as a cost of any other federally financed program in either the current or a prior period.

g. Be net of all applicable credits.

2. *Allocable costs.* a. A cost is allocable to a particular cost objective to the extent of benefits received by such objective.

b. Any cost allocable to a particular grant or cost objective under the principles provided for in this appendix may not be shifted to other Federal grant programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

c. Where an allocation of joint cost will ultimately result in charges to a grant program, an allocation plan will be required as prescribed in section J.

3. *Applicable credits.* a. Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to grants as direct or indirect costs. Examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

b. Applicable credits may also arise when Federal funds are received or are available from sources other than the grant program involved to finance operations or capital items of the grantee. This includes costs arising from the use or depreciation of items donated or financed by the Federal Government to fulfill matching requirements under another grant program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given grant.

D. Composition of Cost

1. *Total cost.* The total cost of a grant program is comprised of the allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credits.

2. *Classification of costs.* There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the grant or other ultimate cost objective. It is essential therefore that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under grant programs are provided in the sections which follow.

E. Direct Costs

1. *General.* Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to grants, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the accumulation of costs pending distribution in due course to grants and other ultimate cost objectives.

2. *Application.* Typical direct costs chargeable to grant programs are:

a. Compensation of employees for the time and effort devoted specifically to the execution of grant programs.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of the grant.

c. Equipment and other approved capital expenditures.

d. Other items of expense incurred specifically to carry out the grant agreement.

e. Services furnished specifically for the grant program by other agencies, provided such charges are consistent with criteria outlined in Section G of these principles.

F. Indirect Costs

1. *General.* Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities, to the grantee department. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect cost within a grantee department or in other agencies providing services to a grantee department. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration or relative benefits derived.

2. *Grantee departmental indirect costs.* All grantee departmental indirect costs, including the various levels of supervision, are eligible for allocation to grant programs provided they meet the conditions set forth in this Appendix. In lieu of determining the actual amount of grantee departmental indirect cost allocable to a grant program, the following methods may be used:

a. *Predetermined fixed rates for indirect costs.* A predetermined fixed rate for computing indirect costs applicable to a grant may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the contracting parties to reach an informed judgment (1) as to the probable level of indirect costs in the grantee department during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect cost.

b. *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a grantee department's indirect services cannot be readily determined as in the case of small, self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the grantee department before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

3. *Limitation on indirect costs.* a. Federal grants may be subject to laws that limit the amount of indirect cost that may be allowed. Agencies that sponsor grants of this type will establish procedures which will assure that the amount actually allowed for indirect costs under each such grant does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under this Appendix, whichever is the smaller.

b. When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under this Appendix, the amount not recoverable as indirect costs under a grant may not be shifted to another federally sponsored grant program or contract.

G. Cost Incurred by Agencies Other Than the Grantee

1. *General.* The cost of service provided by other agencies only may include allowable direct costs of the service plus a pro rata share of allowable supporting costs (section B.12.) and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in operations. However, supervision by the head of a department or agency whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying department or by other agencies.

2. *Alternative methods of determining indirect cost.* In lieu of determining actual indirect cost related to a particular service furnished by another agency, either of the following alternative methods may be used provided only one method is used for a specific service during the fiscal year involved.

a. *Standard indirect rate.* An amount equal to 10 percent of direct labor cost in providing the service performed by another State agency (excluding overtime, shift, or holiday premiums and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

b. *Predetermined fixed rate.* A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in section F.2.a.

H. Cost Incurred by Grantee Department for Others

1. *General.* The principles provided in section G. will also be used in determining the cost of services provided by the grantee department to another agency.

I. [Reserved]

J. Cost Allocation Plan

1. *General.* A plan for allocation of costs will be required to support the distribution of any joint costs related to the grant program. All costs included in the plan will be supported by formal accounting records which will substantiate the propriety of eventual charges.

2. *Requirements.* The allocation plan of the grantee department should cover all joint costs of the department as well as costs to be allocated under plans of other agencies or organizational unit which are to be included in the costs of federally sponsored programs. The cost allocation plans of all the agencies rendering services to the grantee department, to the extent feasible, should be presented in a single document. The allocation plan should contain, but not necessarily be limited to, the following:

a. The nature and extent of services provided and their relevance to the federally sponsored programs.

b. The items of expense to be included.

c. The methods to be used in distributing cost.

3. *Instructions for preparation of cost allocation plans.* The Department of Education, in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by State and local government grantees in preparation of cost allocation plans. This responsibility applies to both central support services at the State and local government level as well as indirect cost proposals of individual grantee departments.

4. *Negotiation and approval of indirect cost proposals for States.* a. The Department of Education, in collaboration with the other Federal agencies concerned, will be responsible for negotiation, approval and

audit of cost allocation plans, which will be submitted to it by the States. These plans will cover central support service costs of the State.

b. At the grantee department level in a State, a single Federal agency will have responsibility similar to that set forth in a. above for the negotiation, approval and audit of the indirect cost proposal. Cognizant Federal agencies have been designated for this purpose. Changes which may be required from time to time in agency assignments will be arranged by the Department of Education, in collaboration with the other interested agencies, and submitted to the Office of Management and Budget for final approval. A current list of agency assignments will be maintained by the Department of Education.

c. Questions concerning the cost allocation plans approved under a. and b. above should be directed to the agency responsible for such approvals.

5. *Negotiation and approval of indirect cost proposals for local governments.* a. Cost allocation plans will be retained at the local government level for audit by a designated Federal agency except in those cases where that agency requests that cost allocation plans be submitted to it for negotiation and approval.

b. A list of cognizant Federal agencies assigned responsibility for negotiation, approval and audit of central support service cost allocation plans at the local government level is being developed. Changes which may be required from time to time in agency assignments will be arranged by the Department of Education in collaboration with the other interested agencies, and submitted to the Office of Management and Budget for final approval. A current list of agency assignments will be maintained by the Department of Education.

c. At the grantee department level of local governments, the Federal agency with the predominant interest in the work of the grantee department will be responsible for necessary negotiation, approval and audit of the indirect cost proposal.

6. *Resolution of problems.* To the extent that problems are encountered among the Federal agencies in connection with 4. and 5. above, the Office of Management and Budget will lend assistance as required.

## Part II—Standards for Selected Items of Cost

### A. Purpose and Applicability

1. *Objective.* This part provides standards for determining the allowability of selected items of cost.

2. *Application.* These standards will apply irrespective of whether a particular item of cost is treated as direct or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable, rather determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles stated in Part I of this appendix.

### B. Allowable Costs

1. *Accounting.* The cost of establishing and maintaining accounting and other information systems required for the management of grant programs is allowable. This includes cost incurred by central service agencies for these purposes. The cost of maintaining central accounting records required for overall State or local government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

2. *Advertising.* Advertising media includes newspapers, magazines, radio, and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

a. Recruitment of personnel required for the grant program.

b. Solicitation of bids for the procurement of goods and services required.

c. Disposal of scrap or surplus materials acquired in the performance of the grant agreement.

d. Other purposes specifically provided for in the grant agreement.

3. *Advisory councils.* Costs incurred by State advisory councils or committees established pursuant to Federal requirements to carry out grant programs are allowable. The cost of like organizations is allowable when provided for in the grant agreement.

4. *Audit service.* The cost of audits necessary for the administration and management of functions related to grant programs is allowable.

5. *Bonding.* Costs of premiums on bonds covering employees who handle grantee agency funds are allowable.

6. *Budgeting.* Costs incurred for the development, preparation, presentation, and execution of budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office actively participate in the grantee agency's budget process, the cost of identifiable services is allowable.

7. *Building lease management.* The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

8. *Central stores.* The cost of maintaining and operating a central stores organization for supplies, equipment, and materials used either directly or indirectly for grant programs is allowable.

9. *Communications.* Communication costs incurred for telephone calls or service, telegraph, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

10. *Compensation for personal services*—a. *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under the grant agreement, including but not necessarily limited to wages, salaries, and supplementary compensation and benefits (section B.13.). The costs of such compensation are allowable to the extent that total compensation for individual employees: (1) is reasonable for the services rendered. (2) follows an appointment made in accordance with State or local government laws and rules and which meets Federal merit system or other requirements, where applicable, and (3) is determined and supported as provided in b. below. Compensation for employees engaged in federally assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the State or local government. In cases where the kinds of employees required for the federally assisted activities are not found in the other activities of the State or local government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

b. *Payroll and distribution* of time. Amounts charged to grant programs for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with generally accepted practice of the State or local agency. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one grant program or other cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort.

11. *Depreciation and use allowances.* a. Grantees may be compensated for the use of buildings, capital improvements, and equipment through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

b. The computation of depreciation or use allowance will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost or any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal grant programs or otherwise, irrespective of where title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by the grantor Federal agency.

c. Where the depreciation method is followed, adequate property records must be maintained, and any generally accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected federally sponsored programs and must result in equitable charges considering the extent of the use of the assets for the benefit of such programs.

d. In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding 2 percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost of usable equipment.

e. No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated: *provided, however,* That reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

12. *Disbursing service.* The cost of disbursing grant program funds by the Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

13. *Employee fringe benefits.* Costs identified under a. and b. below are allowable to the extent that total compensation for employees is reasonable as defined in section B.10.

a. Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (1) provided pursuant to an approved leave system, and (2) the cost thereof is equitably allocated to all related activities, including grant programs.

b. Employee benefits in the form of employers' contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to grant programs and to other activities.

14. *Employee morale, health, and welfare costs.* The costs of health of first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred in accordance with general State or local policy are allowable. Income generated from any of these activities will be offset against expenses.

15. *Exhibits.* Costs of exhibits relating specifically to the grant programs are allowable.

16. *Legal expenses.* The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer of a State or local government or his staff solely for the purpose of discharging his general responsibilities as legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government are unallowable.

17. *Maintenance and repair.* Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

18. *Materials and supplies.* The cost of materials and supplies necessary to carry out the grant programs is allowable. Purchases made specifically for the grant program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the grantee. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

19. *Memberships, subscriptions and professional activities*—a. *Memberships.* The cost of membership in civic, business, technical and professional organizations is allowable provided: (1) the benefit from the membership is related to the grant program, (2) the expenditure is for agency membership, (3) the cost of the membership is reasonably related to the value of the services or benefits received, and (4) the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

b. *Reference material.* The cost of books and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the grant program.

c. *Meetings and conferences.* Costs are allowable when the primary purpose of the meeting is the dissemination of technical information relating to the grant program and they are consistent with regular practices followed for other activities of the grantee.

20. *Motor pools.* The costs of a service organization which provides automobiles to user grantee agencies at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

21. *Payroll preparation.* The cost of preparing payrolls and maintaining necessary related wage records is allowable.

22. *Personnel administration.* Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for grant programs, are allowable.

23. *Printing and reproduction.* Costs for printing and reproduction services necessary for grant administration, including but not limited to forms, reports, manuals, and informational literature, are allowable. Publication costs of reports or other media relating to grant program accomplishments or results are allowable when provided for in the grant agreement.

24. *Procurement service.* The cost of procurement service, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities and services for grant programs, is allowable.

25. *Taxes.* In general, taxes or payments in lieu of taxes which the grantee agency is legally required to pay are allowable.

26. *Training and education.* The cost of in-service training, customarily provided for employee development which directly or indirectly benefits grant programs, is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by the grantor agency.

27. *Transportation.* Costs incurred for freight, cartage, express, postage, and other transportation costs relating either to goods purchased, delivered, or moved from one location to another, are allowable.

28. *Travel.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to a grant program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in nonfederally sponsored activities. The difference in cost between first-class air accommodations and less-than-first-class air accommodations is unallowable except when less-than-first-class air accommodations are not reasonably available.

C. Costs Allowable With Approval of Grantor Agency

1. *Automatic data processing.* The cost of data processing services to grant programs is allowable. This cost may include rental of equipment or depreciation on grantee-owned equipment. The acquisition of equipment, whether by outright purchase, rental-purchase agreement or other method of purchase, is allowable only upon specific prior approval of the grantor Federal agency as provided under the selected item for capital expenditures.

2. *Building space and related facilities.* The cost of space in privately or publicly owned buildings used for the benefit of the grant program is allowable subject to the conditions stated below. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality. The cost of space procured for grant program usage may not be charged to the program for periods of nonoccupancy, without authorization of the grantor Federal agency.

a. *Rental cost.* The rental cost of space in a privately owned building is allowable.

b. *Maintenance and operation.* The costs of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs, and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

c. *Rearrangements and alterations.* Cost incurred for rearrangement and alteration of facilities required specifically for the grant program or those that materially increase the value or useful life of the facilities (section C.3.) are allowable when specifically approved by the grantor agency.

d. *Depreciation and use allowances on publicly owned buildings.* These costs are allowable as provided in section B.11.

e. *Occupancy of space under rental-purchase or a lease with option-to-purchase*

*agreement.* The cost of space procured under such arrangements is allowable when specifically approved by the Federal grantor agency.

3. *Capital expenditures.* The cost of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets is allowable when such procurement is specifically approved by the Federal grantor agency. When assets acquired with Federal grant funds are (a) sold, (b) no longer available for use in a federally sponsored program, or (c) used for purposes not authorized by the grantor agency, the Federal grantor agency's equity in the asset will be refunded in the same proportion as Federal participation in its cost. In case any assets are traded on new items, only the net cost of the newly acquired assets is allowable.

4. *Insurance and indemnification.* a. Cost of insurance required, or approved and maintained pursuant to the grant agreement, is allowable.

b. Cost of other insurance in connection with the general conduct of activities is allowable subject to the following limitations:

(1) Types and extent and cost of coverage will be in accordance with general State or local government policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the grantor agency has specifically required or approved such costs.

c. Contributions to a reserve for a self-insurance program approved by the Federal grantor agency are allowable to the extent that the type of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant agreement. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations, are allowable.

e. *Indemnification* includes securing the grantee against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the grantee only to the extent expressly provided for in the grant agreement, except as provided in d above.

5. *Management studies.* The cost of management studies to improve the effectiveness and efficiency of grant management for ongoing programs is allowable except that the cost of studies performed by agencies other than the grantee department or outside consultants is allowable only when authorized by the Federal grantor agency.

6. *Preagreement costs.* Costs incurred prior to the effective date of the grant or contract, whether or not they would have been allowable thereunder if incurred after such date, are allowable when specifically provided for in the grant agreement.

7. *Professional services.* Cost of professional services rendered by individuals or organizations not a part of the grantee department is allowable subject to such prior authorization as may be required by the Federal grantor agency.

8. *Proposal costs.* Costs of preparing proposals on potential Federal Government grant agreements are allowable when specifically provided for in the grant agreement.

D. Unallowable Costs

1. *Bad debts.* Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable.

2. *Contingencies.* Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

3. *Contributions and donations.* Unallowable.

4. *Entertainment.* Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities, are unallowable.

5. *Fines and penalties.* Costs resulting from violations of, or failure to comply with, Federal, State, and local laws and regulations are unallowable.

6. *Governor's expenses.* The salaries and expenses of the office of the Governor of a State or the chief executive of a political subdivision are considered a cost of general State or local government and are unallowable.

7. *Interest and other financial costs.* Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by Federal legislation.

8. *Legislative expenses.* Salaries and other expenses of the State legislature or similar local governmental bodies such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are unallowable.

9. *Underrecovery of costs under grant agreements.* Any excess of cost over the Federal contribution under one grant agreement is unallowable under other grant agreements.

Appendix D

Part I—Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts With Educational Institutions

A. Purpose and Scope

1. *Objectives.* This appendix provides principles for determining the costs applicable to research and development work performed by educational institutions under grants from and contracts with the Federal Government. These principles are confined to the subject of cost determination and make no attempt to identify the circumstances or dictate the extent of agency and institutional participation in the financing of a particular research or development project. The principles are designed to provide recognition of the full allocated costs of such research work under generally accepted accounting principles. No provision for profit or other increment above cost is intended.

2. *Policy guides.* The successful application of these principles requires development of mutual understanding between representatives of universities and of the Federal Government as to their scope, implementation, and interpretation. It is recognized that—

a. The arrangements for agency and institutional participation in the financing of a research and development project are properly subject to negotiation between the agency and the institution concerned in accordance with such Government-wide criteria as may be applicable.

b. Each college and university, possessing its own unique combination of staff, facilities, and experience, should be encouraged to conduct research in a manner consonant with its own academic philosophies and institutional objectives.

c. Each institution, in the fulfillment of its obligations, should employ sound management practices.

d. The application of the principles established herein should require no significant changes in the generally accepted accounting practices of colleges and universities and standards herein provided on a consistent basis. Where wide variations exist in the treatment of a given cost item among institutions, the reasonableness and equitableness of such treatments will be fully considered during the rate negotiations and audit.

3. *Application.* The Department of Education will apply these principles and related policy guides in determining the costs incurred for such work under any type of research and development agreement. These principles should also be used as a guide in the pricing of fixed-price contracts or lump sum agreements.

B. Definition of Terms

1. *Organized research* means all research activities of an institution that are separately budgeted and accounted for.

2. *Departmental research* means research activities that are not separately budgeted and accounted for. Such research work, which includes all research activities not encompassed under the term "organized research," is regarded for purposes of this document as a part of the instructional activities of the institution.

3. *Research agreement* means any valid arrangement to perform federally sponsored research, including grants, cost-reimbursement type contracts, cost-reimbursement type subcontracts, and fixed-price contracts and subcontracts for research.

4. *Other institutional activities* means all organized activities of an institution not directly related to the instruction and research functions, such as residence halls, dining halls, student hospitals, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar activities or auxiliary enterprises. Also included under this

definition is any other category of cost treated as "unallowable," provided such category of cost identifies a function or activity to which a portion of the institution's indirect costs (as defined in section E.1.) are properly allocable.

5. *Apportionment* means the process by which the indirect costs of the institution are assigned as between (a) instruction and research, and (b) other institutional activities.

6. *Allocation* means the process by which the indirect costs apportioned to instruction and research are assigned as between (a) organized research, and (b) instruction, including departmental research.

7. *Stipulated salary support* is a fixed or a stated dollar amount of the salary of professorial or other professional staff involved in the conduct of research which a Government agency agrees in advance to reimburse an educational institution as a part of sponsored research costs.

8. *Federal agency* or sponsoring agency means the Department of Education.

C. Basic Considerations

1. *Composition of total costs.* The cost of a research agreement is comprised of the allowable direct costs incident to its performance, plus the allocable portion of the allowable indirect costs of the institution, less applicable credits as described in section C.5.

2. *Factors affecting allowability of costs.* The tests of allowability of costs under these principles are: (a) they must be reasonable; (b) they must be allocable to research agreements under the standards and methods provided herein; (c) they must be accorded consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances; and (d) they must conform to any limitations or exclusions set forth in these principles or in the research agreement as to types or amounts of cost items.

3. *Reasonable costs.* A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefor, reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are: (a) whether or not the cost is of a type generally recognized as necessary for the operation of the institution or the performance of the research agreement; (b) the restraints or requirements imposed by such factors as arm's-length bargaining, Federal and State laws and regulations, and research agreement terms and conditions; (c) whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the institution, its employees, its students, the Government, and the public at large; and (d) the extent to which the actions taken with respect to the incurrence of the cost are consistent with established institutional policies and practices applicable to the work of the institution generally, including Government research.

4. *Allocable costs.* a. A cost is allocable to a particular cost objective (i.e., a specific function, project, research agreement, department, or the like) if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a research agreement if it is incurred solely to advance the work under the research agreement; or it benefits both the research agreement and other work of the institution in proportions that can be approximated through use of reasonable methods; or it is necessary to the overall operation of the institution and, in the light of the standards provided in this appendix is deemed to be assignable in part to organized research. Where the purchase of equipment or other capital items is specifically authorized under a research agreement, the amounts thus authorized for such purchases are allocable to the research agreement regardless of the use that may subsequently be made of the equipment or other capital items involved.

b. Any costs allocable to a particular research agreement under the standards provided in this appendix may not be shifted to other research agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the research agreement, or for other reasons of convenience.

5. *Applicable credits.* a. The term applicable credits refers to those receipt or negative expenditure types of transactions which operate to offset or reduce expense items that are allocable to research agreements as direct or indirect costs. Typical examples of such transactions are: purchase discounts, rebates, or allowances; recoveries or indemnities on losses; sales of scrap or incidental services; and adjustments of overpayments or erroneous charges.

b. In some instances, the amounts received from the Federal Government to finance institutional activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the institution in determining the rates or amounts to be charged to Government research for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds. (See sections F.6., J.10.b., and J.37. for areas of potential application in the matter of direct Federal financing.)

6. *Costs incurred by State and local governments.* Costs incurred or paid by State or local governments in behalf of educational institutions for certain personnel benefit programs such as pension plans, FICA, and any other costs specifically disbursed in behalf of and in direct benefit to the institutions, are allowable costs of such institutions whether or not these costs are recorded in the accounting records of such institutions, subject to the following:

a. Such costs meet the requirements of sections C.1. through C.5.

b. Such costs are properly supported by cost allocation plans in accordance with Appendix C to this part.

c. Such costs are not otherwise borne directly or indirectly by the Federal Government.

D. Direct Costs

1. *General.* Direct costs are those costs which can be identified specifically with a particular research project, an instructional activity or any other institutional activity or which can be directly assigned to such activities relatively easily with a high degree of accuracy.

2. *Application to research agreements.* Identifiable benefit to the research work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of research agreements. Typical transactions chargeable to a research agreement as direct costs are the compensation of employees for performance of work under the research agreement, including related staff benefit and pension plan costs to the extent that such items are consistently treated by the educational institution as direct rather than indirect costs; the costs of materials consumed or expended in the performance of such work; and other items of expense incurred for the research agreement, including extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of research agreements provided such items are consistently treated by the institution as direct rather than indirect costs and are charged under a recognized method of costing or pricing designed to recover only actual costs and conforming to generally accepted cost accounting practices consistently followed by the institution.

E. Indirect Costs

1. *General.* Indirect costs are those that have been incurred for common or joint objectives and therefore cannot be identified specifically with a particular research project, an instructional activity or any other institutional activity. At educational institutions such costs normally are classified under the following functional categories: general administration and general expenses; research administration expenses; operation and maintenance expenses; library expenses; and departmental administration expenses.

2. *Criteria for distribution—a. Base period.* A base period for distribution of indirect costs is the period during which such costs are incurred and accumulated for distribution to work performed within that period. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings.* The overall objective of the allocation and apportionment process is to distribute the indirect costs described in section F to organized research, instruction, and other activities in reasonable proportions consistent with the nature and extent of the use of the institution's resources by research personnel, academic staff, students, and other personnel or organizations. In order to achieve this

objective, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the functional categories of indirect costs referred to in section E.1. In general, the cost groupings established within a functional category should constitute, in each case, a pool of those items of expense that are considered to be of like character in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in c. below. Each such pool or cost grouping should then be distributed individually to the appertaining cost objectives, using the distribution base or method most appropriate in the light of the guides set out in d. below.

c. *General considerations on cost groupings.* The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groups (based on account classification or analysis) within a functional category include but are not limited to the following:

(1) Where certain items or categories of expense relate solely to one of the three major divisions of the institution (instruction, organized research or other institutional activities) or to any two but not the third, such expenses should be set aside as a separate cost grouping for direct assignment or selective distribution in accordance with the guides provided in b. above and d. below.

(2) Where any types of expense ordinarily treated as general administration and general expenses or departmental administration expenses are charged to research agreements as direct costs, the similar type expenses applicable to other activities of the institution must, through separate cost groupings, be excluded from the indirect costs allocable to those research agreements and included in the direct cost of other activities for cost allocation purposes.

(3) Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research and other activities at the institution or within the department.

(4) Where organized activities (including identifiable segments of organized research as well as the activities cited in section B.4.) provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central indirect costs (such as for overall management) which are properly allocable to such activities.

(5) Where the institution elects to treat as indirect charges the cost of the pension plan and other staff benefits, such costs should be set aside as a separate cost grouping for selective distribution to appertaining cost objectives, including organized research.

(6) The number of separate cost groupings within a functional category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

d. *Selection of distribution method.* (1) Actual conditions must be taken into account in selecting the method or base to be used in distributing to applicable cost objectives the expenses assembled under each of the individual cost groupings established as indicated under b. above. Where a distribution can be made by assignment of a cost grouping directly to the area benefited, the distribution should be made in that manner. Where the expenses under a cost grouping are more general in nature, the distribution to appertaining cost objectives should be made through use of a selected base which will produce results that are equitable to both the Government and the institution. In general, any cost element or cost-related factor associated with the institution's work is potentially adaptable for use as a distribution base provided (a) it can readily be expressed in terms of dollars or other quantitative measure (total direct expenditures, direct salaries, man-hours applied, square feet utilized, hours of usage, number of documents processed, population served, and the like); and (b) it is common to the appertaining cost objectives during the base period.

(2) Results of cost analysis studies may be used when they result in more accurate and equitable distribution of costs. Such cost analysis studies may take into consideration weighting factors, population, or space occupied if they produce equitable results. Cost analysis studies, however, should (a) be appropriately documented in sufficient detail for subsequent review by the cognizant Federal agency, (b) distribute the indirect costs to the appertaining cost objectives in accord with the relative benefits derived, (c) be conducted to fairly reflect the true conditions of the activity and to cover representative transactions for a reasonable period of time, (d) be performed specifically at the institution at which the results are to be used, and (e) be updated periodically and used consistently. Any assumptions made in the study will be sufficiently supported. The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.

(3) The essential consideration in selection of the distribution base in each instance is that it be the one best suited for assigning the pool of costs to appertaining cost objectives in accord with the relative benefits derived; the traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

3. *Administration of limitations on allowances for research costs.* Research agreements may be subject to statutory or administrative policies that limit the allowance of research costs. When the maximum amount allowable under a statutory limitation or the terms of a research agreement is less than the amount otherwise reimbursable under this Appendix, the amount not recoverable under that research agreement may not be charged to other research agreements.

**F. Identification and Assignment of Indirect Costs**

1. *General administration and general expenses.* a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any major division of the institution; i.e., solely to (1) instruction, (2) organized research, or (3) other institutional activities. The general administration and general expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of the physical plant, and charges representing use allowances and/or depreciation applicable to the buildings and equipment utilized in performing the functions represented thereunder.

b. The expenses included in this category may be apportioned and allocated on the basis of total expenditures exclusive of capital expenditures in situations where the results of the distribution made on this basis are deemed to be equitable both to the Government and the institution; otherwise the distribution of general administration and general expenses should be made through use of selected bases applied to separate cost groupings established within this category of expenses in accordance with the guides set out in section E.2.d.

2. *Research administration expenses.* a. The expenses under this heading are those that have been incurred by a separate organization or identifiable administrative unit established solely to administer the research activity, including such functions as contract administration, security, purchasing, personnel administration, and editing and publishing of research reports. They include the salaries and expenses of the head of such research organization, his assistants, and their immediate secretarial staff together with the salaries and expenses of personnel engaged in supporting activities maintained by the research organization, such as stock rooms, stenographic pools, and the like. The salaries of members of the professional staff whose appointments or assignments involve the performance of such administrative work may also be included to the extent that the portion so charged to research administration is supported as required by section J.7. The research administration expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of the physical plant, and charges representing use allowance and/or depreciation applicable to the buildings and equipment utilized in performing the functions represented thereunder.

b. The expenses included in this category should be allocated to organized research and, where necessary, to departmental research or to any other benefiting activities

on any basis reflecting the proportion fairly applicable to each. (See section E.2.d.)

3. *Operation and maintenance expenses.* a. The expenses under this heading are those that have been incurred by a central service organization or at the departmental level for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant.

They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; and care of grounds and maintenance and operation of buildings and other plant facilities. The operation and maintenance expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, and charges representing use allowance and/or depreciation applicable to the buildings and equipment utilized in performing the functions represented thereunder.

b. The expenses included in this category should be apportioned and allocated to applicable cost objectives in a manner consistent with the guides provided in section E.2. on a basis that gives primary emphasis to space utilization. The allocations and apportionments should be developed as follows: (1) where actual space and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records; (2) where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost objectives normally will suffice as a means for effecting distribution of the amounts of operation and maintenance expenses involved; or (3) where it can be demonstrated that an area or volume of space basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of facilities by research personnel and others, including students.

4. *Library expenses.* a. The expenses under this heading are those that have been incurred for the operation of the library, including the costs of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under section C.5. The library expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of the physical plant, and charges representing the allowances and/or depreciation applicable to the buildings and equipment utilized in the performance of the functions represented thereunder. Costs incurred in the purchases of rare books (museum-type books) with no research value should not be allocated to Government-sponsored research.

b. The expenses included in this category should be allocated on the basis of population including students and other users. Where the results of the distribution made on this basis are deemed to be inequitable to the Government or the institution, the distribution should then be made on a selective basis in accordance with the guides set out in section E.2. Such selective distribution should be made through use of reasonable methods which give adequate recognition to the utilization of the library attributable to faculty, research personnel, students and others. The method used will be based on data developed periodically on the respective institution's experience for representative periods.

5. *Departmental administration expenses.* a. The expenses under this heading are those that have been incurred in academic deans' offices, academic departments and organized research units such as institutes, study centers and research centers for administrative and supporting services which benefit common or joint departmental activities or objectives. They include the salaries, and expenses of deans or heads, or associate deans or heads, of colleges, schools, departments, divisions, or organized research units, and their administrative staffs together with the salaries and expenses of personnel engaged in supporting activities maintained by the department, such as stockrooms, stenographic pools, and the like, provided such supporting services cannot be directly identified with a specific research project, with an instructional activity or with any other institutional activity. The salaries of other members of the professional staff whose appointments or assignments involve the performance of such administrative work may also be included to the extent that the portion so charged to departmental administration expenses is supported as required by section J.7. The departmental administration expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of the physical plant, and charges representing use allowances and/or depreciation applicable to the buildings and equipment utilized in performing the functions represented thereunder.

b. The distribution of departmental administration expenses should be made through use of selected bases applied to cost groupings established within this category of expenses in accordance with the guides set out in section E.2.d.

6. *Setoff for indirect expenses otherwise provided for by the Government.* a. The items to be accumulated under this heading are the reimbursements and other receipts from the Federal Government which are used by the institution to support directly, in whole or in part, any of the administrative or service (indirect) activities described in the foregoing (sections F.1. through F.5.). They include any amounts thus applied to such activities which may have been received pursuant to an institutional base grant or any similar contractual arrangement with the Federal Government other than a research agreement as herein defined (section B.3).

b. The sum of the items in this group shall be treated as a credit to the total indirect cost pool before it is apportioned to organized research and to other activities. Such setoff shall be made prior to the determination of the indirect cost rate or rates as provided in section G.

G. Determination and Application of Indirect Cost Rate or Rates

1. *Indirect cost pools.* a. Subject to b. below, indirect costs allocated to organized research should be treated as a common pool, and the costs in such common pool should then be distributed to individual research agreements benefiting therefrom on a single rate basis.

b. In some instances a single rate basis for use across the board on all Government research at an institution may not be appropriate, since it would not take into account those different environmental factors which may affect substantially the indirect costs applicable to a particular segment of Government research at the institution. For this purpose, a particular segment of Government research may be that performed under a single research agreement or it may consist of research under a group of research agreements performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of Government research is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular distribution process, and the separate indirect cost rate resulting therefrom should be utilized provided it is determined that (1) such indirect cost rate differs significantly from that which would have obtained under a. above, and (2) the volume of research work to which such rate would apply is material in relation to other Government research at the institution.

2. *The distribution base.* Indirect costs allocated to organized research should be distributed to applicable research agreements on the basis of direct salaries and wages. For this purpose, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to section G.1. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the total direct salaries and wages of all research agreements identified with such pool. For the purpose of establishing an indirect cost rate, direct salaries and wages may include that portion contributed to the research by the institution for cost sharing or other purposes. Bases other than salaries and wages may be used provided it can be demonstrated that they produce more equitable results.

3. *Negotiated lump sum for indirect costs.* A negotiated fixed amount in lieu of indirect costs may be appropriate for self-contained, off-campus, or primarily subcontracted research activities where the benefits derived from an institution's indirect services cannot be readily determined. Such amount negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses before apportionment to instruction.

organized research, and other institutional activities. The base on which such remaining expenses are allocated should be approximately adjusted.

4. *Predetermined fixed rates for indirect costs.* Public Law 87–638 (76 Stat. 437) authorizes the use of predetermined fixed rates in determining the indirect costs applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, consideration should be given to the negotiation of predetermined fixed rates for indirect costs in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting period.

5. *Negotiated fixed rates and carryforward provisions.* When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for that year may be included as an adjustment to the indirect cost for the next rate negotiation. When the rate is negotiated before the carryforward adjustment is determined due to the delay in audit, the carryforward may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected indirect costs allocable to Government research for the forecast period plus or minus the carryforward adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under lump-sum agreements or cost-sharing provisions of prior years shall not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant Federal agency as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carryforward provision may not subsequently change without prior approval of the cognizant Federal agency. In the event that an institution returns to a postdetermined rate, any over- or under-recovery during the period in which negotiated fixed rates and carryforward provisions were followed will be included in the subsequent postdetermined rates. Where multiple rates are used, the same procedure will be applicable for determining each rate. This procedure also applies to rates established for grants and contracts for training and other educational services, but does not apply to cost-type research agreements covering work performed in wholly or partially Government-owned facilities.

## H. Simplified Method for Small Institutions

1. *General.* a. Where the total direct cost of all federally supported work under research and educational service agreements at an institution does not exceed $1 million in a fiscal year (excluding direct payments by the institution to participants under educational service agreements for stipends, support, and similar costs requiring little, if any, indirect cost support), the use of the abbreviated procedure described in 2., below, may be used in determining allowable indirect costs. Under this abbreviated procedure, the institution's most recent annual financial report and immediately available supporting information, with salaries and wages segregated from other costs, will be utilized as a basis for determining the indirect cost rate applicable both to federally supported research and educational service agreements.

b. The rigid formula approach provided under this abbreviated procedure should not be used where it produces results which appear inequitable to the Government or the institution. In any such case, indirect costs should be determined through use of the regular procedure.

2. *Abbreviated procedure.* a. Establish the total amount of salaries and wages paid to all employees of the institution.

b. Establish an indirect cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student aid, student activities, and scholarships).

(2) Operation and maintenance of physical plant.

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under 2.b.(1) and 2.b.(2) have previously been allocated to other institutional activities, they may be included in the indirect cost pool. The total amount of salaries and wages included in the indirect cost pool must be separately identified.

c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established under 2.a. the amount of salaries and wages included under 2.b.

d. Establish the indirect cost rate, determined by dividing the amount in the indirect cost pool 2.b. by the amount of the distribution base 2.c.

e. Apply the indirect cost rate established to direct salaries and wages for individual agreements to determine the amount of indirect costs allocable to such agreements.

## I. [Reserved]

## J. General Standards for Selected Items of Cost

Sections J.1. through J.46. provide standards to be applied in establishing the allowability of certain items involved in determining cost. These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable; rather determination as to allowability in each case should be based on the treatment or standards provided for similar or related items of cost. In case of discrepancy between the provisions of a specific research agreement and the applicable standards provided, the provisions of the research agreement should govern.

1. *Advertising costs.* The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like. The only advertising costs allowable are those which are solely for: (a) The recruitment of personnel required for the performance by the institution of obligations arising under the research agreement, when considered in conjunction with all other recruitment costs, as set forth in J.32; (b) the procurement of scarce items for the performance of the research agreement; or (c) the disposal of scrap or surplus materials acquired in the performance of the research agreement. Costs of this nature, if incurred for more than one research agreement or for both research agreement work and other work of the institution, are allowable to the extent that the principles in sections D and E are observed.

2. *Bad debts.* Any losses, whether actual or estimated arising from uncollectible accounts and other claims, related collections costs, and related legal costs, are unallowable.

3. *Capital expenditures.* The costs of equipment, buildings, and repairs which materially increase the value or useful life of buildings or equipment, are unallowable except as provided for in the research agreement. Government funds shall not be used for the acquisition of land, or any interest therein, except with the specific prior approval of the sponsoring agency.

4. *Civil defense costs.* Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, firefighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when distributed to all activities of the institution. Capital expenditures for civil defense purposes will not be allowed, but a use allowance or depreciation may be permitted in accordance with provisions set forth in section J.10. Costs of local civil defense projects not on the institution's premises are unallowable.

5. *Commencement and convocation costs.* Costs incurred for commencements and convocations apply only to instruction and therefore are not allocable to research agreements, either as direct costs or indirect costs.

6. *Communication costs.* Costs incurred for telephone services, local and long-distance telephone calls, telegrams, radiograms, postage and the like, are allowable.

7. *Compensation for personal services*—a. *General.* Compensation for personal services

covers all remuneration paid currently or accured to the institution for services of employees rendered during the period of performance under Government research agreements. Such remuneration includes salaries, wages, staff benefits (see section J.39.), and pension plan costs (see section J.23.). The costs of such remuneration are allowable to the extent that the total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the institution consistently applied, and provided that the charges for work performed directly on Government research agreements and for other work allocable as indirect costs to organized research are determined and supported as hereinafter provided.

b. *Payroll distribution.* Amounts charged to organized research for personal services, except stipulated salary support, regardless of whether treated as direct costs or allocated as indirect costs, will be based on institutional payrolls which have been approved and documented in accordance with generally accepted institutional practices. Support for direct and indirect allocations of personal service costs to (1) instruction, (2) organized research, and (3) indirect activities as defined in section E.1., or (4) other institutional activities as defined in section B.4., will be provided as described in c., d., e., and f., below.

c. *Stipulated salary support.* As an alternative to payroll distribution, stipulated salary support amounts may be provided in the research agreement for professorial staff, any part of whose compensation is chargeable to Government-sponsored research. Stipulated salary support may also be provided for any other professionals who are engaged part time in sponsored research and part time in other work. The stipulated salary support for an individual will be determined by the Government and the educational institution during the proposal and award process on the basis of considered judgment as to the monetary value of the contribution which the individual is expected to make to the research project. This judgment will take into account any cost sharing by the institution and such other factors as the extent of the investigator's planned participation in the project and his ability to perform as planned in the light of his other commitments. It will be necessary for those who review research proposals to obtain information on the total academic year salary of the faculty members involved; the other research projects or proposals for which salary is allocated; and any other duties they may have such as teaching assignments, administrative assignments, number of graduate students for which they are responsible, or other institutional activities. Stipulated amounts for an individual must not per se result in increasing his official salary from the institution.

d. *Direct charges for personal services under payroll distribution.* The direct cost charged to organized research for the personal services of professorial and professional staff, exclusive of those whose salaries are stipulated in the research agreement, will be based on institutional payroll systems. Such institutional payroll systems must be supported by either: (1) an adequate appointment and workload distribution system accompanied by monthly reviews performed by responsible officials and a reporting of any significant changes in workload distribution of each professor or professional staff member, or (2) a monthly after-the-fact certification system which will require the individual investigators, deans, departmental chairmen or supervisors having first-hand knowledge of the services performed on each research agreement to report the distribution of effort. Reported changes will be incorporated during the accounting period into the payroll distribution system and into the accounting records. Direct charges for salaries and wages of nonprofessionals will be supported by time and attendance and payroll distribution records.

e. *Direct charges for personal services under stipulated salaries.* The amounts stipulated for salary support will be treated as direct costs. The stipulated salary for the academic year will be prorated equally over the duration of the grant or contract period during the academic year, unless other arrangements have been made in the grant or contract instrument. No time or effort reporting will be required to support these amounts. Special provision for summer salaries, or for a particular "off period" if other than summer, will be required. The research agreements will state that any research covered by summer salary support must be carried out during the summer, not during the academic year, and at locations approved in advance in writing by the granting agency. The certification required in section K will attest to this requirement as well as all others in a given research agreement. Stipulated salary support remains fixed during the funding period of the grant or contract and will be costed at the rate described above unless there is a significant change in performance. For example, a significant change in performance would exist if the faculty member (1) was ill for an extended period, (2) took sabbatical leave to devote effort to duties unrelated to his research, or (3) was required to increase substantially his teaching assignments, administrative duties, or responsibility for more research projects. In the latter event, it will be the responsibility of the educational institution to reduce the charges to the research agreement proportionately or seek an appropriate amendment. In the case of those covered by stipulated salary support, the auditors are no longer required to review the precise accuracy of time or effort devoted to research projects. Rather, their reviews should include steps to determine on a sample basis that an institution is not reimbursed for more than 100 percent of each faculty member's salary and that the portion of each faculty member's salary charged to Government-sponsored research is reasonable in view of his university workload and other commitments. The stipulated salary method may also be agreed upon for that portion of a professional's salary that represents cost sharing by the institution.

f. *Indirect personal services costs.* Allowable indirect personal services costs will be supported by the educational institution's accounting system maintained in accordance with generally accepted institutional practices. Where a comprehensive accounting system does not exist, the institution should make periodic surveys no less frequently than annually to support the indirect personal services costs for inclusion in the overhead pool. Such supporting documentation must be retained for subsequent review by Government officials.

g. *General guidance for charging personal services.* Budget estimates on a monthly, quarterly, semester, or yearly basis do not qualify as support for charges to federally sponsored research projects and should not be used unless confirmed after the fact. Charges to research agreements may include reasonable amounts for activities contributing and intimately related to work under the agreement, such as preparing and delivering special lectures about specific aspects of the ongoing research, writing research reports and articles, participating in appropriate research seminars, consulting with colleagues and graduate students with respect to related research, and attending appropriate scientific meetings and conferences. In no case should charges be made to federally sponsored research projects for lecturing or preparing for formal courses listed in the catalog and offered for degree credit, or for committee or administrative work related to university business.

h. *Nonuniversity professional activities.* A university must not alter or waive university-wide policies and practices dealing with the permissible extent of professional services over and above those traditionally performed without extra university compensation, unless such arrangements are specifically authorized by the sponsoring agency. Where university-wide policies do not adequately define the permissible extent of consultantship or other nonuniversity activities undertaken for extra pay, the Government may require that the effort of professional staff working under research agreements be allocated as between (1) university activities, and (2) nonuniversity professional activities. If the sponsoring agency should consider the extent of nonuniversity professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

i. *Salary rates for academic year.* Charges for work performed on Government research by faculty members during the academic year will be based on the individual faculty member's regular compensation for the continuous period which, under the practice of the institution concerned, constitutes the basis of his salary. Charges for work performed on research agreements during all or any portion of such period would be allowable at the base salary rate. In no event will the charge to research agreements, irrespective of the basis of computation, exceed the proportionate share of the base salary for that period, and any extra compensation above the base salary for work on Government research during such period would be unallowable. This principle applies to all members of the faculty at an institution.

Since intrauniversity consulting is assumed to be undertaken as a university obligation requiring no compensation in addition to full-time base salary, the principle also applies to those who function as consultants or otherwise contribute to a research agreement conducted by another faculty member of the same institution. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the consultant is in addition to his regular departmental load, any charges for such work representing extra compensation above the base salary are allowable provided such consulting arrangement is specifically provided for in the research agreement or approved in writing by the sponsoring agency.

j. *Salary rates for periods outside the academic year.* Charges for work performed by faculty members on Government research during the summer months or other periods not included in the base salary period will be determined for each faculty member at a monthly rate not in excess of that which would be applicable under his base salary and will be limited to charges made in accordance with other subsections of J.7.

k. *Salary rates for part-time faculty.* Charges for work performed on Government research by a faculty member having only part-time appointment for teaching will be determined at a rate not in excess of that for which he is regularly paid for his part-time teaching assignments. Example: An institution pays $5,000 to a faculty member for half-time teaching during the academic year. He devoted one-half of his remaining time (25 percent of his total available time) to Government research. Thus his additional compensation, chargeable by the institution to Government research agreements, would be one-half of $5,000 or $2,500.

8. *Contingency provisions.* Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable.

9. *Deans of faculty and graduate schools.* The salaries and expenses of deans of faculty and graduate schools, or their equivalents, and their staffs, are allowable.

10. *Depreciation and use allowances.* a. Institutions may be compensated for the use of buildings, capital improvements, and usable equipment on hand through use allowances or depreciation. Use allowances are the means of providing such compensation when depreciation or other equivalent costs are not considered. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

b. Due consideration will be given to Government-furnished facilities utilized by the institution when computing use allowances and/or depreciation if the Government-furnished facilities are material in amount. Computation of the use allowance and/or depreciation will exclude both the cost or any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it presently resides and, secondly, the cost of grounds. Capital expenditures for land improvements (paved areas, fences, streets, sidewalks, utility conduits, and similar improvements not already included in the cost of buildings) are allowable provided the systematic amortization of such capital expenditures has been provided, based on reasonable determinations of the probable useful lives of the individual items involved, and the share allocated to organized research is developed from the amount thus amortized for the base period involved. Amortization methods once used should not be changed for a given building or equipment unless approved in advance by the cognizant Federal agency.

c. Where the use allowance method is followed, the use allowance for buildings and improvements will be computed at an annual rate not exceeding 2 percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost of usable and needed equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance will be computed at an annual rate not exceeding 10 percent of such cost. Original complement for this purpose means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings; however, where a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable and needed equipment which may be used to compute the use allowance at an annual rate not exceeding 6⅔ percent of such estimate.

d. Where the depreciation method is followed, adequate property record must be maintained and periodic inventory (a statistical sampling basis is acceptable) must be taken to insure that properties for which depreciation is charged do exist and are needed. The period of useful service (service life) established in each case for usable capital assets must be determined on a realistic basis which takes into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular research area, and the renewal and replacement policies followed for the individual items or classes of assets involved. Where the depreciation method is introduced for application to assets acquired in prior years, the annual charges therefrom must not exceed the amounts that would have resulted had the depreciation method been in effect from the date of acquisition of such assets.

e. Where an institution elects to go to a depreciation basis for a particular class of assets, no depreciation, rental or use charge may be allowed on any such assets that, under d. above, would be viewed as fully depreciated provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the actual replacement policy followed in the light of service lives used for calculating depreciation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

11. *Employee morale, health, and welfare costs and credits.* The costs of house publications, health or first-aid clinics and/or infirmaries, recreational activities, employees' counseling services, and other expenses incurred in accordance with the institution's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee-performance, are allowable. Such costs will be equitably apportioned to all activities of the institution. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

12. *Entertainment costs.* Costs incurred for amusement, social activities, entertainment, and any items relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable.

13. *Equipment and other facilities.* The costs of permanent equipment or other facilities are allowable where such purchases are approved by the sponsoring agency concerned or provided for by the terms of the research agreement. Total expenditures for permanent equipment may not exceed 125 percent of the amount allotted for the permanent equipment category by the sponsoring agency (through an approved budget or other document) except with approval. The term "permanent equipment" shall mean an item of property which has an acquisition cost of $200 or more and has an expected service life of one year or more.

a. *General purpose equipment.* Approval must be obtained to acquire with Government funds any general purpose permanent equipment, i.e., any items which are usable for activities of the institution other than research, such as office equipment and furnishings, air conditioning, reproduction, or printing equipment, motor vehicles, etc., or any automatic data processing equipment.

b. *Research equipment.* Approval must be obtained to acquire with Government funds any item of permanent research equipment costing $1,000 or more.

14. *Fines and penalties.* Costs resulting from violations of, or failure of the institution to comply with, Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the research agreement or instructions in writing from the contracting officer.

15. *Insurance and indemnification.* a. Costs of insurance required or approved, and maintained, pursuant to the research agreement, are allowable.

b. Costs of other insurance maintained by the institution in connection with the general conduct of its activities, are allowable subject to the following limitations: (1) types

and extent and cost of coverage must be in accordance with sound institutional practice; (2) costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to Government-owned property are unallowable except to the extent that the Government has specifically required or approved such costs; and (3) costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted.

c. Contributions to a reserve for an approved self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the research agreement, except that costs incurred because of losses not covered under existing deductible clauses for insurance coverage provided in keeping with sound management practice as well as minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

e. Indemnification includes securing the institution against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the institution only to the extent expressly provided for in the research agreement, except as provided in d. above.

16. *Interest, fund raising, and investment management costs.* a. Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

b. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, are not allowable under Government research agreements.

c. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are not allowable under Government research agreements.

d. Costs related to the physical custody and control of monies and securities are allowable.

17. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the institution and its employees, including costs of labor management committees, employees' publications, and other related activities, are allowable.

18. *Losses on other research agreements or contracts.* Any excess of costs over income under any other research agreement or contract of any nature is unallowable. This includes, but is not limited to, the institution's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for indirect costs.

19. *Maintenance and repair costs.* Costs incurred for necessary maintenance, repair, or upkeep of property (including Government property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life but keep it in an efficient operating condition, are allowable.

20. *Material costs.* Costs incurred for purchased materials, supplies, and fabricated parts directly or indirectly related to the research agreement, are allowable. Purchases made specifically for the research agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores' withdrawals conforming to sound accounting practices consistently followed by the institution. Incoming transportation charges are a proper part of material cost. Direct material cost should include only the materials and supplies actually used for the performance of the research agreement, and due credit should be given for any excess materials retained, or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the research agreement. Where Government-donated or furnished material is used in performing the research agreement, such material will be used without charge.

21. *Memberships, subscriptions, and professional activity costs.* a. Costs of the institution's membership in civic, business, technical, and professional organizations are allowable.

b. Costs of the institution's subscriptions to civic, business, professional, and technical periodicals are allowable.

c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

22. *Patent costs.* Cost of preparing disclosures, reports, and other documents required by the research agreement and of searching the art to the extent necessary to make such invention disclosures, are allowable. In accordance with the clauses of the research agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See also section J.33.)

23. *Pension plan costs.* Costs of the institution's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided such policies meet the test of reasonableness and the methods of cost allocation are not discriminatory, and provided appropriate adjustments are made for credits or gains arising out of normal and abnormal employee turnover or any other contingencies that can result in forfeitures by employees which inure to the benefit of the institution.

24. *Plant security costs.* Necessary expenses incurred to comply with Government security requirements, including wages, uniforms, and equipment of personnel engaged in plant protection, are allowable.

25. *Preresearch agreement costs.* Costs incurred prior to the effective date of the research agreement, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless specifically set forth and identified in the research agreement.

26. *Professional services costs.* a. Costs of professional services rendered by the members of a particular profession who are not employees of the institution are allowable subject to b. and c. below, when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government. Retainer fees to be allowable must be reasonably supported by evidence of services rendered.

b. Factors to be considered in determining the allowability of costs in a particular case include (1) the past pattern of such costs, particularly in the years prior to the award of Government research agreements; (2) the impact of Government research agreements on the institution's total activity; (3) the nature and scope of managerial services expected of the institution's own organizations; and (4) whether the proportion of Government work to the institution's total activity is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government research agreements.

c. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with organization and reorganization or the prosecution of claims against the Government, are unallowable. Costs of legal, accounting and consulting services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the research agreement.

27. *Profits and losses on disposition of plant, equipment, or other capital assets.* Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sale or exchange of either short- or long-term investments, shall not be considered in computing research agreement costs.

28. *Proposal costs.* Proposal costs are the costs of preparing bids or proposals on potential Government and nongovernment research agreements or projects, including the development of engineering data and cost data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods will be allocable in the current period to the Government research agreement. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the method used, the results obtained may be accepted only if found to be reasonable and equitable.

29. *Public information services costs.* Costs of news releases pertaining to specific research or scientific accomplishment are unallowable unless specifically authorized by the sponsoring agency.

30. *Rearrangement and alteration costs.* Costs incurred for ordinary or normal

rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable when such work has been approved in advance by the sponsoring agency concerned.

31. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of Government research agreement work, fair wear and tear excepted, are allowable.

32. *Recruiting costs.* a. Subject to b., c., and d. below, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to a well-managed recruitment program. Where the institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help-wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal institutional practices in this respect), are unallowable.

c. Costs of help-wanted advertising, special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel from other institutions that do not meet the test of reasonableness or do not conform with the established practices of the institution, are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within 12 months after hire, the institution will be required to refund or credit such relocation costs to the Government.

33. *Royalties and other costs for use of patents.* Royalties on a patent or amortization of the costs of acquiring a patent or invention or rights thereto, necessary for the proper performance of the research agreement and applicable to tasks or processes thereunder, are allowable unless the Government has a license or the right to free use of the patent, the patent has been adjudicated to be invalid or has been administratively determined to be invalid, the patent is considered to be unenforceable, or the patent has expired.

34. *Sabbatical leave costs.* Costs of leave of absence to employees for performance of graduate work or sabbatical study, travel, or research, are allowable provided the institution has a uniform policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all appertaining activities of the institution. Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the institution's actual experience under its sabbatical leave policy.

35. *Scholarships and student aid costs.* Costs of scholarships, fellowships and other forms of student aid apply only to instruction and therefore are not allocable to research agreements, either as direct costs or indirect costs. However, in the case of students actually engaged in work under research agreements, any tuition remissions to such students for work performed are allocable to such research agreements provided consistent treatment is accorded such costs. (See section J.39.)

36. *Severance pay.* a. Severance pay is compensation in addition to regular salaries and wages which is paid by an institution to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer-employee agreement, by established policy that constitutes in effect an implied agreement on the institution's part, or by circumstances of the particular employment.

b. Severance payments that are due to normal, recurring turnover and which otherwise meet the conditions of a. above may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

c. Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Governmnment recognizes its obligation to participate, to the extent of its fair share, in any specific payment.

37. *Specialized service facilities operated by institution.* a. The costs, including amortization by generally accepted accounting practice, of institutional services involving the use of highly complex and specialized facilities such as electronic computers, including the cost of adapting computers for use, wind tunnels, and reactors are allowable provided the charges therefor meet the conditions of b. or c. below, and otherwise take into account any items of income or Federal financing that qualify as applicable credits under section C.5.

b. The costs of such institutional services normally will be charged directly to applicable research agreements based on actual usage or occupancy of the facilities on the basis of a schedule of rates that (1) is designed to recover only aggregate costs of providing such services over a long term agreed upon in advance by the cognizant Federal agency on an individual basis, and (2) is applied on a nondiscriminatory basis as between organized research and other work of the institution, including usage by the institution for internal purposes. Commercial or accommodation sales of computer services will be charged at not less than the above rates; however, if the rates charged for these services are greater, the total amount of charges above the scheduled rates when significant may be considered in revising the schedule of rates. Further, within the constraints of this paragraph, it is not necessary that the rates charged for services be equal to the cost of providing those services during any one fiscal year.

c. In the absence of an acceptable arrangement for direct costing as provided in b. above, the costs incurred for such institutional services may be assigned to research agreements as indirect costs, provided the methods used achieve substantially the same results. Such arrangements should be worked out in coordination with the cognizant Federal agency in order to assure equitable distribution of the indirect costs.

38. *Special services costs.* Costs incurred for general public relations activities, catalogs, alumni activities, and similar services, are unallowable.

39. *Staff benefits.* a. Staff benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, military leave, and the like, are allowable provided such costs are absorbed by all institutional activities, including organized research, in proportion to the relative amount of time or effort actually devoted to each. (See section J.34. for treatment of sabbatical leave.)

b. Staff benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, the pension plan (see section J.23.), tuition or remission of tuition for individual employees or their families (see section J.35.), and the like, are allowable provided such benefits are granted in accordance with established institutional policies, and provided such contributions and other expenses, whether treated as indirect costs or as an increment of direct labor costs, are distributed to particular research agreements and other activities in a manner consistent with the pattern of benefits accruing to the individuals or groups of employees whose salaries and wages are chargeable to such research agreements and other activities.

40. *Student activity costs.* Costs incurred for intramural activities, student publications, student clubs, and other student activities, apply only to instruction and therefore are not allocable to research agreements, either as direct costs or indirect costs.

41. *Student services costs.* Costs of the deans of students, administration of student affairs, registrar, placement offices, student advisers, student health and infirmary services, and such other activities as are identifiable with student services apply only to instruction and therefore are not allocable to research agreements, either as direct costs or indirect costs. However, in the case of students actually engaged in work under research agreements, a proportion of student services costs measured by the relationship between hours of work by students on such research work and total student hours including all research time may be allowed as a part of research administration expenses.

42. *Taxes.* a. In general, taxes which the institution is required to pay and which are

paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for: (1) taxes from which exemptions are available to the institution directly or which are available to the institution based on an exemption afforded the Government and in the latter case when the sponsoring agency makes available the necessary exemption certificates, and (2) special assessments on land which represent capital improvements.

b. Any refund of taxes, interest, or penalties, and any payment to the institution of interest thereon, attributable to taxes, interest, or penalties which were allowed as research agreement costs, will be credited or paid to the Government in the manner directed by the Government provided any interest actually paid or credited to an institution incident to a refund of tax, interest and penalty will be paid or credited to the Government only to the extent that such interest accrued over the period during which the institution had been reimbursed by the Government for the taxes, interest, and penalties.

43. *Transportation costs.* Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the research agreement, should be treated as a direct cost.

44. *Travel costs.* a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the institution. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed by the institution in its regular operations.

b. Travel costs are allowable subject to c., d., e., and f. below, when they are directly attributable to specific work under a research agreement or are incurred in the normal course of administration of the institution or a department or research program thereof.

c. The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would:

(1) Require circuitous routing, (2) require travel during unreasonable hours, (3) greatly increase the duration of the flight, (4) result in additional costs which would offset the transportation savings, or (5) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Costs of personnel movements of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

e. Foreign travel costs are allowable only when the travel has received specific prior approval. Each separate foreign trip must be specifically approved. For purposes of this provision, foreign travel is defined as "any travel outside of Canada and the United States and its territories and possessions."

f. Expenditures for domestic travel may not exceed $500, or 125 percent of the amount allotted for such travel by the sponsoring agency, whichever is greater, except with approval.

45. *Termination costs applicable to research agreements.* a. Termination of research agreements generally gives rise to the incurrence of costs or to the need for special treatment of costs, which would not have arisen had the agreement not been terminated. Items peculiar to termination are set forth below. They are to be used in conjunction with all other provisions of this Appendix in the case of termination.

b. The cost of common items of material reasonably usable on the institution's other work will not be allowable unless the institution submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, consideration should be given to the institution's plans and orders for current and scheduled work. Contemporaneous purchases of common items by the institution will be regarded as evidence that such items are reasonably usable on the institution's other work. Any acceptance of common items as allowable to the terminated portion of the agreement should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

c. If in a particular case, despite all reasonable efforts by the institution, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Appendix, except that any such costs continuing after termination due to the negligent or willful failure of the institution to discontinue such costs will be considered unacceptable.

d. Loss of useful value of special tooling and special machinery and equipment is generally allowable, provided: (1) such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the institution; (2) the interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer or equivalent; and (3) the loss of useful value as to any one terminated agreement is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the agreement bears to the entire terminated agreement and other Government agreements for which the special tooling, special machinery, or equipment was acquired.

e. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated agreement, less the residual value of such leases, if: (1) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the agreement and such further period as may be reasonable; and (2) the institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the agreement, and of reasonable restoration required by the provisions of the lease.

f. Settlement expenses including the following are generally allowable: (1) accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to contracting officers or equivalent of settlement claims and supporting data with respect to the terminated portion of the agreement, and the termination and settlement of subagreements; and (2) reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced by the institution for the agreement.

g. Claims under subagreements, including the allocable portion of claims which are common to the agreement and to other work of the institution, are generally allowable.

K. Certification of Charges.

To assure that expenditures for research grants and contracts are proper and in accordance with the research agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under research agreements will include a certification, signed by an authorized official of the university, which reads essentially as follows: "I certify that all expenditures reported (or payments requested) are for appropriate purposes and in accordance with the agreements set forth in the application and award documents."

Part II—Principles for Determining Costs Applicable to Training and Other Educational Services Under Grants and Contracts With Educational Institutions

A. *Purpose.* This part extends the scope of Part I to cover the determination of costs incurred by educational institutions under Federal grants and contracts for training and other educational services.

B. *Application.* The Department of Education will use Parts I and II of this Appendix as a basis for determining allowable costs under grants and cost reimbursement type contracts with educational institutions for work performed under federally supported education service agreements.

C. *Terminology.* The following definitions are to be used in determining the indirect cost

of federally sponsored training and other educational services under this Part II:

1. *Educational service agreement* means any grant or contract under which Federal financing is provided on a cost reimbursement basis for all or an agreed portion of the costs incurred for training or other educational services. Typical of the work covered by educational service agreements are summer institutes, special training programs for selected participants, professional or technical services to cooperating countries, the development and introduction of new or expanded courses, and similar instructional oriented undertakings, including special research training programs, that are separately budgeted and accounted for by the institution.

The term does not extend to: (a) grants or contracts for organized research, (b) arrangements under which the Federal financing is exclusively in the form of scholarships, fellowships, traineeships, or other fixed amounts such as a cost of education allowance or the normal published tuition rates and fees of an institution, or (c) construction, facility and exclusively general resource or institutional-type grants.

2. *Instruction* means all of the academic work other than organized research carried on by an institution, including the teaching of graduate and undergraduate courses, departmental research (see section B.2. of Part I) and all special training or other instructional-oriented projects sponsored by the Federal Government or others under educational service agreements.

D. *Student administration and services.* In addition to the five major functional categories of indirect costs described in section F of Part I, there is established an additional category under the title "Student administration and services" to embrace the following:

1. The expenses in this category are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations. The salaries of members of the academic staff whose academic appointments or assignments involve the performance of such administrative or service work may also be included to the extent that the portion so charged is supported pursuant to section J.2. of Part I. The student administration and services category also includes the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the cost of the operation and maintenance of the physical plant, and charges representing use allowance or depreciation applicable to the buildings and equipment utilized in the performance of the functions included in this category.

2. The expenses in this category are generally applicable in their entirety to the instruction activity. They should be allocated to applicable cost objectives within the instruction activity, including educational service agreements, when such agreements reasonably benefit from these expenses. Such expenses should be allocated on the basis of population served (computed on the basis of full-time equivalents including students, faculty, and others as appropriate) or other methods which will result in an equitable distribution to cost objectives in relation to the benefits received and be consistent with guides provided in section E.2. of Part I.

E. *Direct costs of educational service agreements.* Direct costs of work performed under educational service agreements will be determined consistent with the principles set forth in section D of Part I.

F. *Indirect costs of the instruction activity.* The indirect costs of the instruction activity as a whole should include its allocated share of administrative and supportive costs determined in accordance with the principles set forth in section D above and in section F of Part I. Such costs may include other items of indirect cost incurred solely for the instruction activity and not included in the general allocation of the various categories of indirect expenses. Costs incurred for the institutions by State and local governments are allowable as provided for in section C.6. of Part I.

G. *Indirect costs applicable to educational service agreements.* The individual items of indirect costs applicable to the instruction activity as a whole should be assigned to: (1) educational service agreements, and (2) all other instructional work through use of appropriate cost groupings, selected distribution bases, and other reasonable methods as outlined in section E.2. of Part I. A single indirect pool may be used for all educational service agreements provided this results in a reasonably equitable distribution of costs among agreements in relation to indirect support services provided. However, when the level of indirect support significantly varies for work performed either on campus or off campus under a particular agreement or group of agreements, separate cost pools should be established consistent with the principles set forth in section G.1.b. of Part I. Where direct charges are provided for under educational service agreements for such things as commencement fees, student fees, and tuition, the related indirect costs, through separate cost groupings, should be excluded from the indirect costs allocable to the service agreements.

H. *Indirect cost rates for educational service agreements.* An indirect cost rate should be determined for the educational service agreement pool or pools, as established under section G above. The rate in each case should be stated as the percentage which the amount of the particular educational service agreement pool is of the total direct salaries and wages of all educational service agreements identified with such pool. Indirect costs should be distributed to individual agreements by applying the rate or rates established to direct salaries and wages for each agreement. When a fixed rate is negotiated in advance of a fiscal year, the over- or under-recovery for that year may be included as an adjustment to the indirect cost for the next rate negotiation as in sections G.4. and G.5. of Part I.

I. *General standards for selected items of cost.* The standards for selected items of cost as set forth in sections J.1. through J.46. of Part I applicable to research agreements will also be applied to educational service agreements with the following modifications:

1. *Commencement and convocation costs (J.5.).* Expenses incurred for convocations and commencements apply to the instruction activity as a whole. Such expenses are unallowable as direct costs of educational service agreements unless specifically authorized in the agreement or approved in writing by the sponsoring agency. For eligibility of allocation as indirect costs, see section D.

2. *Compensation for personal services (J.7.).* Charges to educational service agreements for personal services will normally be determined and supported consistent with the provisions of section J.7. of Part I. However, the provision for stipulated salary support will not be used for educational service agreements. Also, charges may include compensation in excess of the base salary of a faculty member for the conduct of courses outside the normal duties of such member provided that: (a) extra charges are determined at a rate not greater than the basic salary rate of the member; (b) salary payments for such work follow practices consistently applied within the institution; and (c) specific authorization for such charges is included in the educational service agreement.

3. *Scholarships and student aid costs (J.35.).* Expenses incurred for scholarships and student aid are unallowable as either direct costs or indirect costs of educational service agreements, unless specifically authorized in the educational service agreement or approved in writing by the sponsoring agency.

4. *Student activity costs (J.40.).* Expenses incurred for student activities are unallowable as either direct costs or indirect costs of educational service agreements, unless specifically authorized in the educational service agreement or approved in writing by the sponsoring agency.

5. *Student services costs (J.41.).* Expenses incurred for student services are unallowable as direct costs of educational service agreements unless specifically authorized in the agreement or approved in writing by the sponsoring agency. For eligibility of allocation as indirect costs, see section D.

## Appendix E—Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts With Hospitals

### I. Purpose and Scope

A. *Objectives.* This appendix provides principles for determining the costs applicable to research and development work performed by hospitals under grants and contracts with the Department of Education. These principles are confined to the subject of cost determination and make no attempt to identify the circumstances or dictate the extent of hospital participation in the financing of a particular research or development project. The principles are designed to provide recognition of the full allocated costs of such research work under generally accepted accounting principles. These principles will be applicable to both

proprietary and non-profit hospitals. No provision for profit or other increment above cost is provided for in these principles. However, this is not to be interpreted as precluding a negotiated fee between contracting parties when a fee is appropriate.

B. *Policy guides.* The successful application of these principles requires development of mutual understanding between representatives of hospitals and of the Department of Education as to their scope, applicability and interpretation. It is recognized that:

1. The arrangements for hospital participation in the financing of a research and development project are properly subject to negotiation between the agency and the hospital concerned in accordance with such Government-wide criteria as may be applicable.

2. Each hospital, possessing its own unique combination of staff, facilities and experience, should be encouraged to conduct research in a manner consonant with its own institutional philosophies and objectives.

3. Each hospital in the fulfillment of its contractual obligations should be expected to employ sound management practices.

4. The application of the principles established herein shall be in conformance with the generally accepted accounting practices of hospitals.

5. Hospitals receive reimbursements from the Federal Government for differing types of services under various programs such as support of Research and Development (including discrete clinical centers) Health Services Projects, Medicare, etc. It is essential that consistent procedures for determining reimbursable costs for similar services be employed without regard to program differences. Therefore, both the direct and indirect costs of research programs must be identified as a cost center(s) for the cost finding and step-down requirements of the Medicare program, or in its absence the Medicaid program.

C. *Application.* When the Department of Education sponsors research and development work in hospitals, it will apply these principles and related policy guides in determining the costs incurred for such work under grants and cost-reimbursement type contracts and subcontracts. These principles will also be used as a guide in the pricing of fixed-price contracts and subcontracts.

## II. Definitions of Terms

A. "Organized research' means all research activities of a hospital that may be identified whether the support for such research is from a federal, non-federal or internal source.

B. "Departmental research" means research activities that are not separately budgeted and accounted for. Such work, which includes all research activities not encompassed under the term organized research, is regarded for purposes of this document as a part of the patient care activities of the hospital.

C. "Research agreement" means any valid arrangement to perform federally-sponsored research or development including grants, cost-reimbursement type contracts, cost-reimbursement type subcontracts, and fixed-price contracts and subcontracts.

D. "Instruction and training" means the formal or informal programs of educating and training technical and professional health services personnel, primarily medical and nursing training. This activity, if separately budgeted or identifiable with specific costs, should be considered as a cost objective for purposes of indirect cost allocations and the development of patient care costs.

E. "Other hospital activities" means all organized activities of a hospital not immediately related to the patient care, research, and instructional and training functions which produce identifiable revenue from the performance of these activities. If a non-related activity does not produce identifiable revenue, it may be necessary to allocate this expense using an appropriate basis. In such a case, the activity may be included as an allocable cost (See para. III D below.) Also included under this definition is any category of cost treated as "Unallowable," provided such category of cost identifies a function or activity to which a portion of the institution's indirect cost (as defined in para. V. A.) are properly allocable.

F. "Patient care" means those departments or cost centers which render routine or ancillary services to in-patients and/or out-patients. As used in para. IX B.23, it means the cost of these services applicable to patients involved in research programs.

G. "Allocation" means the process by which the indirect costs are assigned as between:

1. Organized research,

2. Patient care including departmental research.

3. Instruction and training, and

4. Other hospital activities.

H. "Cost center" means an identifiable department or area (including research) within the hospital which has been assigned an account number in the hospital accounting system for the purpose of accumulating expense by department or area.

I. "Cost finding" is the process of recasting the data derived from the accounts ordinarily kept by a hospital to ascertain costs of the various types of services rendered. It is the determination of direct costs by specific identification and the proration of indirect costs by allocation.

J. "Step down" is a cost finding method that recognizes that services rendered by certain nonrevenue-producing departments or centers are utilized by certain other nonrevenue producing centers as well as by the revenue-producing centers. All costs of nonrevenue-producing centers are allocated to all centers which they serve, regardless of whether or not these centers produce revenue. Following the apportionment of the cost of the nonrevenue-producing center, that center will be considered closed and no further costs are apportioned to that center.

K. "Scatter bed" is a bed assigned to a research patient based on availability. Research patients occupying these beds are not physically segregated from nonresearch patients occupying beds. Scatter beds are geographically dispersed among all the beds available for use in the hospital. There are no special features attendant to a scatter bed that distinguishes it from others that could just as well have been occupied.

L. "Discrete bed" is a bed or beds that have been set aside for occupancy by research patients and are physically segregated from other hospital beds in an environment that permits an easily ascertainable allocation of costs associated with the space they occupy and the services they generate.

## II. Basic Considerations

A. *Composition of total costs.* The cost of a research agreement is comprised of the allowable direct costs incident to its performance plus the allocable portion of the allowable indirect costs of the hospital less applicable credits. (See para. III–E.)

B. *Factors affecting allowability of costs.* The tests of allowability of costs under these principles are:

1. They must be reasonable.

2. They must be assigned to research agreements under the standards and methods provided herein.

3. They must be accorded consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances (See para. I–E.5.) and

4. They must conform to any limitations or exclusions set forth in these principles or in the research agreement as to types or amounts of cost items.

C. *Reasonable costs.* A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefor reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are:

1. Whether or not the cost is of a type generally recognized as necessary for the operation of the hospital or the performance of the research agreement,

2. The restraints or requirements imposed by such factors as arm's length bargaining, federal and state laws and regulations, and research agreement terms and conditions,

3. Whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the hospital, its patients, its employees, its students, the Government, and the public at large, and

4. The extent to which the actions taken with respect to the incurrence of the cost are consistent with established hospital policies and practices applicable to the work of the hospital generally, including Government research.

D. *Allocable costs.* 1. A cost is allocable to a particular cost center (i.e., a specific function, project, research agreement, department, or the like) if the goods or services involved are chargeable or assignable to such cost center in accordance with relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a research agreement if it is incurred solely to advance the work under the research agreement; or it benefits both the research agreement and other work of the hospital in proportions that can be approximated through use of reasonable methods; or it is necessary to the

overall operation of the hospital and, in light of the standards provided in this chapter, is deemed to be assignable in part to organized research. Where the purchase of equipment or other capital items are specifically authorized under a research agreement, the amounts thus authorized for such purchases are allocable to the research agreement regardless of the use that may subsequently be made of the equipment or other capital items involved.

2. Any costs allocable to a particular research agreement under the standards provided in these principles may not be shifted to other research agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the research agreement, or for other reasons of convenience.

E. *Applicable credits.* 1. The term applicable credits refers to those receipts or negative expenditure types of transactions which operate to offset or reduce expense items that are allocable to research agreements as direct or indirect costs as outlined in para. V-A. Typical examples of such transactions are: purchase discounts, rebates, or allowances; recoveries or indemnities on losses; sales of scrap or incidental services; tuition; adjustments of overpayments or erroneous charges; and services rendered to patients admitted to federally funded clinical research centers, primarily for care though also participating in research protocols.

2. In some instances, the amounts received from the Federal Government to finance hospital activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the hospital in determining the rates or amounts to be charged to government research for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by federal funds. Thus, where such items are provided for or benefit a particular hospital activity, i.e., patient care, research, instruction and training, or other, they should be treated as an offset to the indirect costs apportioned to that activity. Where the benefits are common to all hospital activities they should be treated as a credit to the total indirect cost pool before allocation to the various cost objectives.

## IV. Direct Costs

A. *General.* Direct costs are those that can be identified specifically with a particular cost center. For this purpose, the term cost center refers not only to the ultimate centers against which costs are finally lodged such as research agreements, but also to other established cost centers such as the individual accounts for recording particular objects or items of expense, and the separate account groupings designed to record the expenses incurred by individual organizational units, functions, projects and the like. In general, the administrative functions and service activities described in para. VI are identifiable as separate cost centers, and the expenses associated with such centers become eligible in due course for distribution as indirect costs of research agreements and other ultimate cost centers.

B. *Application to research agreements.* Identifiable benefit to the research work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of research agreements. Typical of transactions chargeable to a research agreement as direct costs are the compensation of employees for the time or effort devoted to the performance of work under the research agreement, including related staff benefit and pension plan costs to the extent that such items are consistently accorded to all employees and treated by the hospital as direct rather than indirect costs (see para. V. B4b); the costs of materials consumed or expended in the performance of such work; and other items of expense incurred for the research agreement, such as extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of research agreements provided such items are consistently treated by the institution as direct rather than indirect costs and are charged under a recognized method of costing or pricing designed to recover only the actual direct and indirect costs of such material or service and conforming to generally accepted cost accounting practices consistently followed by the institution.

## V. Indirect Costs

A. *General.* Indirect costs are those that have been incurred for common or joint objectives, and thus are not readily subject to treatment as direct costs of research agreements or other ultimate or revenue producing cost centers. In hospitals such costs normally are classified but not necessarily restricted to the following functional categories: Depreciation; Administrative and General (including fringe benefits if not charged directly); Operation of Plant; Maintenance of Plant; Laundry and Linen Service; Housekeeping; Dietary; Maintenance of Personnel; and Medical Records and Library.

B. *Criteria for distribution.*—1. *Base period.* A base period for distribution of indirect costs is the period during which such costs are incurred and accumulated for distribution to work performed within that period. The base period normally should coincide with the fiscal year established by the hospital, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

2. *Need for cost groupings.* The overall objective of the allocation process is to distribute the indirect costs described in para. VI to organized research, patient care, instruction and training, and other hospital activities in reasonable proportions consistent with the nature and extent of the use of the hospital's resources by research personnel, medical staff, patients, students, and other personnel or organizations. In order to achieve this objective with reasonable precision, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the functional categories of indirect costs referred to in para. V-A. In general, the cost groupings established within a functional category should constitute, in each case, a pool of those items of expense that are considered to be of like character in terms of their relative contribution to (or degree of remoteness from) the particular cost centers to which distribution is appropriate. Each such pool or cost grouping should then be distributed individually to the related cost centers, using the distribution base or method most appropriate in the light of the guides set out in B3 below. While this paragraph places primary emphasis on a step-down method of indirect cost computation, para. VIII provides an alternate method which may be used under certain conditions.

3. *Selection of distribution method.* Actual conditions must be taken into account in selecting the method or base to be used in distributing to related cost centers the expenses assembled under each of the individual cost groups established as indicated under B2 above. Where a distribution can be made by assignment of a cost grouping directly to the area benefited, the distribution should be made in that manner. Care should be given, however, to eliminate similar or duplicative costs from any other distribution made to this area. Where the expenses under a cost grouping are more general in nature, the distribution to related cost centers should be made through use of a selected base which will produce results which are equitable to both the Government and the hospital. In general, any cost element or cost-related factor associated with the hospital's work is potentially adaptable for use as a distribution base provided:

a. It can readily be expressed in terms of dollars or other quantitative measure (total direct expenditures, direct salaries, manhours applied, square feet utilized, hours of usage, number of documents processed, population served, and the like); and

b. It is common to the related cost centers during the base period. The essential consideration in selection of the distribution base in each instance is that it be the one best suited for assigning the pool of costs to related cost centers in accord with the relative benefits derived; the traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

4. *General consideration on cost groupings.* The extent to which separate cost groupings and selective distribution would be appropriate at a hospital is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groups (based on account classification or analysis) within a functional category include but are not limited to the following:

a. Where certain items or categories of expense relate solely to one of the major divisions of the hospital (patient care, sponsored research, instruction and training, or other hospital activities) or to any two but not all, such expenses should be set aside as a separate cost grouping for direct assignment or selective distribution in

accordance with the guides provided in B2 and B3 above.

b. Where any types of expense ordinary treated as indirect cost as outlined in para. V-A are charged to research agreements as direct costs, the similar type expenses applicable to other activities of the institution must through separate cost grouping be excluded from the indirect costs allocable to research agreements.

c. Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research and other hospital activities.

d. Where organized activities (including identifiable segments of organized research as well as the activities cited in para. II-E) provide their own purchasing, personnel administration, building maintenance, or housekeeping or similar service, the distribution of such elements of indirect cost to such activities should be accomplished through cost grouping which includes only that portion of central indirect costs (such as for overall management) which are properly allocable to such activities.

e. Where the hospital elects to treat as indirect charges the costs of pension plans and other staff benefits, such costs should be set aside as a separate cost grouping for selective distribution to related cost centers, including organized research.

f. Where the hospital is affiliated with a medical school or some other institution which performs organized research on the hospital's premises, every effort should be made to establish separate cost groupings in the Administrative and General or other applicable category which will reasonably reflect the use of services and facilities by such research. (See also para. VII-A.3)

5. *Materiality.* Where it is determined that the use of separate cost groupings and selective distribution are necessary to produce equitable results, the number of such separate cost groupings within a functional category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

C. *Administration of limitations on allowances for indirect costs.* 1. Research grants may be subject to laws and/or administrative regulations that limit the allowance for indirect costs under each such grant to a stated percentage of the direct costs allowed. Agencies that sponsor such grants will establish procedures which will assure that:

a. the terms and amount authorized in each case conform with the provisions of paragraphs III, V and IX of these principles as they apply to matters involving the consistent treatment and allowability of individual items of cost; and

b. the amount actually allowed for indirect costs under each such research grant does not exceed the maximum allowable under the limitation or the amount otherwise allowable under these principles, whichever is the smaller.

2. Where the actual allowance for indirect costs on any research grant must be restricted to the smaller of the two alternative amounts referred to in C1 above, such alternative amounts should be determined in accordance with the following guides:

a. The maximum allowable under the limitation should be established by applying the stated percentage to a direct cost base which shall include all items of expenditure authorized by the sponsoring agency for inclusion as part of the total cost for the direct benefit of the work under the grant; and

b. The amount otherwise allowable under these principles should be established by applying the current institutional indirect cost rate to those elements of direct cost which were included in the base on which the rate was computed.

3. When the maximum amount allowable under a statutory limitation or the terms of a research agreement is less than the amount otherwise allocable as indirect costs under these principles, the amount not recoverable as indirect costs under the research agreement involved may not be shifted to other research agreements.

## VI. Identification and Assignment of Indirect Costs

A. *Depreciation or use charge.* 1. The expenses under this heading should include depreciation (as defined in para. IX-B.9a) on buildings, fixed equipment, and movable equipment, except to the extent purchased through federal funds. Where adequate records for the recording of depreciation are not available, a use charge may be substituted for depreciation (See para. IX-B.)

2. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides set forth in para. V-B, on a basis that gives primary emphasis to (a) space utilization with respect to depreciation on buildings and fixed equipment; and (b) specific identification of assets and their use with respect to movable equipment as it relates to patient care, organized research, instruction and training, and other hospital activities. Where such records are not sufficient for the purpose of the foregoing, reasonable estimates will suffice as a means for effecting distribution of the amounts involved.

B. *Administration and general expenses.* 1. The expenses under this heading are those that have been incurred for the administrative offices of the hospital including accounting, personnel, purchasing, information centers, telephone expense, and the like which do not relate solely to any major division of the institution, i.e., solely to patient care, organized research, instruction and training, or other hospital activities.

2. The expenses included in this category may be allocated on the basis of total expenditures exclusive of capital expenditures, or salaries and wages in situations where the results of the distribution made on this basis are deemed to be equitable both to the Government and the hospital; otherwise the distribution of Administration and General expenses should be made through use of selected bases, applied to separate cost groupings established within this category of expenses in accordance with the guides set out in para. V-B.

C. *Operation of plant.* 1. The expenses under this heading are those that have been incurred by a central service organization or at the departmental level for the administration, supervision, and provision of utilities (exclusive of telephone expense) and protective services to the physical plant. They include expenses incurred for such items as power plant operations, general utility costs, elevator operations, protection services, and general parking lots.

2. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides provided in para. V-B, on a basis that gives primary emphasis to space utilization. The allocations should be developed as follows:

a. Where actual space and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost centers normally will suffice as a means for effecting distribution of the amounts involved; or

c. Where it can be demonstrated that an area or volume or space basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of facilities by research personnel and others, including patients.

D. *Maintenance of plant.* 1. The expenses under this heading should include:

a. All salaries and wages pertaining to ordinary repair and maintenance work performed by employees on the payroll of the hospital;

b. All supplies and parts used in the ordinary repairing and maintaining of buildings and general equipment; and

c. Amounts paid to outside concerns for the ordinary repairing and maintaining of buildings and general equipment.

2. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides provided in para. V-B, on a basis that gives primary emphasis to space utilization. The allocations and apportionments should be developed as follows:

a. Where actual space and related cost records are available and can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost centers normally will suffice as a means for effecting distribution of the amounts involved; or

c. Where it can be demonstrated that an area or volume of space basis of allocation is impractical or inequitable, other basis may be used provided consideration is given to the

use of facilities by research personnel and others, including patients.

E. *Laundry and linen.* 1. The expenses under this heading should include:

a. Salaries and wages of laundry department employees, seamstresses, clean linen handlers, linen delivery men, etc.;

b. Supplies used in connection with the laundry operation and all linens purchased; and

c. Amounts paid to outside concerns for purchased laundry and/or linen service.

2. The expense included in this category should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B. on a basis that gives primary emphasis to actual pounds of linen used. The allocations should be developed as follows:

a. Where actual poundage and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where it can be demonstrated that a poundage basis of allocation is impractical or inequitable other bases may be used provided consideration is given to the use of linen by research personnel and others, including patients.

F. *Housekeeping.* 1. The expenses under this heading should include:

a. All salaries and wages of the department head, foreman, maids, porters, janitors, wall washers, and other housekeeping employees;

b. All supplies used in carrying out the housekeeping functions; and

c. Amounts paid to outside concerns for purchased services such as window washing, insect extermination, etc.

2. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B. on a basis that gives primary emphasis to space actually serviced by the housekeeping department. The allocations and apportionments should be developed as follows:

a. Where actual space serviced and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where the space serviced and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost centers normally will suffice as a means for effecting distribution of the amounts of housekeeping expenses involved; or

c. Where it can be demonstrated that the space serviced basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of housekeeping services by research personnel and others, including patients.

G. *Dietary.* 1. These expenses, as used herein, shall mean only the subsidy provided by the hospital to its employees including research personnel through its cafeteria operation. The hospital must be able to demonstrate through the use of proper cost accounting techniques that the cafeteria operates at a loss to the benefit of employees.

2. The reasonable operating loss of a subsidized cafeteria operation should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B. on a basis that gives primary emphasis to number of employees.

H. *Maintenance (housing) of personnel.* 1. The expenses under this heading should include:

a. The salaries and wages of matrons, clerks, and other employees engaged in work in nurses' residences and other employees' quarters;

b. All supplies used in connection with the operation of such dormitories; and

c. Payments to outside agencies for the rental of houses, apartments, or rooms used by hospital personnel.

2. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B. on a basis that gives primary emphasis to employee utilization of housing facilities. The allocation should be developed as follows:

a. Appropriate credit should be given for all payments received from employees or otherwise to reduce the expense to be allocated;

b. A net cost per housed employee may then be computed; and

c. Allocation should be made on a departmental basis based on the number of housed employees in each respective department.

I. *Medical records and library.* 1. The expenses under this heading should include:

a. The salaries and wages of the records librarian, medical librarian, clerks, stenographers, etc.; and

b. All supplies such as medical record forms, chart covers, filing supplies, stationery, medical library books, periodicals, etc.

2. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B. on a basis that gives primary emphasis to a special time survey of medical records personnel. If this appears to be impractical or inequitable, other bases may be used provided consideration is given to the use of these facilities by research personnel and others, including patients.

## VII. Determination and Application of Indirect Cost Rate or Rates

A. *Indirect cost pools.* 1. Subject to (2) below, indirect costs allocated to organized research should be treated as a common pool, and the costs in such common pool should be distributed to individual research agreements benefiting therefrom on a single rate basis.

2. In some instances a single rate basis for use on all government research at a hospital may not be appropriate since it would not take into account those different environmental factors which may affect substantially the indirect costs applicable to a particular segment of government research at the institution. For this purpose, a particular segment of government research may be that performed under a single research agreement or it may consist of research under a group of research agreements performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of government research is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. An example of this differential may be in the development of a separate indirect cost pool for a clinical research center grant. The separate indirect cost pool should be developed during the course of the regular distribution process, and the separate indirect cost rate resulting therefrom should be utilized provided it is determined that:

a. Such indirect cost rate differs significantly from that which would have obtained under (1) above; and

b. The volume of research work to which such rate would apply is material in relation to other government research at the institution.

3. It is a common practice for grants or contracts awarded to other institutions, typically University Schools of Medicine, to be performed on hospital premises. In these cases the hospital should develop a separate indirect cost pool applicable to the work under such grants or contracts. This pool should be developed by a selective distribution of only those indirect cost categories which benefit the work performed by the other institution, within the practical limits dictated by available data and the materiality of the amounts involved. Hospital costs determined to be allocable to grants or contracts awarded to another institution may not be recovered as a cost of grants or contracts awarded directly to the hospital.

B. *The distribution base.* Preferably, indirect costs allocated to organized research should be distributed to applicable research agreements on the basis of direct salaries and wages. However, where the use of salaries and wages results in an inequitable allocation of costs to the research agreements, total direct costs or a variation thereof, may be used in lieu of salaries and wages. Regardless of the base used, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to para. VII–A. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the total direct salaries and wages (or other base selected) for all research agreements identified with such a pool.

C. *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate for self-contained or off-campus research activities where the benefits derived from a hospital's indirect services cannot be readily determined. Such amount negotiated in lieu of indirect costs will be treated as an offset to the appropriate indirect cost pool after allocation to patient care, organized research, instruction and training, and other hospital activities. The

base on which such remaining expenses are allocated should be appropriately adjusted.

D. *Predetermined overhead rates.* The utilization of predetermined fixed overhead rates may offer potential advantages in the administration of research agreements by facilitating the preparation of research budgets and permitting more expeditious close out of the agreements when the work is completed. Therefore, to the extent allowed by law, consideration may be given to the negotiation of predetermined fixed rates in those situations where the cost experience and other pertinent factors available are deemed sufficient to enable the Government and the hospital to reach a reasonable conclusion as to the probable level of the indirect cost rate for the ensuing accounting period.

viii. Simplified Method for Small Institutions

A. *General.* 1. Where the total direct cost of all government-sponsored research and development work at a hospital in a year is minimal, the use of the abbreviated procedure described in para. VIII–B below may be acceptable in the determination of allowable indirect costs. This method may also be used to initially determine a provisional indirect cost rate for hospitals that have not previously established a rate. Under this abbreviated procedure, data taken directly from the institution's most recent annual financial report and immediately available supporting information will be utilized as a basis for determining the indirect cost rate applicable to research agreements at the institution.

2. The rigid formula approach provided under the abbreviated procedure has limitations which may preclude its use at some hospitals either because the minimum data required for this purpose are not readily available or because the application of the abbreviated procedure to the available data produces results which appear inequitable to the Government or the hospital. In any such case, indirect costs should be determined through use of the regular procedure rather than the abbreviated procedure.

3. In certain instances where the total direct cost of all government-sponsored research and development work at the hospital is more than minimal, the abbreviated procedure may be used if prior permission is obtained. This alternative will be granted only in those cases where it can be demonstrated that the step-down technique cannot be followed.

B. *Abbreviated procedure.* 1. Total expenditures as taken from the most recent annual financial report will be adjusted by eliminating from further consideration expenditures for capital items as defined in para. IX–B.4 and unallowable costs as defined under various headings in para. IX and para. III–E.

2. Total expenditures as adjusted under the foregoing will then be distributed among (a) expenditures applicable to administrative and general overhead functions, (b) expenditures applicable to all other overhead functions, and (c) expenditures for all other purposes. The first group shall include amounts associated with the functional categories, Administration and General, and Dietary, as defined in para. VI. The second group shall include Depreciation, Operation of Plant, Maintenance of Plant, and Housekeeping. The third group—expenditures for all other purposes—shall include the amounts applicable to all other activities, namely, patient care, organized research, instruction and training, and other hospital activities as defined under para. II–E. For the purposes of this section, the functional categories of Laundry and Linen, Maintenance of Personnel, and Medical Records and Library as defined in para. VI shall be considered as expenditures for all other purposes.

3. The expenditures distributed to the first two groups in para. VIII–B.2 should then be adjusted by those receipts or negative expenditure types of transactions which tend to reduce expense items allocable to research agreements as indirect costs. Examples of such receipts or negative expenditures are itemized in para. III–E.1.

4. In applying the procedures in para. VIII–B.1 and B.2, the cost of unallowable activities such as Gift Shop, Investment Property Management, Fund Raising, and Public Relations, when they benefit from the hospital's indirect cost services, should be treated as expenditures for all other purposes. Such activities are presumed to benefit from the hospital's indirect cost services when they include salaries of personnel working in the hospital. When they do not include such salaries, they should be eliminated from the indirect cost rate computation.

5. The indirect cost rate will then be computed in two stages. The first stage requires the computation of an Administrative and General rate component. This is done by applying a ratio of research direct costs over total direct costs to the Administrative and General pool developed under para. VIII–B.2 and B.3 above. The resultant amount—that which is allocable to research—is divided by the direct research cost base. The second stage requires the computation of an All Other Indirect Cost rate component. This is done by applying a ratio of research direct space over total direct space to All Other Indirect Cost pool developed under para. VIII–B.2 and B.3 above. The resultant amount—that which is allocable to research—is divided by the direct research cost base.

The total of the two rate components will be the institution's indirect cost rate. For the purposes of this section, the research direct cost or space and total direct cost or space will be that cost or space identified with the functional categories classified under Expenditures for all other purposes under para. VIII–B.2.

IX General Standards for Selected Items of Cost

A. *General.* This section provides standards to be applied in establishing the allowability of certain items involved in determining cost. These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment or standards provided for similar or related items of cost. In case of discrepancy between the provisions of a specific research agreement and the applicable standards provided, the provisions of the research agreement should govern. However, in some cases advance understandings should be reached on particular cost items in order that the full costs of research be supported. The extent of allowability of the selected items of cost covered in this section has been stated to apply broadly to many accounting systems in varying environmental situations. Thus, as to any given research agreement, the reasonableness and allocability of certain items of costs may be difficult to determine, particularly in connection with hospitals which have medical school or other affiliations. In order to avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, it is important that prospective recipients of federal funds particularly those whose work is predominantly or substantially with the Government, seek agreement with the Government in advance of the incurrence of special or unusual costs in categories where reasonableness or allocability are difficult to determine. Such agreement may also be initiated by the Government. Any such agreement should be incorporated in the research agreement itself. However, the absence of such an advance agreement on any element of cost will not in itself serve to make that element either allowable or unallowable. Examples of costs on which advance agreements may be particularly important are:

1. Facilities costs, such as;
   a. Depreciation
   b. Rental
   c. Use charges for fully depreciated assets
   d. Idle facilities and idle capacity
   e. Plant reconversion
   f. Extraordinary or deferred maintenance and repair
   g. Acquisition of automatic data processing equipment.
2. Preaward costs
3. Non-hospital professional activities
4. Self-insurance
5. Support services charged directly (computer services, printing and duplicating services, etc.)
6. Employee compensation, travel, and other personnel costs, including;
   a. Compensation for personal service, including wages and salaries, bonuses and incentives, premium payments, pay for time not worked, and supplementary compensation and benefits, such as pension and retirement, group insurance, severance pay plans, and other forms of compensation
   b. Morale, health, welfare, and food service and dormitory costs
   c. Training and education costs
   d. Relocation costs, including special or mass personnel movement

B. *Selected items.*—1. *Advertising costs.* The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and

television programs, direct mail, exhibits, and the like. The only advertising costs allowable are those which are solely for;

a. The recruitment of persons required for the performance by the institution of obligations arising under the research agreement, when considered in conjunction with all other recruitment costs as set forth in para IX-B.34

b. The procurement of scarce items for the performance of the research agreement; or

c. The disposal of scrap or surplus materials acquired in the performance of the research agreement.

Costs of this nature, if incurred for more than one research agreement or for both research agreement work and other work of the institution, are allowable to the extent that the principles in paragraph IV and V are observed.

2. *Bad debts.* Losses arising from uncollectible accounts and other claims and related collection and legal costs are unallowable except that a bad debt may be included as a direct cost of the research agreement to the extent that it is caused by a research patient and approved by the awarding agency. This inclusion is only intended to cover the situation of the patient admitted for research purposes who subsequently or in conjunction with the research receives clinical care for which a charge is made to the patient. If, after exhausting all means of collecting these charges, a bad debt results, it may be considered an appropriate charge to the research agreement.

3. *Bonding costs.* a. Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the hospital. They arise also in instances where the hospital requires similar assurance.

Included are such types as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the research agreement are allowable.

c. Costs of bonding required by the hospital in the general conduct of its business are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

4. *Capital expenditures.* The costs of equipment, buildings, and repairs which materially increase the value or useful life of buildings or equipment should be capitalized and are unallowable except as provided for in the research agreement.

5. *Civil defense costs.* Civil defense costs are those incurred in planning for, and the protection of life and property against the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, fire-fighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when distributed to all activities of the institution. Capital expenditures for civil defense purposes will not be allowed, but a use allowance or depreciation may be permitted in accordance with provisions set forth elsewhere. Costs of local civil defense projects not on the institution's premises are unallowable.

6. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, radiograms, postage, and the like are allowable.

7. *Compensation for personal services.*—a. *General.* Compensation for personal services covers all remuneration paid currently or accrued to employees of the hospital for services rendered during the period of performance under government research agreements. Such remuneration includes salaries, wages, staff benefits (see para. IX-B.10), and pension plan costs (see para. IX-B.25). The costs of such remuneration are allowable to the extent that the total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the institution consistently applied, and provided that the charges for work performed directly on government research agreements and for other work allocable as indirect costs to sponsored research are determined and supported as hereinafter provided. For non-profit, non-proprietary institutions, where federally supported programs constitute less than a preponderance of the activity at the institution the primary test of reasonableness will be to require that the institution's compensation policies be applied consistently both to federally-sponsored and non-sponsored activities alike. However, where special circumstances so dictate a contractual clause may be utilized which calls for application of the test of comparability in determining the reasonableness of compensation.

b. *Payroll distribution.* Amounts charged to organized research for personal services, regardless of whether treated as direct costs or allocated as indirect costs, will be based on hospital payrolls which have been approved and documented in accordance with generally accepted hospital practices. In order to develop necessary direct and indirect allocations of cost, supplementary data on time or effort as provided in (c) below, normally need be required only for individuals whose compensation is properly chargeable to two or more research agreements or to two or more of the following broad functional categories: (1) patient care; (2) organized research; (3) instruction and training; (4) indirect activities as defined in para. V-A; or (5) other hospital activities as defined in para. II-E.

c. *Reporting time or effort.* Charges for salaries and wages of individuals other than members of the professional staff will be supported by daily time and attendance and payroll distribution records. For members of the professional staff, current and reasonable estimates of the percentage distribution of their total effort may be used as support in the absence of actual time records. The term professional staff for purposes of this section includes physicians, research associates, and other personnel performing work at responsible levels of activities. These personnel normally fulfill duties, the competent performance of which usually requires persons possessing degrees from accredited institutions of higher learning and/or state licensure. In order to qualify as current and reasonable, estimates must be made no later than one month (though not necessarily a calendar month) after the month in which the services were performed.

d. *Preparation of estimates of effort.* Where required under (c) above, estimates of effort spent by a member of the professional staff on each research agreement should be prepared by the individual who performed the services or by a responsible individual such as a department head or supervisor having first-hand knowledge of the services performed on each research agreement. Estimates must show the allocation of effort between organized research and all other hospital activities in terms of the percentage of total effort devoted to each of the broad functional categories referred to in (b) above. The estimate of effort spent on a research agreement may include a reasonable amount of time spent in activities contributing and intimately related to work under the agreement, such as preparing and delivering special lectures about specific aspects of the ongoing research, writing research reports and articles, participating in appropriate research seminars, consulting with colleagues with respect to related research, and attending appropriate scientific meetings and conferences. The term "all other hospital activities" would include departmental research, administration, committee work, and public services undertaken on behalf of the hospital.

e. *Application of budget estimates.* Estimates determined before the performance of services, such as budget estimates on a monthly, quarterly, or yearly basis do not qualify as estimates of effort spent.

f. *Non-hospital professional activities.* A hospital must not alter or waive hospital-wide policies and practices dealing with the permissible extent of professional services over and above those traditionally performed without extra hospital compensation, unless such arrangements are specifically authorized by the sponsoring agency. Where hospital-wide policies do not adequately define the permissible extent of consultantships or other non-hospital activities undertaken for extra pay, the Government may require that the effort of professional staff working under research agreements be allocated as between (1) hospital activities, and (2) non-hospital professional activities. If the sponsoring agency should consider the extent of non-hospital professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case by case basis.

g. *Salary rates for part-time appointments.* Charges for work performed on government research by staff members having only part-time appointments will be determined at a rate not in excess of that for which he is regularly paid for his part-time staff assignment.

8. *Contingency provisions.* Contributions to a contingency reserve or any similar provisions made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable.

9. *Depreciation and use allowances.* a. Hospitals may be compensated for the use of buildings, capital improvements and usable equipment on hand through depreciation or use allowances. Depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life has reference to the prospective period of economic usefulness in the particular hospital's operations as distinguished from physical life. Use allowances are the means of allowing compensation when depreciation or other equivalent costs are not considered.

b. Due consideration will be given to government-furnished research facilities utilized by the institution when computing use allowances and/or depreciation if the government-furnished research facilities are material in amount. Computation of the use allowance and/or depreciation will exclude both the cost or any portion of the cost of grounds, buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it presently resides, and secondly, the cost of grounds. Capital expenditures for land improvements (paved areas, fences, streets, sidewalks, utility conduits, and similar improvements not already included in the cost of buildings) are allowable provided the systematic amortization of such capital expenditures has been provided in the institution's books of accounts, based on reasonable determinations of the probable useful lives of the individual items involved, and the share allocated to organized research is developed from the amount thus amortized for the base period involved.

c. Normal depreciation on a hospital's plant, equipment, and other capital facilities, except as excluded by (d) below, is an allowable element of research cost provided that the amount thereof is computed:

1. Upon the property cost basis used by the hospital for Federal Income Tax purposes (See section 167 of the Internal Revenue Code of 1954); or

2. In the case of non-profit or tax exempt organizations, upon a property cost basis which could have been used by the hospital for Federal Income Tax purposes, had such hospital been subject to the payment of income tax; and in either case

3. By the consistent application to the assets concerned of any generally accepted accounting method, and subject to the limitations of the Internal Revenue Code of 1954 as amended, including—

i. The straight line method;

ii. The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in (i) above;

iii. The sum of the years-digits method; and

iv. Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year, does not during the first two-thirds of the useful life of the property exceed the total of such allowances which would have been used had such allowances been computed under the method described in (ii) above.

d. Where the depreciation method is followed, adequate property records must be maintained. The period of useful service (service life) established in each case for usable capital assets must be determined on a realistic basis which takes into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular research area, and the renewal and replacement policies followed for the individual items or classes of assets involved. Where the depreciation method is introduced for application to assets acquired in prior years, the annual charges therefrom must not exceed the amounts that would have resulted had the depreciation method been in effect from the date of acquisition of such assets.

e. Depreciation on idle or excess facilities shall not be allowed except on such facilities as are reasonably necessary for standby purposes.

f. Where an institution elects to go on a depreciation basis for a particular class of assets, no depreciation, rental or use charge may be allowed on any such assets that would be viewed as fully depreciated; provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the actual replacement policy followed in the light of service lives used for calculating depreciation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

g. Hospitals which choose a depreciation allowance for assets purchased prior to 1966 based on a percentage of operating costs in lieu of normal depreciation for purposes of reimbursement under Public Law 89-97 (Medicare) shall utilize that method for determining depreciation applicable to organized research.

The operating costs to be used are the lower of the hospital's 1965 operating costs or the hospital's current year's allowable costs. The percent to be applied is 5 percent starting with the year 1966-67, with such percentage being uniformly reduced by one-half percent each succeeding year. The allowance based on operating costs is in addition to regular depreciation on assets acquired after 1965. However, the combined amount of such allowance on pre-1966 assets and the allowance for actual depreciation on assets acquired after 1965 may not exceed 6 percent of the hospital's allowable cost for the current year. After total depreciation has been computed, allocation methods are used to determine the share attributable to organized research.

For purposes of this section, "Operating Costs" means the total costs incurred by the hospital in operating the institution, and includes patient care, research, and other activities. "Allowable Costs" means operating costs less unallowable costs as defined in these principles; by the application of allocation methods to the total amount of such allowable costs, the share attributable to Federally-sponsored research is determined.

A hospital which elects to use this procedure under Public Law 89-97 and subsequently changes to an actual depreciation basis on pre-1966 assets in accordance with the option afforded under the Medicare program shall simultaneously change to an actual depreciation basis for organized research.

Where the hospital desires to change to actual depreciation but either has no historical cost records or has incomplete records, the determination of historical cost could be made through appropriate means involving expert consultation with the determination being subject to review and approval by the Department of Health, Education, and Welfare.

h. Where the use allowance method is followed, the use allowance for buildings and improvements will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance will be computed at an annual rate not exceeding ten percent of such cost. Original complement for this purpose means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings; however, where a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable equipment which may be used to compute the use allowance at an annual rate not exceeding six and two-thirds percent of such estimate.

i. Depreciation and/or use charges should usually be allocated to research and other activities as an indirect cost.

10. *Employee morale, health, and welfare costs and credits.* The costs of house publications, health or first-aid benefits, recreational activities, employees' counseling services, and other expenses incurred in accordance with the hospital's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Such costs will be equitably apportioned to all activities of the hospital. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

11. *Entertainment costs.* Except as pertains to 10 above, costs incurred for amusement, social activities, entertainment, and any items relating thereto, such as meals, lodging, rentals, transportation, and gratuities are unallowable.

12. *Equipment and other facilities.* The cost of equipment or other facilities are allowable on a direct charge basis where such purchases are approved by the sponsoring agency concerned or provided for by the terms of the research agreement.

13. *Fines and penalties.* Costs resulting from violations of, or failure of the institution to comply with federal, state and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the research agreement, or instructions in writing from the awarding agency.

14. *Insurance and indemnification.* a. Costs of insurance required or approved and maintained pursuant to the research agreement are allowable.

b. Costs of other insurance maintained by the hospital in connection with the general conduct of its activities are allowable subject to the following limitations: (1) types and extent and cost of coverage must be in accordance with sound institutional practice; (2) costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to government owned property are unallowable except to the extent that the Government has specifically required or approved such costs; and (3) costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted.

c. Contributions to a reserve for an approved self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks. Such contributions are subject to prior approval of the Government.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the research agreement, except that costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice as well as minor losses not covered by insurance such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations are allowable.

15. *Interest, fund raising and investment management costs.* a. Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

b. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are not allowable.

c. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are not allowable.

d. Costs related to the physical custody and control of monies and securities are allowable.

16. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the hospital and its employees, including costs of labor management committees, employees' publications, and other related activities are allowable.

17. *Losses on research agreements or contracts.* Any excess of costs over income under any agreement or contract of any nature is unallowable. This includes, but is not limited to, the hospital's contributed portion by reason of cost-sharing agreements, under-recoveries through negotiation of flat amounts for overhead, or legal or administrative limitations.

18. *Maintenance and repair costs.* a. Costs necessary for the upkeep of property (including government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows:

1. Normal maintenance and repair costs are allowable;

2. Extraordinary maintenance and repair costs are allowable, provided they are allocated to the periods to which applicable for purposes of determining research costs.

b. Expenditures for plant and equipment, including rehabilitation thereof, which according to generally accepted accounting principles as applied under the hospital's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

19. *Material costs.* Costs incurred for purchased materials, supplies and fabricated parts directly or indirectly related to the research agreement, are allowable. Purchases made specifically for the research agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores withdrawals conforming to sound accounting practices consistently followed by the hospital. Incoming transportation charges are a proper part of material cost. Direct material cost should include only the materials and supplies actually used for the performance of the research agreement, and due credit should be given for any excess materials retained or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the research agreement. Where government donated or furnished material is used in performing the research agreement, such material will be used without charge.

20. *Memberships, subscriptions and professional activity costs.* a. Costs of the hospital's membership in civic, business, technical and professional organizations are allowable.

b. Costs of the hospital's subscriptions to civic, business, professional and technical periodicals are allowable.

c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

21. *Organization costs.* Expenditures such as incorporation fees, attorneys' fees, accountants' fees, brokers' fees, fees to promoters and organizers in connection with (a) organization or reorganization of a hospital, or (b) raising capital, are unallowable.

22. *Other business expenses.* Included in this item are such recurring expenses as registry and transfer charges resulting from changes in ownership of securities issued by the hospital; cost of shareholders meetings preparation and publication of reports to shareholders, preparation and submission of required reports and forms to taxing and other regulatory bodies, and incidental costs of directors and committee meetings. The above and similar costs are allowable when allocated on an equitable basis.

23. *Patient care.* The cost of routine and ancillary or special services to research patients is an allowable direct cost of research agreements.

a. Routine services shall include the costs of the regular room, dietary and nursing services, minor medical and surgical supplies and the use of equipment and facilities for which a separate charge is not customarily made.

b. Ancillary or special services are the services for which charges are customarily made in addition to routine services, such as operating rooms, anesthesia, laboratory, BMR-EKG, etc.

c. Patient care, whether expressed as a rate or an amount, shall be computed in a manner consistent with the procedures used to determine reimbursable costs under Public Law 89-97 (Medicare Program) as defined under the "Principles Of Reimbursement For Provider Costs" published by the Social Security Administration of the Department of Health and Human Services. The allowability of specific categories of cost shall be in accordance with those principles rather than the principles for research contained herein. In the absence of participation in the Medicare program by a hospital, all references to the Medicare program in these principles shall be construed as meaning the Medicaid program.

i. Once costs have been recognized as allowable, the indirect costs or general service center's cost shall be allocated (stepped-down) to special service centers, and all patient and nonpatient costs centers based upon actual services received or benefiting these centers.

ii. After allocation, routine and ancillary costs shall be apportioned to scatter-bed research patients on the same basis as is used to apportion costs to Medicare patients, i.e. using either the departmental method or the combination method, as those methods are defined by the Social Security Administration; except that final settlement shall be on a grant-by-grant basis. However, to the extent that the Social Security Administration has recognized any other method of cost apportionment, that method generally shall also be recognized as applicable to the determination of research patient care costs.

iii. A cost center must be established on Medicare reimbursement forms for each discrete-bed unit grant award received by a hospital. Routine costs should be stepped-down to this line item(s) in the normal course

of stepping-down costs under Medicare/Medicaid requirements. However, in stepping-down routine costs, consideration must be given to preventing a step-down of those costs to discrete-bed unit line items that have already been paid for directly by the grant, such as bedside nursing costs. Ancillary costs allocable to research discrete-bed units shall be determined and proposed in accordance with Section 23.c.ii.

d. Where federally sponsored research programs provide specifically for the direct reimbursement of nursing, dietary, and other services, appropriate adjustment must be made to patient care costs to preclude duplication and/or misallocation of costs.

24. *Patent costs.* Costs of preparing disclosures, reports and other documents required by the research agreement and of searching the art to the extent necessary to make such invention disclosures are allowable. In accordance with the clauses of the research agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See also para. IX–B.36.)

25. *Pension plan costs.* Costs of the hospital's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided such policies meet the test of reasonableness and the methods of cost allocation are not discriminatory, and provided appropriate adjustments are made for credits or gains arising out of normal and abnormal employee turnover or any other contingencies that can result in forfeitures by employees which inure to the benefit of the hospital.

26. *Plan security costs.* Necessary expenses incurred to comply with government security requirements including wages, uniforms and equipment of personnel engaged in plant protection are allowable.

27. *Preresearch agreement costs.* Costs incurred prior to the effective date of the research agreement, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless specifically set forth and identified in the research agreement.

28. *Professional services costs.* a. Costs of professional services rendered by the members of a particular profession who are not employees of the hospital are allowable subject to (b) and (c) below when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government. Retainer fees to be allowable must be reasonably supported by evidence of services rendered.

b. Factors to be considered in determining the allowability of costs in a particular case include (1) the past pattern of such costs, particularly in the years prior to the award of government research agreements on the institution's total activity; (2) the nature and scope of managerial services expected of the institution's own organizations; and (3) whether the proportion of government work to the hospital's total activity is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under government research agreements.

c. Costs of legal, accounting and consulting services, and related costs incurred in connection with organization and reorganization or the prosecution of claims against the Government are unallowable. Costs of legal, accounting and consulting services, and related costs incurred in connection with patent infringement litigation are unallowable unless otherwise provided for in the research agreement.

29. *Profits and losses on disposition of plant equipment, or other assets.* Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sales or exchange of either short- or long-term investments, shall be excluded in computing research agreement costs.

30. *Proposal costs.* Proposal costs are the costs of preparing bids or proposals on potential government and non-government research agreements or projects, including the development of technical data and cost data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods will be allocable in the current period to the government research agreement. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the methods used, the results obtained may be accepted only if found to be reasonable and equitable.

31. *Public information services costs.* Costs of news releases pertaining to specific research or scientific accomplishment are unallowable unless specifically authorized by the sponsoring agency.

32. *Rearrangement and alteration costs.* Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special rearrangement and alteration costs incurred specifically for a project are allowable only as a direct charge when such work has been approved in advance by the sponsoring agency concerned.

33. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of government research agreement work, fair wear and tear excepted, are allowable.

34. *Recruiting costs.* a. Subject to (b), (c), and (d) below, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees are allowable to the extent that such costs are incurred pursuant to a well managed recruitment program. Where an institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal institutional practices in this respect) are unallowable.

c. Costs of help wanted advertising, special emoluments; fringe benefits, and salary allowances incurred to attract professional personnel from other institutions that do not meet the test of reasonableness or do not conform with the established practices of the institution are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within twelve months after hire, the institution will be required to refund or credit such relocations costs as were charged to the Government.

35. *Rental costs (including sale and lease-back of facilities).* a. Rental costs of land, building, and equipment and other personal property are allowable if the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the area, the type, life expectancy, condition, and value of the facilities leased, options available, and other provisions of the rental agreement. Application of these factors, in situations where rentals are extensively used, may involve among other considerations comparison of rental costs with the amount which the hospital would have received had it owned the facilities.

b. Charges in the nature of rent between organizations having a legal or other affiliation or arrangement such as hospitals, medical schools, foundations, etc., are allowable to the extent such charges do not exceed the normal costs of ownership such as depreciation, taxes, insurance, and maintenance, provided that no part of such costs shall duplicate any other allowed costs.

c. Unless otherwise specifically provided in the agreement, rental costs specified in sale and lease-back agreements incurred by hospitals through selling plant facilities to investment organizations such as insurance companies or to private investors, and concurrently leasing back the same facilities are allowable only to the extent that such rentals do not exceed the amount which the hospital would have received had it retained legal title to the facilities.

36. *Royalties and other costs for use of patents.* Royalties on a patent or amortization of the cost of acquiring a patent or invention or rights thereto necessary for the proper performance of the research agreement and applicable to tasks or processes thereunder are allowable unless the Government has a license or the right to free use of the patent, the patent has been adjudicated to be invalid, or has been administratively determined to be invalid, the patent is considered to be unenforceable, or the patent has expired.

37. *Severance pay.* a. Severance pay is compensation in addition to regular salaries

and wages which is paid by a hospital to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer-employee agreement, by established policy that constitutes in effect an implied agreement on the institution's part, or by circumstances of the particular employment.

b. Severance payments that are due to normal, recurring turnover, and which otherwise meet the conditions of (a) above may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

c. Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Government recognizes its obligation to participate to the extent of its fair share in any specific payment.

38. *Specialized service facilities operated by a hospital.* a. The costs of institutional services involving the use of highly complex and specialized facilities such as electronic computers and reactors are allowable provided the charges therefor meet the conditions of (b) or (c) below, and otherwise take into account any items of income or federal financing that qualify as applicable credits under para. III–E.

b. The costs of such hospital services normally will be charged directly to applicable research agreements based on actual usage or occupancy of the facilities at rates that (1) are designed to recover only actual costs of providing such services, and (2) are applied on a nondiscriminatory basis as between organized research and other work of the hospital including commercial or accommodation sales and usage by the hospital for internal purposes. This would include use of such facilities as radiology, laboratories, maintenance men used for a special purpose, medical art, photography, etc.

c. In the absence of an acceptable arrangement for direct costing as provided in (b) above, the costs incurred for such institutional services may be assigned to research agreements as indirect costs, provided the methods used achieve substantially the same results. Such arrangements should be worked out in coordination with all government users of the facilities in order to assure equitable distribution of the indirect costs.

39. *Special administrative costs.* Costs incurred for general public relations activities, catalogs, alumni activities, and similar services are unallowable.

40. *Staff and/or employee benefits.* a. Staff and/or employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job such as for annual leave, sick leave, military leave and the like are allowable provided such costs are absorbed by all hospital activities including organized research in proportion to the relative amount of time or effort actually devoted to each.

b. Staff benefits in the form of employer contributions or expenses for Social Security taxes, employee insurance, Workmen's Compensation insurance, the Pension Plan (see para. IX–B.25), hospital costs or remission of hospital charges to the extent of costs for individual employees or their families, and the like are allowable provided such benefits are granted in accordance with established hospital policies, and provided such contributions and other expenses whether treated as indirect costs or an increment of direct labor costs are distributed to particular research agreements and other activities in a manner consistent with the pattern of benefits accruing to the individuals or groups of employees whose salaries and wages are chargeable to such research agreements and other activities.

41. *Taxes.* a. In general, taxes which the hospital is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable except for (1) taxes from which exemptions are available to the hospital directly or which are available to the hospital based on an exemption afforded the Government and in the latter case when the sponsoring agency makes available the necessary exemption certificates, (2) special assessments on land which represent capital improvements, and (3) Federal Income Taxes.

b. Any refund of taxes, interest, or penalties, and any payment to the hospital of interest thereon attributable to taxes, interest or penalties, which were allowed as research agreement costs will be credited or paid to the Government in the manner directed by the Government provided any interest actually paid or credited to a hospital incident to a refund of tax, interest, and penalty will be paid or credited to the Government only to the extent that such interest accrued over the period during which the hospital had been reimbursed by the Government for the taxes, interest, and penalties.

42. *Transportation costs.* Costs incurred for inbound freight, express, cartage, postage and other transportation services relating either to goods purchased, in process, or delivered are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the material received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the research agreement, should be treated as a direct cost.

43. *Travel costs.* a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the hospital. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed by the institution in its regular operations.

b. Travel costs are allowable subject to (c) and (d) below when they are directly attributable to specific work under a research agreement or when they are incurred in the normal course of administration of the hospital or a department or research program thereof.

c. The difference in cost between first class air accommodations and less than first class air accommodations is unallowable except when less than first class air accommodations are not reasonably available to meet necessary mission requirements such as where less than first class accommodations would (1) require circuitous routing, (2) require travel during unreasonable hours, (3) greatly increase the duration of the flight, (4) result in additional costs which would offset the transportation savings, or (5) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Costs of personnel movements of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

44. *Termination costs applicable to contracts.* a. Contract terminations generally give rise to the incurrence of costs or to the need for special treatment of costs which would not have arisen had the contract not been terminated. Items peculiar to termination are set forth below. They are to be used in conjunction with all other provisions of these principles in the case of contract termination.

b. The cost of common items of material reasonably usable on the hospital's other work will not be allowable unless the hospital submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, consideration should be given to the hospital's plans for current scheduled work or activities including other research agreements. Contemporaneous purchases of common items by the hospital will be regarded as evidence that such items are reasonably usable on the hospital's other work. Any acceptance of common items as allowable to the terminated portion of the contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirement of other work.

c. If in a particular case, despite all reasonable efforts by the hospital, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in these principles, except that any such costs continuing after termination due to the negligent or willful failure of the hospital to discontinue such costs will be considered unacceptable.

d. Loss of useful value of special tooling and special machinery and equipment is generally allowable, provided (1) such special tooling, machinery or equipment is not reasonably capable of use in the other work of the hospital; (2) the interest of the Government is protected by transfer of title or by other means deemed appropriate by the

contracting officer; and (3) the loss of useful value as to any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other government contracts for which the special tooling, special machinery or equipment was acquired.

e. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated contract, less the residual value of such leases, if (1) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and (2) the hospital makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the contract and of reasonable restoration required by the provisions of the lease.

f. Settlement expenses including the following are generally allowable: (1) accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to contracting officers of settlement claims and supporting data with respect to the terminated portion of the contract and the termination and settlement of subcontracts; and (2) reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced by the institution for the contract.

g. Subcontractor claims including the allocable portion of claims which are common to the contract and to other work of the contractor are generally allowable.

45. *Voluntary services.* The value of voluntary services provided by sisters or other members of religious orders is allowable provided that amounts do not exceed that paid other employees for similar work. Such amounts must be identifiable in the records of the hospital as a legal obligation of the hospital. This may be reflected by an agreement between the religious order and the hospital supported by evidence of payments to the order.

## Appendix F—Principles for Determining Costs Applicable to Grants and Contracts With Nonprofit Institutions

### A. Purpose and Scope

1. *Objectives.* This Appendix provides principles for determining the costs applicable to grants and contracts awarded by the Department of Education and performed by nonprofit organizations other than educational institutions, hospitals and State and local Government organizations. These principles are confined to the subject of cost determination and make no attempt to identify the circumstances or dictate the extent of agency and institutional participation in the financing of a particular project. The principles are designed to provide recognition of the full allocated costs of work under generally accepted accounting principles. No provision for profit or other increment above cost is provided for in these principles.

2. *Definition of nonprofit institution.* (a) A nonprofit institution for purposes of this document is any corporation, foundation, trust, association, cooperative or other organization other than (i) educational institutions, (ii) hospitals and (iii) State and local Governmental agencies, bureaus or departments, which is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest, which is not organized primarily for profit and which uses all income exceeding costs to maintain, improve and/or expand its operations.

The charter or other legally binding authority for the existence of the institution must provide that no part of the net earnings, properties or other assets of the institution, on dissolution or otherwise, shall inure to the benefits of any private person or individual including any member, employee, officer, director or trustee of the institution, and that, on liquidation or dissolution all properties and assets remaining after providing for all debts and obligations shall be distributed and paid over to such other fund, foundation or other organization formed and operated as a nonprofit institution, as defined herein, as the board of directors or trustees may determine. Institutions which have received tax exemptions as nonprofit institutions from the U.S. Internal Revenue Service shall be considered to have met the criteria of this definition.

(b) For purposes of this document, the terms nonprofit and not-for-profit as they are descriptively applied to institutions shall be considered synonymous provided the requirements of 2(a) are met.

3. *Policy guides.* The successful application of these principles requires development of mutual understanding between representatives of nonprofit institutions and of the Federal Government as to their scope, applicability, and interpretation. It is recognized that the arrangements for agency and institutional participation in the financing of a project are properly subject to negotiation between the agency and the institution concerned in accordance with such governmentwide criteria as may be applicable, that each institution should be expected to employ sound management practice in the fulfillment of its obligation, and that each grantee or contractor organization in recognition of its own unique combination of staff, facilities and experience should be responsible for employing whatever form of organization and management techniques as may be necessary to assure proper efficient administration.

4. *Application.* These principles shall be applied in determining cost incurred in the performance of all grants and cost-reimbursement type contracts awarded by the Department of Education. The principles shall also apply to cost-reimbursement type contracts performed under ED grants and cost-reimbursement type subcontracts and shall be used as a guide in the pricing of fixed price contracts and subcontracts. The principles do not apply to construction grants or contracts.

### B. Basic Considerations

1. *Composition of total cost.* The total cost of a contract or grant is the sum of the allowable direct and indirect costs allocable to the grant/contract less any applicable credits. In ascertaining what constitutes costs, any generally accepted accounting method of determining or estimating costs that is equitable under the circumstances may be used.

2. *Factors affecting allowability of costs.* Factors to be considered in determining the allowability of individual items of cost include (a) reasonableness, (b) allocability, (c) application of those generally accepted accounting principles and practices appropriate to the particular circumstances, and (d) any limitations or exclusions set forth in this document or otherwise included in the grant/contract as to types or amounts of cost items.

3. *Definition of reasonableness.* A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with institutions or separate divisions thereof which may not be subject to effective competitive restraints. What is reasonable depends upon a variety of considerations and circumstances involving both the nature and amount of the cost in question. In determining the reasonableness of a given cost, consideration shall be given to:

(a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the institution or the performance of the grant/contract.

(b) The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and grant/contract terms and specifications;

(c) The action that a prudent businessman would take in the circumstances, considering his responsibilities to the public at large, the Government, his employees, his clients, shareholders or members and the fulfillment of the purposes for which the institution was organized; and

(d) Significant deviations from the established practices of the institution which may unjustifiably increase the grant/contract costs.

4. *Definition of allocability.* A cost is allocable if it is assignable or chargeable to a particular cost objective, such as a grant/contract, project, product, service, process, or other major activity, in accordance with the relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government grant/contract if it:

(a) Is incurred specifically for the grant/contract;

(b) Benefits both the grant/contract and other work and can be distributed to them in reasonable proportion to the benefits received; or

(c) Is necessary to the overall operation of the institution, although a direct relationship to any particular cost objective cannot be shown.

Where an organization utilizes the Standards of Accounting and Financial

Reporting for Voluntary Health and Welfare Organizations (or comparable generally accepted accounting standards peculiar to its particular organizational structure or activity) to allocate costs to non-ED supported activities it must also use such standards to allocate costs to ED grants/contracts.

5. *Applicable credits.* The term applicable credits refers to those receipt or negative expenditure types of transactions which operate to offset or reduce expense items that are allocable to grants or contracts as direct or indirect costs. Typical examples of such transactions are: purchase discounts, rebates or allowances; recoveries or indemnities on losses; sales of scrap or incidental services; and adjustments of overpayments or erroneous charges. The applicable portion of any income, rebate, allowance, and other credit relating to any allowable cost, received by or accruing to the grantee/contractor shall be credited to the Government either as a cost reduction or by cash refund, as appropriate.

C. Direct Costs

1. A direct cost is any cost which can be identified specifically with a particular cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with the grant/contract are direct costs of the grant/contract and may be charged directly thereto. Costs identified specifically with other work of the institution are direct costs of that work and are not to be charged to the grant/contract either directly or indirectly. Items charged as direct cost to Government-supported projects must be charged in a uniform manner to all other work of the institution in order to preclude an overcharge to the Government as a result of the Government's participation in the indirect cost pool. Conversely, where the institution's established accounting system provides for the treatment of certain items of cost as direct costs of the institution, then the same items must be considered direct costs to Government-supported projects and may not be included in the indirect cost pool.

2. Certain types of cost, or costs associated with certain activities are not reimbursable as a charge to an ED grant/contract. These unallowable costs or activities are identified in section G. Even though a particular activity or cost is designated as unallowable for purposes of computing costs charged to Government work, it nonetheless must be treated as a direct cost or activity if a portion of the institution's indirect cost (as defined in section D) is properly allocable to it. The amount of indirect cost allocated must be in accordance with the principles set forth in section D-2. In general, an unallowable institutional activity shall be treated as a direct function when it (1) includes salaries of personnel, (2) occupies space, and (3) is serviced by an indirect cost grouping(s). Thus the costs associated with the following types of activities when normal or necessary to an institution's primary mission shall be treated as direct costs:

(a) Maintenance of membership rolls, subscriptions, publications and related functions.

(b) Providing services and information to members, legislative or administrative bodies or the public.

(c) Promotion, lobbying, and other forms of public relations.

(d) Meetings and conferences except those held to conduct the general administration of the institution.

(e) Fund raising.

(f) Maintenance, protection, and investment of special funds not used in operation of institutions.

(g) Administration of group benefits on behalf of members or clients including life and hospital insurance, annuity or retirement plans, financial aid, etc.

(h) Other activities performed primarily as a service to a membership, clients, or the public.

3. This definition shall be applied to all items of cost of significant amount unless the institution demonstrates that the application of any different current practice achieves substantially the same results. Direct cost items of minor amount may be distributed as indirect costs as provided in section D.

D. Indirect Costs

1. An indirect cost is one which, because of its incurrence for common or joint objectives, is not readily subject to treatment as a direct cost. Minor direct cost items may be considered to be indirect costs for reasons of practicality. After direct costs have been determined and charged directly to the grant/contract or other work as appropriate, indirect costs are those remaining to be allocated to the several classes of work. The overall objective of the allocation process is to distribute the indirect costs of the institution to its various major activities or cost objectives in reasonable proportions with the benefits provided to those activities or cost objective. Because of the diverse natures and purposes of organizations falling within the definition of a non-profit organization, it is impractical to specifically identify those functions which constitute major activities for purposes of identifying and distributing indirect costs. Such identification will be dependent upon an institution's purpose-in-being, the services it renders to the public, its clients and/or members, the amount of effort devoted to fund raising activities; public relations, and membership activities, etc. (See section C-2.)

2. Indirect costs shall be accumulated by logical cost groupings with due consideration of the reasons for incurring the costs. Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accruing to the several cost objectives. Sub-grouping may be required where there is no single equitable distribution base for all the elements of cost comprising a group. Actual conditions must be taken into account in selecting the method or base to be used in distributing the expenses assembled under each of the individual cost groupings established to applicable cost objectives. Where a distribution can be made by assignment of a cost grouping directly to the area benefited, the distribution should be made in that manner. Where the expenses under a cost grouping are more general in nature, the distribution to the cost objectives should be made through use of a selected base which will produce results which are equitable to both the Government and the institution. In general, any cost element or cost-related factor associated with the institution's work is potentially adaptable for use as a distribution base provided (1) it can readily be expressed in terms of dollars or other quantitative measure (total direct expenditures, direct salaries, manhours applied, square feet utilized, hours of usage, number of documents processed, population served, and the like); and (2) it is common to the cost objectives during the base period. The essential consideration in selection of the distribution base in each instance is that it be the one best suited for assigning the pool of costs to the cost objectives in accord with the relative benefits derived; the traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

3. The number and composition of the groupings should be governed by practical considerations and should be such as not to complicate unduly the allocation where substantially the same results are achieved through less precise methods.

4. A base period for distribution of indirect costs is the period during which such costs are incurred and accumulated for distribution to work performed within that period. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

E. Determination and Application of Indirect Cost Rate or Rates

1. *Indirect cost pools.* (a) Subject to (b) below, indirect costs allocable to an institution's direct functions should be treated as a common pool, and the costs in such common pool should then be distributed to the individual projects benefiting therefrom by use of a single rate.

(b) In some instances a single rate for use across the board on all activities at an institution may not be appropriate, since it would not take into account those different environmental factors which may affect substantially the indirect costs applicable to a particular segment of work at the institution. For this purpose, a particular segment of work may be that performed under a single grant/contract or it may consist of work under a group of grants/contracts performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of work is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular distribution process,

and the separate indirect cost rate resulting therefrom should be utilized provided it is determined that (1) such indirect cost rate differs significantly from that which would have been obtained under (a) above, and (2) the volume of work to which such rate would apply is material in relation to other activity at the institution.

2. *The distribution base.* Indirect costs should be distributed to each applicable project on the basis of direct salaries and wages, total direct costs or other basis which results in an equitable distribution. For this purpose, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to section E.1. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the base selected.

F. Application of Principles and Procedures

1. Costs shall be allowed to the extent that they are reasonable (see B.3) allocable (see B.4) and determined to be allowable in view of the other factors set forth in paragraph B.2. and section G. These criteria apply to all of the selected items of cost which follow notwithstanding that particular guidance is provided in connection with certain specific items for emphasis or clarity.

2. Costs of all subcontracts under a grant or cost-reimbursement type contract are subject to those Federal cost regulations and policies appropriate to the subcontract involved. Thus if the subcontract is for supplies or services with a nonprofit institution other than an educational institution, hospital or State and local governmental unit this document would apply; if the subcontract is for supplies or services with a commercial organization, Federal Procurement Regulation Part 1.15.2 would apply.

3. Selected items of cost are treated in Section G. However, section G does not cover every element of cost and every situation that might arise in a particular case. Failure to treat any item of cost in Section G is not intended to imply that it is either allowable or unallowable. With respect to all items, whether or not specifically covered, determination of allowability shall be based on the principles and standards set forth in this document and, where appropriate, the treatment of similar or related selected items.

G. General Standards for Selected Items of Cost

Sections G-1 through G-46 provide standards to be applied in establishing the allowability of certain items involved in determining costs. These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable; rather determination as to allowability in each case should be based on the treatment or standards provided for similar or related items of cost. In case of a discrepancy between the provisions of a specific grant/contract and the applicable standards provided, the provisions of the grant/contract shall govern. Under any given grant/contract the reasonableness and allocability of certain items of costs may be difficult to determine. This is particularly true in connection with nonprofit institutions which are so diverse in nature and not subject to effective competitive restraints. In order to avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, it is important that institutions entering into grants or contracts with the Government seek agreement in advance of the incurrence of special or unusual costs in categories where reasonableness or allocability are difficult to determine. Such action may also be initiated by the Government. Examples of costs on which advance agreements may be particularly important are:

1. Compensation for personal services;
2. Consultant fees;
3. Deferred maintenance costs;
4. Excess facility costs;
5. Materiel, services, and supplies sold between organizations or divisions under common control;
6. Preaward costs;
7. Publication and public information costs;
8. Royalties;
9. Training and educational costs;
10. Travel costs, as related to special or mass personnel movement, and to the class of air-travel accommodations allowable;
11. Use charge for fully depreciated assets;
12. Depreciation or use charge on assets donated to the institution by third parties.

1. *Advertising costs.* (a) Advertising costs mean the costs of advertising media and corollary administrative costs. Advertising media include magazine, newspapers, radio, and television programs, direct mail, trade papers, outdoor advertising, dealer cards, and window displays, conventions, exhibits, free goods, and samples, and the like.

(b) The only advertising costs allowable are those which are solely for (1) the recruitment of personnel required for the performance by the institution of obligations arising under the grant/contract, when considered in conjunction with all other recruitment costs, as set forth in G.36; (2) the procurement of scarce items for the performance of the grant/contract or (3) the disposal of scrap or surplus materials acquired in the performance of the project. Costs of this nature, if incurred for more than one Government award or for both Government work and other work of the institution, are allowable to the extent that the principles in paragraphs B-3, B-4, and section D are observed.

2. *Bad debts.* Bad debts, including losses (whether actual or estimated) arising from uncollectible customers' accounts and other claims, related costs, and related legal costs, are unallowable.

3. *Bidding or proposal costs.* Bidding or proposal costs are the immediate costs of preparing bids or proposals on potential Government and non-Government contracts or projects or applications for financial assistance under Federal grant and contract programs, including development of scientific, engineering and cost data necessary to support the institution's bids, proposals or applications. Bidding costs of the current accounting period are allowable as part of the indirect cost pool. Costs of past accounting periods are unallowable. Bidding costs do not include any of those costs described in section G-16 and G-30.

4. *Bonding costs.* (a) Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the grantee/contractor. They arise also in instances where the grantee/contractor requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

(b) Costs of bonding required pursuant to the terms of the grant/contract are allowable.

(c) Costs of bonding required by the grantee/contractor in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

5. *Civil defense costs.* (a) Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, fire fighting training and equipment, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when allocated to all work of the institution.

(b) Costs of capital assets under (a) above are allowable through depreciation or use charges in accordance with G-10.

(c) Contributions to local civil defense funds and projects are unallowable.

6. *Compensation for personal services—*(a) *Definition.* Compensation for personal services includes all remuneration paid currently or accrued in whatever form and whether paid immediately or deferred for services rendered by employees of the institution during the period of grant/contract performance. It includes, but is not limited to salary, wages, directors' and executive committee members' fees, bonuses, incentive awards, employee insurance, fringe benefits, and contributions to pension, annuity, and management employee incentive compensation plans.

(b) *Allowability.* Except as otherwise specifically provided in this subsection, the costs of compensation for personal services are to be treated as allowable to the extent that:

(1) Compensation is paid in accordance with policy, programs, and procedures that effectively relate individual compensation to the individual's contribution to the performance of grant or contract work, result in internally consistent treatment of employees in like situations, and effectively relate compensation paid within the organization to that paid for similar services outside the organization;

(2) Total compensation of individual employees is reasonable for the services rendered; and

(3) Costs are not in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder.

(c) *Reasonableness.* (1) When the institution is predominantly engaged in

activities other than those sponsored by the Federal Government, compensation for employees on federally sponsored work will be considered reasonable to the extent that it is consistent with that paid for similar work in the institution's other activities;

(2) When the institution is predominantly engaged in federally sponsored activities, and in cases where the kind of employees required for the federally sponsored activities are not found in the institution's other activities, compensation for employees on federally sponsored work will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor markets in which the institution competes for the kind of employees involved.

(d) *Review and approval of compensation of individual employees.* In determining the reasonableness of compensation, the compensation of each individual employee normally need not be subject to review and approval. Reviews and approvals of individuals need be made only in those cases in which a general review reveals amounts or types of compensation which appear unreasonable or otherwise out of line.

(e) *Special considerations in determining allowability.* Certain conditions require special consideration and possible limitation as to allowability for grant and contract cost purposes where amounts appear excessive. Among such conditions are the following:

(1) Compensation to share holders, members, trustees, directors, associates, officers or members of the immediate families thereof, or to persons who are contractually committed to acquire a substantial financial interest in the enterprise. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs.

(2) Any change in an institution's compensation policy resulting in a substantial increase in the institution's level of compensation, particularly when it was concurrent with an increase in the ratio of Government awards to other business, or any change in the treatment of allowability of specific types of compensation due to changes in Government policy.

(3) The institution's activities are such that its compensation levels are not subject to the restraints normally occurring in the conduct of competitive business.

(f) Notwithstanding any other provisions of this subsection, costs of compensation are not allowable to the extent that they result from provisions of labor-management agreements that, as applied to work in the performance of Government grants or contracts are determined to be unreasonable either because they are unwarranted by the character and circumstances of the work or because they are discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (for example, work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government grant or contract involving significantly different circumstances and conditions of employment, (for example, work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if its results in individual personnel compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances. Disallowance of costs will not be made under this subparagraph unless:

(1) The institution has been permitted an opportunity to justify the costs; and

(2) Due consideration has been given to whether there are unusual conditions pertaining to the Government work which impose burdens, hardships, or hazards on the institution's employees, for which compensation that might otherwise appear unreasonable is required to attract and hold necessary personnel.

(g)(1) In addition to the general requirements set forth in (a) through (f) of this subsection, certain forms of compensation are subject to further requirements as specified in (2) through (9) below.

(2) *Salaries and wages.* Salaries and wages for current services include gross compensation paid to employees in the form of cash, products, or services, and are allowable. However, see G.25 as it relates to compensation for overtime.

(3) *Incentive compensation.* Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc. are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the institution and the employees before the services were rendered, or pursuant to an established plan followed by the institution to consistently as to imply, in effect, an agreement to make such payment. Awards, and incentive compensation when deferred are allowable to the extent provided in (4) below.

(4) *Deferred compensation.* (a) As used herein, deferred compensation includes all remuneration, in whatever form, for which the employee is not paid until after the lapse of a stated period of years or the occurrence of other events as provided in the plans, except that it does not include normal end of accounting period accruals for regular salaries and wages. It includes (i) contributions to pension and annuity plans, (ii) contributions to disability, withdrawal, insurance, survivorship, and similar benefit plans, and (iii) other deferred compensation.

(b) Deferred compensation is allowable to the extent that (i) except for past service pension and retirement costs, it is for services rendered during the grant/contract period; (ii) it is, together with all other compensation paid to the employee, reasonable in amount; (iii) it is paid pursuant to an agreement entered into in good faith between the institution and its employees before the services are rendered, or pursuant to an established plan followed by the institution so consistently as to imply, in effect, an agreement to make such payments; (iv) the benefits of the plan are vested in the employees or their designated beneficiaries and no part of the deferred compensation reverts to the employer institution; (v) in the case of past service pension costs, it is amortized over a period of ten years or more; and (vi) for a plan which is subject to approval by the Internal Revenue Service, it falls within the criteria and standards of the Internal Revenue Code and the regulations of the Internal Revenue Service.

(c) In determining the cost of deferred compensation allowable under the grant or contract, appropriate adjustments shall be made for credits or gains, including those arising out of both normal and abnormal employee turnover, or any other contingencies that can result in a forfeiture by employees of such deferred compensation. Adjustments shall be made only for forfeitures which directly or indirectly inure to the benefit of the institution; forfeitures which inure to the benefits of other employees covered by a deferred compensation plan with no reduction in the institution's costs will not normally give rise to an adjustment in grant/contract costs. Adjustments for normal employee turnover shall be based on the institution's experience and on foreseeable prospects, and shall be reflected in the amount of cost currently allowable. Such adjustments will be unnecessary to the extent that the institution can demonstrate that its contributions take into account normal forfeitures. Adjustments for possible future abnormal forfeitures shall be effected according to the following rules:

(i) Abnormal forfeitures that are foreseeable and which can be currently evaluated with reasonable accuracy, by actuarial or other sound computation shall be reflected by an adjustment of current costs otherwise allowable; and

(ii) Abnormal forfeitures, not within (i) above, may be made the subject of agreement between the Government and the institution either as to an equitable adjustment or a method of determining such adjustment.

(d) In determining whether deferred compensation is for services rendered during the agreement period or is for future services, consideration shall be given to conditions imposed upon eventual payment, such as requirements of continued employment, consultation after retirement, and covenants not to compete.

(5) *Fringe benefits.* Fringe benefits are allowances and services provided by the institution to its employees as compensation in addition to regular wages and salaries. Costs of fringe benefits, such as pay for vacations, holidays, sick leave, military leave, employee insurance, and supplemental unemployment benefit plans are allowable to the extent required by law, employer-employee agreement, or an established policy of the institution.

(6) Severance pay. See G.40.

(7) Training and education expenses. See G.44.

(8) *Location allowances.* (a) "Location allowances," sometimes called "supplemental pay" or "incentive pay," are compensation in addition to normal wages or salaries and are paid by institutions to especially compensate or induce employees to undertake or continue work at locations which may be isolated or in an unfavorable environment. Location allowances include extra wage or salary payments in the form of

station allowances, extended per diem, or mileage payments for daily commuting; they also include such benefits as institution-furnished housing. Payment of location allowances shall be allowed as costs under grants and cost-reimbursement type contracts, or recognized in pricing fixed-price type contracts, only with prior approval in writing from the awarding agency and only where and so long as the isolation or unfavorable environment of the site makes such payments necessary to the accomplishment of the work without unacceptable delays. Whether the site is so isolated, or its environment is so unfavorable, as to require location allowances is to be determined in the light of (a) its location and climate; (b) the availability and adequacy of housing within reasonable commuting distance; and (c) the availability and adequacy of educational, recreational, medical, and hospital facilities. The extent to which compensation includes location allowances is to be determined by comparing it with (a) the institution's normal compensation policy, including pay scales at its principal operating locations; (b) pay scales of other organizations and concerns operating at or near the site; and (c) compensation paid by other concerns within the same field for similar services elsewhere.

(b) Locations for which location allowances are paid shall be reviewed at least once a year to determine whether such allowances should continue to be allowed.

(9) *Support of salaries and wages.* (a) Direct charges for professionals must be supported by either:

(i) An adequate appointment and workload distribution system, accompanied by monthly reviews performed by responsible change in workload distribution of each professional (i.e., an exception reporting system) or

(ii) A monthly after-the-fact certification system which will require persons in supervisory positions having firsthand knowledge of the services performed to report the distribution of effort (i.e., a positive reporting system). Such reports must account for the *total* salaried effort of the persons covered. Consequently, a system which provides for the reporting only of effort applicable to federally sponsored activities is not acceptable.

(b) Direct charges for salaries and wages of nonprofessionals will be supported by time and attendance and payroll distribution records.

(c) Allowable indirect personal services costs will be supported by the institution's accounting system maintained in accordance with generally accepted institutional practices. Where a comprehensive accounting system does not exist, the institution should make periodic surveys no less frequently than annually to support the indirect personal services costs for inclusion in the overhead pool. Such supporting documentation must be retained for subsequent review by Government representatives.

7. *Capital expenditures.* The costs of equipment, buildings, and repairs which materially increase the value or useful life of buildings or equipment, are unallowable except as provided for in the grant/contract.

8. *Contingencies.* (a) A contingency is a possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminable at the present time.

(b) In historical costing, contingencies are not normally present since such costing deals with costs which have been incurred and recorded on the institution's books. Accordingly, contingencies are generally unallowable for historical costing purposes. However, in some cases, as for example, terminations, a contingency factor may be recognized which is applicable to a past period to give recognition to minor unsettled factors in the interest of expeditious settlement.

(c) In connection with estimates of future costs, contingencies fall into two categories:

(1) Those which may arise from presently known and existing conditions, the effects of which are foreseeable within reasonable limits of accuracy; e.g., pension funds, sick leave, and vacation accruals, etc. In such situations where they exist, contingencies of this category are to be included in the estimates of future cost so as to provide the best estimate of performance costs; and

(2) Those which may arise from presently known or unknown conditions, the effect of which cannot be measured so precisely as to provide equitable results to the institution and to the Government; e.g., results of pending litigation, and other general business risks. Contingencies of this category are to be excluded from cost estimates under the several items of cost, but should be disclosed separately, including the basis upon which the contingency is computed in order to facilitate the negotiation of appropriate contractual coverage (see, for example, G-17, G-21, and G-40).

9. *Contributions and donations.* (a) Contributions and donations by the grantee/contractor are unallowable.

(b) The value of donated services or goods provided by individual volunteers or members of volunteer organizations is not an allowable cost; however, the fair market value of donated services or goods utilized in the performance of a direct cost activity as defined in C.1 and C.2 shall be considered in the determination of the indirect cost rate(s) and, accordingly, shall be allocated a proportionate share of indirect cost.

10. *Depreciation and use allowances.* (a) Institutions may be compensated for the use of buildings, capital improvements and usable equipment on hand through depreciation or use allowances. Depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life has reference to the prospective period of economic usefulness in the particular institution's operations as distinguished from physical life. Use allowances are the means of allowing compensation when depreciation or other equivalent costs are not considered.

(b) Depreciation or a use allowance on assets donated by third parties is allowable. However, any limitations on the amount of depreciation which would have applied to the donor as a result of restrictions contained in this Section shall also apply to the recipient organization.

(c) Due consideration will be given to Government-furnished facilities utilized by the institution when computing use allowances and/or depreciation if the Government-furnished facilities are material in amount. Computation of the use allowance and/or depreciation will exclude both the cost or any portion of the cost of grounds, buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it presently resides, and secondly, the cost of grounds. Capital expenditures for land improvements (paved areas, fences, streets, sidewalks, utility conduits, and similar improvements not already included in the cost of buildings) are allowable provided the systematic amortization of such capital expenditures has been provided in the institution's books of account, based on reasonable determinations of the probable useful lives of the individual items involved, and the share allocated to the grant or contract is developed from the amount thus amortized for the base period involved.

(d) Normal depreciation on an institution's plant, equipment, and other capital facilities, except as excluded by (d) below, is an allowable element of cost provided that the amount thereof is computed:

(1) Upon a property cost basis which could have been used by the institution for Federal Income Tax purposes, had such institution been subject to the payment of income tax; and

(2) By the consistent application to the assets concerned of any generally accepted accounting method, and subject to the limitations of the Internal Revenue Code of 1954 as amended, including—

(i) The straight line method;

(ii) The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in (i) above;

(iii) The sum-of-the-years-digits method; and

(iv) Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year, does not during the first two-thirds of the useful life of the property exceed the total of such allowances which would have been used had such allowances been computed under the method described in (ii) above.

(v) Where the depreciation method is followed, adequate property records must be maintained. The period of useful service (service life) established in each case for usable capital assets must be determined on a realistic basis which takes into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular area, and the renewal and replacement policies followed for the individual items or classes of assets involved. Where the depreciation method is introduced for application to assets acquired in prior years, the annual charges therefrom must not

exceed the amounts that would have resulted had the depreciation method been in effect from the date of acquisition of such assets.

(vi) Depreciation on idle or excess facilities shall not be allowed except on such facilities as are reasonably necessary for standby purposes. (See G. 13.)

(vii) Where an institution elects to go on a depreciation basis for a particular class of assets, no depreciation, rental or use charge may be allowed on any such assets that would be viewed as fully depreciated. *Provided, however,* that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the actual replacement policy followed in the light of service lives used for calculating depreciation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

(viii) Where the use allowance method is followed, the use allowance for buildings and improvements will be computed at an annual rate not exceeding 2 percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost of usable equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance will be computed at an annual rate not exceeding 10 percent of such cost. Original complement for this purpose means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings; however, where a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable equipment which may be used to compute the use allowance at an annual rate not exceeding 6⅔ percent of such estimate.

(ix) Depreciation and/or use charges should usually be allocated to all activities as an indirect cost.

11. *Employee morale, health, welfare costs, and credits.* (a) Employee morale, health, and welfare activities are those services or benefits provided by the institution to its employees to improve working conditions, employer-employee relations, employee morale, and employee performance. Such activities include house publications, health or first-aid clinics, recreation, employee counseling services and, for the purpose of this paragraph, food and dormitory services. Food and dormitory services include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the institution's employees at or near its facilities.

(b) Except as limited by (c) below, the aggregate of costs incurred on account of all activities mentioned in (a) above, less income generated by all such activities is allowable to the extent that the net amount is reasonable.

(c) Losses from the operation of food and dormitory services may be included as cost incurred under (b) above, only if the institution's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to accomplishment of the above objective, are not allowable, except that a loss may be allowed to the extent the institution can demonstrate that unusual circumstances exist (e.g., (1) where the institution must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available or (ii) where it is necessary to operate a facility at a lower volume than the facility could economically support) such that, even with efficient management, operation of the services on a break-even basis would require charging inordinately high prices or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas.

(d) In those situations where the institution has an arrangement authorizing an employee association to provide or operate a service such as vending machines in the institution's plant, and retain the profits derived therefrom, such profits shall be treated in the same manner as if the institution were providing the service (but see (e)).

(e) Contributions by the institution to an employee organization, including funds set over from vending machine receipts or similar sources, may be included as cost incurred under (b) above only to the extent that the institution demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if incurred by the institution directly.

12. *Entertainment costs.* Costs of amusement, diversion, social activities, ceremonials, and incidental costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable (but see G-11 and G-43).

13. *Excess facility costs.* (a) As used in this paragraph, the words and phrases defined in this subparagraph (a) shall have the meanings set forth below.

(1) Facilities means plant or any portion thereof (inclusive of land integral to the operation); equipment indivdually or collectively; or any other tangible capital asset, wherever located, and whether owned or leased by the institution.

(2) Idle Facilities means completely unused facilities that are excess to the institution's current needs.

(3) Idle Capacity means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 percent operating time on a one shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materiels, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. (A multiple shift basis may be used if it can be shown that this amount of usage could normally be expected for the type of facility involved.)

(4) Costs of idle facilities or idle capacity are costs such as maintenance, repair, housing, rent, and other related costs, e.g., property taxes, insurance, and depreciation.

(b) The costs of idle facilities are unallowable except to the extent that:

(i) They are necessary to meet fluctuations in workload; or

(ii) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, grantee/contractor efforts to produce more economically, reorganization, termination, or other causes which could not have been reasonably foreseen.

Under the exception stated in (ii) of this subparagraph (b), costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed 1 year, depending upon the initiative taken to use, lease, or dispose of such facilities (but see G.42(b) and (e)).

(c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or overhead rates from period to period. Such costs are allowable, provided the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire plant or among a group of assets having substantially the same function may be idle facilities.

14. *Fines and penalties.* Costs of fines and penalties resulting from violations of, or failure of the institution to comply with, Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the grant or contract instructions in writing from the awarding agency.

15. *Fringe benefits.* (See G.-6-(g)-(5.)

16. *Independent research and development.* (a) An institution's independent research and development (I.R. & D.) is that research and development which is not sponsored by the Government or a non-Government organization or agency under a grant/contract or other arrangement.

(b) Basic research, for the purpose of this document, is that type of research which is directed toward increase of knowledge within a particular discipline. In such research, the primary aim of the investigator is a fuller knowledge or understanding of the subject under study, rather than any practical application thereof. Applied research, for the purpose of this document consists of that type of effort which (1) is normally derived from the results of basic research, but may not be severable from the related basic research, (2) attempts to determine and expand the potentialities of new scientific discoveries or improvements in technology, materiels, processes, methods, devices, and techniques, and (3) attempts to "advance the state of the art." Applied research, does not

include any such efforts when their principal aim is the design, development, or test of specific articles or services to be offered for sale, which are within the definition of the term development as defined in (c) below. Census research, for the purpose of this document, is that type of activity devoted to the compilation and interpretation of statistical and other analytical information acquired through survey (e.g., interview, circularization of questionnaires), observations or from books, treatises, articles or other sources relative to specifically defined activities, occurrences or conditions for the purpose of accomplishing some scientific end.

(c) "Development" is the systematic use of scientific knowledge which is directed toward the production of, or improvements in, useful products to meet specific performance requirements, but exclusive of manufacturing and production engineering.

(d) Independent research and development will be treated in a manner consistent with the treatment of sponsored research and development. Accordingly, an institution's I.R. & D. shall be allocated in proportionate share of indirect costs on the same basis that indirect costs are allocated to sponsored research and development.

(e) The cost of an institution's I.R. & D. including its proportionate share of indirect costs, is unallowable.

17. *Insurance and indemnification.* (a) Insurance includes insurance which the institution is required to carry, or which is approved, under the terms of the grant or contract and any other insurance which the institution maintains in connection with the general conduct of its business.

(1) Costs of insurance required or approved, and maintained, pursuant to the grant or contract are allowable.

(2) Costs of other insurance maintained by the institution in connection with the general conduct of its business are allowable subject to the following limitations:

(a) Types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances;

(b) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of profit;

(c) Costs of insurance or of any provision for a reserve covering the risk of loss of or damage to Government property are allowable only to the extent that the institution is liable for such loss or damage and such insurance or reserve does not cover loss or damage which results from willful misconduct or lack of good faith on the part of any of the institution's trustees, directors or officers, or other equivalent representatives, who have supervision or direction of (i) all or substantially all of the institution's business, or (ii) all or substantially all of the institution's operations at any one separate location in which the grant or contract is being performed, or who are specifically identified as the project director in the project or otherwise primarily responsible for the direction and/or execution of the project supported by the grant or contract.

(d) Provisions for a reserve under an approved self-insurance program are allowable to the extent that types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks; and

(e) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation. (See G-6).

(3) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant or contract, except:

(a) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice, are allowable; and

(b) Minor losses not covered by insurance, such as spoilage, breakage, and disappearance of supplies, which occur in the ordinary course of doing business, are allowable.

(c) Indemnification includes securing the institution against liabilities to third persons and any other loss or damage not compensated by insurance or otherwise. The Government is obligated to indemnify the institution only to the extent expressly provided in (a)(3) above.

18. *Interest and other financial costs.* (a) Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

(b) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, are unallowable.

(c) Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

(d) Where substantial effort or time is devoted to fund raising and investment activities as described in (b) and (c) in relation to other functions of an institution, such activities shall be considered as a major activity of the institution and shall be allocated its share of indirect costs in accordance with section D. (See also C-2.)

19. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the institution and its employees, including costs of labor management committees, employee publications, and other related activities, are allowable.

20. *Losses on other grants or contracts.* Any excess of costs over income on any grant or contract is unallowable as a cost of any other grant or contract.

21. *Maintenance and repair costs.* (a) Costs necessary for the upkeep of property (including Government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows (but see G-10):

(1) Normal maintenance and repair costs are allowable:

(2) Extraordinary maintenance and repair costs are allowable provided such are allocated to the periods to which applicable for purposes of determining grant or contract costs.

(b) Expenditures for plant and equipment, including rehabilitation thereof, which, according to generally accepted accounting principles as applied under the institution's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

22. *Materiels costs.* (a) The cost of consumable supplies, serum, drugs, fabricated parts, and other materiels necessary to carry out the objectives of a grant or contract, whether purchased outside or manufactured by the institution are allowable subject to the provisions (b) through (e) below. The cost may include such collateral items as inbound transportation and intransit insurance.

In computing these costs consideration will be given to reasonable overruns, spoilage, or defective work if consistent with the nature of the project being performed and the recognized practice of the industry.

(b) Costs of materiel shall be suitably adjusted for applicable portions of income and other credits, including available trade and cash discounts, refunds, rebates, allowances, and credits for scrap and salvage and materiel returned to vendors. Such income and other credits shall either be credited directly to the cost of the materiel involved or be allocated (as credits) to indirect costs. However, where the institution can demonstrate that failure to take cash discounts was due to reasonable circumstances, such lost discounts need not be so credited.

(c) Reasonable adjustments arising from differences between periodic physical inventories and book inventories may be included in arriving at costs, provided such adjustments relate to the period of performance of the grant or contract.

(d) When the materiels are purchased specifically for and identifiable solely with performance under a grant or contract, the actual purchase cost thereof should be charged to that grant or contract. If materiel is issued from stores, any generally recognized method of pricing such materiel is acceptable if that method is consistently applied and the results are equitable. When estimates of materiel costs to be incurred in the future are required, either current market price or anticipated acquisition cost may be used, but the basis of pricing must be disclosed.

(e) Allowance for all materiels, supplies and services which are sold or transferred between any division, subsidiary or affiliate of the institution under a common control shall be on the basis of cost incurred in accordance with these principles, except that when it is the established practice of the transferring organization to price interorganization transfers of materiels, supplies and services at other than cost for non-Government work of the institution or any division, subsidiary or affiliate of the institution under a common control, allowance may be at a price when:

(1) It is or is based on an "established catalog or market price of commercial items sold in substantial quantities to the general public;" or

(2) It is the result of "adequate price competition" and is the price at which an award was made to the affiliated organization after obtaining quotations on an equal basis from such organization and one or more outside sources which normally produce the item or its equivalent in significant quantity.

*Provided,* that in either case:

(1) The price is not in excess of the transferor's current sales price to his most favored customer (including any division, subsidiary, or affiliate of the institution under a common control) for a like quantity under comparable conditions, and

(2) The price is not determined to be unreasonable by the awarding agency.

The price determined in accordance with (1) above should be adjusted, when appropriate, to reflect the quantities being procured and may be adjusted upward or downward to reflect the actual cost of any modifications necessary because of grant or contract requirements.

23. *Organization costs.* Expenditures, such as incorporation fees, attorney's fees, accountant's fees, broker's fees, fees to promoters and organizers, in connection with (a) organization or reorganization of a business, or (b) raising capital, are unallowable unless specified otherwise in the grant or contract.

24. *Other business expenses.* Included in this item are such recurring expenses as preparation and publication of reports to members and trustees; preparation and submission of required reports and forms to taxing and other regulatory bodies; and incidental costs of director and committee meetings. The above and similar costs are allowable when allocated on an equitable basis.

25. *Overtime, extra-pay shift and multishift premiums.* Premiums for overtime, extra-pay shifts and multishift work are allowable only to the extent approved by the awarding agency except:

(a) When necessary to cope with emergencies, such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(b) When by indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(c) In the performance of tests, laboratory procedures, or other similar operations which are continuous in nature and cannot reasonably be interrupted or otherwise completed; or

(d) When lower overall cost to the Government will result.

Overtime premiums and shift premiums may be considered proper for approval when determined in writing by the awarding agency that approval:

(a) Is necessary to meet delivery or performance schedules, and such schedules are determined to be extended to the maximum consistent with essential program objectives;

(b) Is necessary to make up for delays which are beyond the control and without the fault or negligence of the institution;

(c) Is necessary to eliminate foreseeable bottlenecks of an extended nature which cannot be eliminated in any other way.

Approvals should ordinarily be prospective, but may be retroactive where justified by the circumstances. Such approvals may be for an individual grant or contract project, or program, or for a division, department, or branch, as most practicable.

Overtime for which overtime premiums would be at Government expense should not be approved under an award where the institution is already obligated, without the right to additional compensation, to meet the required delivery date.

Where overtime premiums or shift premiums are being paid at Government expense in connection with the performance of Government grant or contract the continued need therefor should be subject to periodic review by the awarding agency.

26. *Patent and copyright costs.* Costs of preparing disclosures, reports, and other documents required by the grant/contract and of searching the art to the extent necessary to make such disclosures, are allowable. In accordance with the conditions of the grant or contract relating to patents or copyrights, costs of preparing documents and any other costs, in connection with the filing of a patent application or copyright where title is conveyed to the Government, are allowable. However, similar costs incurred in connection with patents or copyrights where title is not conveyed to the Government are unallowable. (See G-39.)

27. *Pension plans.* (See G-6(g)-(4).)

28. *Plant protection costs.* Costs of items such as (a) wages, uniforms, and equipment of personnel engaged in plant protection, (b) depreciation on plant protection capital assets, and (c) necessary expenses to comply with security requirements are allowable.

29. *Plant reconversion costs.* Plant reconversion costs are those incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to the commencement of the grant or contract work, fair wear and tear excepted. Reconversion costs are unallowable except for the cost of removing Government property and the restoration or rehabilitation costs caused by such removal. However, in special circumstances where equity so dictates, additional costs may be allowed to the extent agreed upon in writing before the costs are incurred. Whenever such costs are given consideration, care should be exercised to avoid duplication through allowance as contingencies, as additional profit or fee, or in other grants or contracts.

30. *Preaward costs.* Preaward costs are those incurred prior to the effective date of the grant or contract directly pursuant to the negotiation and in anticipation of the award of the grant or contract where such incurrence is necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the prior written approval of the awarding agency.

31. *Professional service cost—legal, accounting, scientific and other.* (a) Costs of professional services rendered by members of a particular profession who are not employees of the institution are allowable, subject to (b), (c) and (d) below, when reasonable in relation to the services rendered. (But see G-23.)

(b) Factors to be considered in determining the allowability of costs in a particular case include:

(1) The nature and scope of the service rendered in relation to the service required;

(2) The necessity of contracting for the service considering the institution's capability in the particular area;

(3) The past pattern of such costs, particularly in years prior to the award of Government work;

(4) The impact of Government work on the institution's business (i.e., what new problems have arisen);

(5) Whether the proportion of Government work to the institution's total business is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government grants/contracts;

(6) Whether the service can be performed more economically by employment rather than by contracting;

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on nongovernment grants/contracts;

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation; termination provisions).

(c) Retainer fees to be allowable must be reasonably supported by evidence of bona fide services available or rendered.

(d) Costs of legal, accounting, and consulting service, and related costs, incurred in connection with organization and reorganization, defense of anti-trust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with patent or copyright infringement litigation, are unallowable unless otherwise provided for in the grant or contract.

32. *Profits and losses on disposition of plant equipment, or other capital assets.* Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sale or exchange of either short- or long-term investments, shall be excluded in computing grant or contract costs.

33. *Public information services costs.* Public information services costs include the costs associated with promotions, public relations, pamphlets, news releases, and other forms of information services. Such costs are normally incurred to:

(a) Inform or instruct individuals, groups or the general public about health or social problems;

(b) Interest individuals or groups in participating in a service program of the institution;

(c) Provide stewardship reports to State and local Government agencies, benefactor foundations and associations, etc.;

(d) Appeal for funds;

(e) Disseminate the results of sponsored and non-sponsored research or other activity to the scientific community.

To the extent that the costs incurred for any of these purposes are identifiable with a particular cost objective they should be charged to the objective to which they relate.

If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all major activities of the institution except that costs related to fund-raising appeals are unallowable as costs of grants and contracts.

Public information service costs are unallowable as a direct cost of grants and contracts unless formally approved by the awarding agency.

34. *Publication and printing costs.* Publication costs include the costs of printing (including the processes of composition, platemaking, press work, binding and the end products produced by such processes), distribution, promotion, mailing and general handling.

Publication costs are unallowable as a direct cost of grants and contracts unless formally approved by the awarding agency.

35. *Rearrangement and alteration costs.* Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable when written approval has been given in advance by the awarding agency.

36. *Recruitment costs.* (a) Subject to (b), (c), and (d) of this G–36, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of help-wanted advertising, operating costs of an employment office necessary to secure and maintain an adequate labor force, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, and travel costs of applicants for interviews for prospective employment are allowable to the extent that such costs are incurred pursuant to a well managed recruitment program. Where the institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) In publications, costs of help-wanted advertising that (1) includes color, (2) includes advertising materiel for other than recruitment purposes, or (3) is excessive in size (taking into consideration recruitment purposes for which intended and normal business practices in this respect) are unallowable.

(c) Costs of (1) help-wanted advertising and (2) excessive salaries, fringe benefits, and special emoluments that have been offered to prospective employees, designed to attract personnel from another institution performing as grantee or contractor to the Government, or in excess of the standard practices in comparable institutions, are unallowable.

(d) Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost and the newly hired employee resigns for reasons within his control within 12 months after hire, the institution shall be required to refund or credit such relocation costs to the Government.

37. *Relocation costs.* (a) Relocation costs, for the purpose of this document, are costs incident to the permanent change of duty assignment (for an indefinite period, or for a stated period of no less than 12 months) of an existing employee or upon recruitment of a new employee. These costs may include, but are not limited to cost of (i) transportation of the employee, members of his immediate family and his household and personal effects to the new location; (ii) finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period; (iii) closing costs (i.e., brokerage fees, legal fees, appraisal fees, etc.), incident to the disposition of housing; (iv) other necessary and reasonable expenses normally incident to relocation, such as cost of cancelling an unexpired lease, disconnecting or reinstalling household appliances, and purchase of insurance against damages to personal property; (v) loss on sale of home; and (vi) acquisition of a home in a new location (i.e., brokerage fees, legal fees, appraisal fees, etc.).

(b) Subject to (c) below, relocation costs of the type covered in (a) (i), (ii), (iii), and (iv) above are allowable, provided (i) the move is for the benefit of the employer; (ii) reimbursement is in accordance with an established policy or practice consistently followed by the employer, and such policy or practice is designed to motivate employees to relocate promptly and economically; (iii) the costs are not otherwise unallowable under the provisions of G–36 or any other paragraph of this document and (iv) amounts to be reimbursed shall not exceed the employee's actual (or reasonably estimated) expenses.

(c) Costs otherwise allowable under (b) above are subject to the following additional provisions: (i) the transition period for incurrence of costs of the type covered in (a) (ii) above shall be kept to the minimum number of days necessary under the circumstances, but shall not, in any event, exceed a cumulative total of 30 days including advance trip time; and (ii) allowance for cost of the type covered in (a)(iii) above shall not exceed 8 percent of the sales price of the property sold. Costs of the type covered in (a) (iii) and (iv) above are allowable only in connection with the relocation of existing employees, and are not allowable for newly recruited employees.

(d) Costs of the type covered in (a) (v) and (vi) above are not allowable.

38. *Rental costs (including sale and leaseback of facilities).* (a) Rental costs of land, building, and equipment and other personal property are allowable if the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the area, the type, life expectancy, condition, and value of the facilities leased, options available, and other provisions of the rental agreement. Application of these factors, in situations where rentals are extensively used, may involve among other considerations, comparison of rental costs with the amount which the institution would have received had it owned the facilities.

(b) Charges in the nature of rent between plants, divisions, or organizations under common control are allowable to the extent such charges do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, and maintenance: Provided, That no part of such costs shall duplicate any other allowed costs.

(c) Unless otherwise specifically provided in the grant or contract, rental costs specified in sale and leaseback agreements, incurred by institutions through selling plant facilities to investment organizations, such as insurance companies, associate institutions, or to private investors, and concurrently leasing back the same facilities, are allowable only to the extent that such rentals do not exceed the amount which the grantee/contractor would have received had it retained legal title to the facilities.

(d) Rentals for land, building and equipment and other personal property owned by affiliated organizations including corporations or by stockholders, members, directors, trustees, officers or other key personnel of the institution or their families either directly or through corporations, trusts or other similar arrangements in which they hold a more than token interest are allowable only to the extent that such rentals do not exceed the amount the institution would have received had legal title to the facilities been vested in it.

(e) The allowability of rental costs under unexpired leases in connection with terminations is treated in G–42(e).

39. *Royalties and other costs for use of patents and copyrights.* (a) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent or rights thereto, necessary for the proper performance of the grant or contract applicable to grant products or processes, are allowable unless:

(1) The Government has a license or the right to free use of the patent;

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid;

(3) The patent or copyright is considered to be unenforceable; or

(4) The patent or copyright is expired.

(b) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less than arm's-length bargaining; e.g.:

(1) Royalties paid to persons, including corporations, affiliated with the institution;

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government grant or contract would be awarded; or

(3) Royalties paid under an agreement entered into after the award of the grant or contract.

(c) In any case involving a patent or copyright formerly owned by the institution, the amount of royalty allowed should not exceed the cost which would have been allowed had the institution retained title thereto.

40. *Severance pay.* (a) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by institutions to workers whose

employment is being terminated. Costs of severance pay are allowable only to the extent that, in each case, it is required by (1) law, (2) employer-employee agreement, (3) established policy that constitutes, in effect, an implied agreement on the institution's part, or (4) circumstance of the particular employment.

(b) Costs of severance payments are divided into two categories as follows:

(1) Actual normal turnover severance payments shall be allocated to all work performed in the institution's facilities; or, where the institution provides for accrual of pay for normal severances, such method will be acceptable if the amount of the accrual is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts accrued are allocated to all work performed in the institution's facilities; and

(2) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event of occurrence.

41. *Taxes.* (a) Taxes are certain charges levied by Federal, State, or local governments. They do not include fines and penalties except as otherwise provided herein. In general, taxes which the institution is required to pay and which are paid or accrued in accordance with generally accepted accounting principles are allowable, except for:

(1) Federal income taxes and similar levies against income of the institution derived from activities unrelated to the project supported by the grant or contract;

(2) Taxes in connection with financing, refinancing, or refunding operations (see G-18);

(3) Taxes from which exemptions are available to the institution directly or available to the institution based on an exemption afforded the Government except when the awarding agency determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to the Government;

(4) Special assessments on land which represent capital improvements; and

(5) Taxes on any category of property which is used solely in connection with work other than on Government grants or contracts. (Taxes on property used solely in connection with either non-Government or Government work should be considered directly applicable to the respective category of work unless the amounts involved are insignificant or comparable results would otherwise be obtained.)

(b) Taxes otherwise allowable under paragraph (a) of this section, but upon which a claim of illegality or erroneous assessment exists, are allowable provided the institution, prior to payment of such taxes:

(1) Promptly requests instructions from the awarding agency concerning such taxes, and

(2) Takes all action directed by the awarding agency arising out of subparagraph (1) of this paragraph or an independent decision of the Government as to the existence of a claim of illegality or erroneous assessment, including cooperation with and for the benefit of the Government to (i) determine the legality of such assessment, or (ii) secure a refund of such taxes. Reasonable costs of any such action undertaken by the institution at the direction or with the concurrence of the awarding agency are allowable. Interest and penalties incurred by an institution by reason of the nonpayment of any tax at the direction of the awarding agency or by reason of the failure of the awarding agency to issue timely direction after prompt request therefor, are also allowable.

(c) Any refund of taxes, interest, or penalties, and any payment to the institution of interest thereon, attributable to taxes, interest, or penalties which were allowed as project costs, shall be credited or paid to the Government in the manner directed by the Government, provided any interest actually paid or credited to an institution incident to a refund of tax, interest or penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the institution had been reimbursed by the Government for the taxes, interest or penalties.

42. *Termination costs.* Grants and contracts terminations generally give rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the project not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the remainder of this document in termination situations.

(a) *Common items.* The cost of items reasonably usable on the institution's other work shall not be allowable unless the institution submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, the awarding agency should consider the institution's plans and orders for current and scheduled production. Contemporaneous purchases of common items by the institution shall be regarded as evidence that such items are reasonably usable on the institution's other work. Any acceptance of common items as allocable to the terminated portion of the project should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) *Costs continuing after termination.* If in a particular case, despite all reasonable efforts by the institution, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this document, except that any such costs continuing after termination due to the negligent or willful failure of the institution to discontinue such costs shall be considered unallowable.

(c) *Initial costs.* Initial costs, including starting load and preparatory costs, are allowable, subject to the following:

(1) Starting load costs are costs of a nonrecurring nature arising in the early stages of operation, investigation or production and not fully absorbed because of the termination. Such costs may include the cost of labor and materiel, and related indirect cost attributable to such factors as:

(a) Excessive spoilage resulting from inexperienced labor;

(b) Idle time and subnormal production occasioned by testing and changing methods of processing;

(c) Employee training; and

(d) Unfamiliarity or lack of experience with the product, materiels, manufacturing processes, and techniques.

(2) Preparatory costs are costs incurred in preparing to perform the terminated project including costs of initial plant rearrangement and alterations, management and personnel organization, production planning and similar activities, but excluding special machinery and equipment and starting load costs.

(3) If initial costs are claimed and have not been segregated on the institution's books, segregation for settlement purposes shall be made from cost reports and schedules which reflect the high unit cost incurred during the early stages of the project.

(4) When the settlement proposal is on the inventory basis, initial costs should normally be allocated on the basis of total end items called for by the project immediately prior to termination; however, if the project includes end items of a diverse nature, some other equitable basis may be used, such as machine or labor hours.

(5) When initial costs are included in the settlement proposal as a direct charge, such costs shall not also be included in overhead.

(6) Initial costs attributable to only one project shall not be allocated to other projects.

(d) *Loss of useful value.* Loss of useful value of special tooling and special machinery and equipment is generally allowable if:

(1) Such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the institution;

(2) The interest of the Government is protected by transfer of title or by other means deemed appropriate by the awarding agency; and

(3) The loss of useful value as to any one terminated project is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the project bears to the entire terminated project and other Government projects for which the special tooling and special machinery and equipment were acquired.

(e) *Rental costs.* Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated project less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the project and such further period as may be reasonable; and

(2) The institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

There also may be included the cost of alterations of such leased property, provided

such alterations were necessary for the performance of the project, and of reasonable restoration required by the provisions of the lease.

(f) *Settlement expenses.* Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for—

(a) The preparation and presentation to awarding agency of settlement claims and supporting data with respect to the terminated portion of the project; and

(b) The termination and settlement of subcontracts; and

(2) Reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the project.

(g) Subcontractor claims. Subcontractor claims, including the allocable portion of claims which are common to the project and to other work of the institution are generally allowable.

43. *Trade, Business, Technical, and Professional Activity Costs*—(a) *Membership.* This category includes costs of memberships in trade, business, technical, and professional organizations. Such costs are allowable.

(b) Subscriptions. This item includes cost of subscriptions to trade, business, professional, or technical periodicals. Such costs are allowable.

(c) Meetings and conferences. This item includes costs of meals, transportation, rental of facilities for meetings, and costs incidental thereto, when the primary purpose of the incurrence of such costs is the dissemination of technical information or stimulation of production. Such costs are allowable.

44. *Training and educational costs.* (a) The costs of training courses taken by a bona fide employee to acquire basic skills which he should bring to the job or to qualify a person for duties other than those related to an institution's goals are unallowable.

(b) Costs of on-the-job training and part-time education, at an undergraduate or post-graduate college level, related to the job requirements of bona fide employees, identified in (1) through (5) below, are allowable.

(1) Training materiels;

(2) Textbooks;

(3) Fees charged by the educational institution;

(4) Tuition charged by the educational institution, or in lieu of tuition, instructors' salaries and the related share of indirect cost of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution; and

(5) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year where circumstances do not permit the operation of classes or attendance at classes after regular working hours.

(c) Costs of tuition, fees, training materiels and textbooks (but not subsistence, salary, or any other emoluments) in connection with full time scientific and medical education at a post-graduate (but not undergraduate) college level related to the job requirements of bona fide employees for a total period not to exceed 1 school year for each employee so trained, are allowable when approved in writing by the awarding agency.

(d) Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, or fellowships, are considered contributions and are unallowable.

45. *Transportation costs.* Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly costed as transportation costs or added to the cost of such items (see G-22).

Where identification with the materiels received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the grant or contract, shall be treated as a direct cost.

46. *Travel costs.* (a) Travel costs include costs of transportation, lodging, subsistence, and incidental expenses, incurred by institution personnel in a travel status while on official business.

(b) Travel costs may be based upon actual costs incurred, or on a per diem or mileage basis in lieu of actual costs, or on a combination of the two, provided the method used does not result in an unreasonable charge. The difference in cost between first-class and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would (1) require circuitous routing, (2) require travel during unreasonable hours, (3) greatly increase the duration of the flight, (4) result in additional costs which would offset the transportation savings, or (5) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

(c) Travel costs incurred in the normal course of overall administration of the business are allowable and shall be treated as indirect costs.

(d) Travel costs directly attributable to specific grant or contract performance are allowable and may be charged to the grant or contract in accordance with the principle of direct costing (see section C).

(e) Costs of personnel movement of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency.

## PART 99—PRIVACY RIGHTS OF PARENTS AND STUDENTS

### Subpart A—General

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Authority: Sec. 438, Pub. L. 90-247, Title IV, as amended, 88 Stat. 571-574 (20 U.S.C. 1232g).

### Subpart A—General

#### § 99.1 Applicability of part.

(a) This part applies to all educational agencies or institutions to which funds are made available under any Federal program for which the Secretary of the U.S. Department of Education has administrative responsibility, as specified by law or by delegation of authority pursuant to law.

(20 U.S.C. 1230, 1232g)

(b) This part does not apply to an educational agency or institution solely because students attending that non-monetary agency or institution receive benefits under one or more of the Federal programs referenced in paragraph (a) of this section, if no funds under those programs are made

available to the agency or institution itself.

(c) For the purposes of this part, funds will be considered to have been made available to an agency or institution when funds under one or more of the programs referenced in paragraph (a) of this section: (1) Are provided to the agency or institution by grant, contract, subgrant, or subcontract, or (2) are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Basic Educational Opportunity Grants Program and the Guaranteed Student Loan Program (Titles IV–A–1 and IV–B, respectively, of the Higher Education Act of 1965, as amended).

(20 U.S.C. 1232g)

(d) Except as otherwise specifically provided, this part applies to education records of students who are or have been in attendance at the educational agency or institution which maintains the records.

(20 U.S.C. 1232g)

**§ 99.2 Purpose.**

The purpose of this part is to set forth requirements governing the protection of privacy of parents and students under section 438 of the General Education Provisions Act, as amended.

(20 U.S.C. 1232g)

**§ 99.3 Definitions.**

As used in this Part:

"Act" means the General Education Provisions Act, Title IV of Pub. L. 90–247 as amended.

"Attendance" at an agency or institution includes, but is not limited to: (a) attendance in person and by correspondence, and (b) the period during which a person is working under a work-study program.

(20 U.S.C. 1232g)

"Directory information" includes the following information relating to a student: the student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous educational agency or institution attended by the student, and other similar information.

(20 U.S.C. 1232g(a)(5)(A))

"Disclosure" means permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.

(20 U.S.C. 1232g(b)(1))

"Educational institution" or "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any Federal program referenced in § 99.1(a). The term refers to the agency or institution recipient as a whole, including all of its components (such as schools or departments in a university) and shall not be read to refer to one or more of these components separate from that agency or institution.

(20 U.S.C. 1232g(a)(3))

"Education records" (a) means those records which: (1) Are directly related to a student, and (2) are maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which:

(i) Are in the sole possession of the maker thereof, and

(ii) Are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means an individual who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position.

(2) Records of a law enforcement unit of an educational agency or institution which are:

(i) Maintained apart from the records described in paragraph (a) of this definition;

(ii) Maintained solely for law enforcement purposes, and

(iii) Not disclosed to individuals other than law enforcement officials of the same jurisdiction; *Provided,* That education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

(3)(i) Records relating to an individual who is employed by an educational agency or institution which:

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee, and

(C) Are not available for use for any other purpose.

(ii) This paragraph does not apply to records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student.

(4) Records relating to an eligible student which are:

(i) Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity;

(ii) Created, maintained, or used only in connection with the provision of treatment to the student, and

(iii) Not disclosed to anyone other than individuals providing the treatment; *Provided,* That the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities or activities which are part of the program of instruction at the educational agency or institution.

(5) Records of an educational agency or institution which contain only information relating to a person after that person was no longer a student at the educational agency or institution. An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni.

(20 U.S.C. 1232g(a)(4))

"Eligible student" means a student who has attained eighteen years of age, or is attending an institution of postsecondary education.

(20 U.S.C. 1232g(d))

"Financial Aid", as used in § 99.31(a)(4), means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) which is conditioned on the individual's attendance at an educational agency or institution.

(20 U.S.C. 1232g(b)(1)(D))

"Institution of postsecondary education" means an institution which provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided, as determined under State law.

(20 U.S.C. 1232g(d))

"Panel" means the body which will adjudicate cases under procedures set forth in §§ 99.65–99.67.

"Parent" includes a parent, a guardian, or an individual acting as a parent of a student in the absence of a parent or guardian. An educational agency or institution may presume the parent has the authority to exercise the rights inherent in the Act unless the

agency or institution has been provided with evidence that there is a State law or court order governing such matters as divorce, separation or custody, or a legally binding instrument which provides to the contrary.

"Party" means an individual, agency, institution or organization.

(20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable" means that the data or information includes (a) the name of a student, the student's parent, or other family member, (b) the address of the student, (c) a personal identifier, such as the student's social security number or student number, (d) a list of personal characteristics which would make the student's identity easily traceable, or (e) other information which would make the student's identity easily traceable.

(20 U.S.C. 1232g)

"Record" means any information or data recorded in any medium, including, but not limited to: handwriting, print, tapes, film, microfilm, and microfiche.

(20 U.S.C. 1232g)

"Secretary" means the Secretary of the U.S. Department of Education.

(20 U.S.C. 1232g)

"Student" (a) includes any individual with respect to whom an educational agency or institution maintains education records.

(b) The term does not include an individual who has not been in attendance at an educational agency or institution. A person who has applied for admission to, but has never been in attendance at a component unit of an institution of postsecondary education (such as the various colleges or schools which comprise a university), even if that individual is or has been in attendance at another component unit of that institution of postsecondary education, is not considered to be a student with respect to the component to which an application for admission has been made.

(20 U.S.C. 1232g(a)(5))

**§ 99.4 Student rights.**

(a) For the purposes of this part, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the rights accorded to and the consent required of the parent of the student shall thereafter only be accorded to and required of the eligible student.

(b) The status of an eligible student as a dependent of his or her parents for the purposes of § 99.31(a)(8) does not otherwise affect the rights accorded to and the consent required of the eligible student by paragraph (a) of this section.

(20 U.S.C. 1232g(d))

(c) Section 438 of the Act and the regulations in this part shall not be construed to preclude educational agencies or institutions from according to students rights in addition to those accorded to parents of students.

**§ 99.5 Formulation of institutional policy and procedures.**

(a) Each educational agency or institution shall, consistent with the minimum requirements of section 438 of the Act and this part, formulate and adopt a policy of—

(1) Informing parents of students or eligible students of their rights under § 99.6;

(2) Permitting parents of students or eligible students to inspect and review the education records of the student in accordance with § 99.11, including at least:

(i) A statement of the procedure to be followed by a parent or an eligible student who requests to inspect and review the education records of the student;

(ii) With an understanding that it may not deny access to an education record, a description of the circumstances in which the agency or institution feels it has a legitimate cause to deny a request for a copy of such records;

(iii) A schedule of fees for copies, and

(iv) A listing of the types and locations of education records maintained by the educational agency or institution and the titles and addresses of the officials responsible for those records;

(3) Not disclosing personally identifiable information from the education records of a student without the prior written consent of the parent of the student or the eligible student, except as otherwise permitted by §§ 99.31 and 99.37; the policy shall include, at least: (i) A statement of whether the educational agency or institution will disclose personally identifiable information from the education records of a student under § 99.31(a)(1) and, if so, a specification of the criteria for determining which parties are "school officials" and what the educational agency or institution considers to be a "legitimate educational interest", and (ii) a specification of the personally identifiable information to be designated as directory information under § 99.37;

(4) Maintaining the record of disclosures of personally identifiable information from the education records of a student required to be maintained by § 99.32, and permitting a parent or an eligible student to inspect that record;

(5) Providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing under Subpart C, and permitting the parent of a student or an eligible student to place a statement in the education records of the student as provided in § 99.21(c);

(b) The policy required to be adopted by paragraph (a) of this section shall be in writing and copies shall be made available upon request to parents of students and to eligible students.

(20 U.S.C. 1232g(e) and (f))

**§ 99.6 Annual notification of rights.**

(a) Each educational agency or institution shall give parents of students in attendance or eligible students in attendance at the agency or institution annual notice by such means as are reasonably likely to inform them of the following:

(1) Their rights under section 438 of the Act, the regulations in this part, and the policy adopted under § 99.5; the notice shall also inform parents of students or eligible students of the locations where copies of the policy may be obtained; and

(2) The right to file complaints under § 99.63 concerning alleged failures by the educational agency or institution to comply with the requirements of section 438 of the Act and this part.

(b) Agencies and institutions of elementary and secondary education shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

(20 U.S.C. 1232g(e))

**§ 99.7 Limitations on waivers.**

(a) Subject to the limitations in this section and § 99.12, a parent of a student or a student may waive any of his or her rights under section 438 of the Act or this part. A waiver shall not be valid unless in writing and signed by the parent or student, as appropriate.

(b) An educational agency or institution may not require that a parent of a student or student waive his or her rights under section 438 of the Act or this part. This paragraph does not preclude an educational agency or institution from requesting such a waiver.

(c) An individual who is an applicant for admission to an institution of postsecondary education or is a student in attendance at an institution of postsecondary education may waive his or her right to inspect and review

confidential letters and confidential statements of recommendation described in § 99.12(a)(3) except that the waiver may apply to confidential letters and statements only if: (1) The applicant or student is, upon request, notified of the names of all individuals providing the letters or statements; (2) the letters or statements are used only for the purpose for which they were originally intended, and (3) such waiver is not required by the agency or institution as a condition of admission to or receipt of any other service or benefit from the agency or institution.

(d) All waivers under paragraph (c) of this section must be executed by the individual, regardless of age, rather than by the parent of the individual.

(e) A waiver under this section may be made with respect to specified classes of: (1) Education records, and (2) persons or institutions.

(f)(1) A waiver under this section may be revoked with respect to any actions occurring after the revocation.

(2) A revocation under this paragraph must be in writing.

(3) If a parent of a student executes a waiver under this section, that waiver may be revoked by the student at any time after he or she becomes an eligible student.

(20 U.S.C. 1232g(a)(1) (B) and (C))

### § 99.8 Fees.

(a) An educational agency or institution may charge a fee for copies of education records which are made for the parents of students, students, and eligible students under section 438 of the Act and this part; *Provided,* That the fee does not effectively prevent the parents and students from exercising their right to inspect and review those records.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

(20 U.S.C. 1232g(a)(1))

## Subpart B—Inspection and Review of Education Records

### § 99.11 Right to inspect and review education records.

(a) Each educational agency or institution, except as may be provided by § 99.12, shall permit the parent of a student or an eligible student who is or has been in attendance at the agency or institution, to inspect and review the education records of the student. The agency or institution shall comply with a request within a reasonable period of time, but in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under paragraph (a) of this section includes:

(1) The right to a response from the educational agency or institution to reasonable requests for explanations and interpretations of the records; and

(2) The right to obtain copies of the records from the educational agency or institution where failure of the agency or institution to provide the copies would effectively prevent a parent or eligible student from exercising the right to inspect and review the education records.

(c) An educational agency or institution may presume that either parent of the student has authority to inspect and review the education records of the student unless the agency or institution has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary.

### § 99.12 Limitations on right to inspect and review education records at the postsecondary level.

(a) An institution of postsecondary education is not required by section 438 of the Act or this part to permit a student to inspect and review the following records:

(1) Financial records and statements of their parents or any information contained therein;

(2) Confidential letters and confidential statements of recommendation which were placed in the education records of a student prior to January 1, 1975; *Provided,* That:

(i) The letters and statements were solicited with a written assurance of confidentiality, or sent and retained with a documented understanding of confidentiality, and

(ii) The letters and statements are used only for the purposes for which they were specifically intended;

(3) Confidential letters of recommendation and confidential statements of recommendation which were placed in the education records of the student after January 1, 1975:

(i) Respecting admission to an educational institution;

(ii) Respecting an application for employment, or

(iii) Respecting the receipt of an honor or honorary recognition; *Provided,* That the student has waived his or her right to inspect and review those letters and statements of recommendation under § 99.7(c).

(20 U.S.C. 1232g(a)(1)(B))

(b) If the education records of a student contain information on more than one student, the parent of the student or the eligible student may inspect and review or be informed of only the specific information which pertains to that student.

(20 U.S.C. 1232g(a)(1)(A))

### § 99.13 Limitation on destruction of education records.

An educational agency or institution is not precluded by section 438 of the Act or this part from destroying education records, subject to the following exceptions:

(a) The agency or institution may not destroy any education records if there is an outstanding request to inspect and review them under § 99.11;

(b) Explanations placed in the education record under § 99.21 shall be maintained as provided in § 99.21(d), and

(c) The record of access required under § 99.32 shall be maintained for as long as the education record to which it pertains is maintained.

(20 U.S.C. 1232g(f))

## Subpart C—Amendment of Education Records

### § 99.20 Request to amend education records.

(a) The parent of a student or an eligible student who believes that information contained in the education records of the student is inaccurate or misleading or violates the privacy or other rights of the student may request that the educational agency or institution which maintains the records amend them.

(b) The educational agency or institution shall decide whether to amend the education records of the student in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the educational agency or institution decides to refuse to amend the education records of the student in accordance with the request it shall so inform the parent of the student or the eligible student of the refusal, and advise the parent or the eligible student of the right to a hearing under § 99.21.

(20 U.S.C. 1232g(a)(2))

### § 99.21 Right to a hearing.

(a) An educational agency or institution shall, on request, provide an opportunity for a hearing in order to challenge the content of a student's education records to insure that information in the education records of the student is not inaccurate, misleading or otherwise in violation of the privacy

or other rights of students. The hearing shall be conducted in accordance with § 99.22.

(b) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall amend the education records of the student accordingly and so inform the parent of the student or the eligible student in writing.

(c) If, as a result of the hearing, the educational agency or institution decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall inform the parent or eligible student of the right to place in the education records of the student a statement commenting upon the information in the education records and/or setting forth any reasons for disagreeing with the decision of the agency or institution.

(d) Any explanation placed in the education records of the student under paragraph (c) of this section shall:

(1) Be maintained by the educational agency or institution as part of the education records of the student as long as the record or contested portion thereof is maintained by the agency or institution, and

(2) If the education records of the student or the contested portion thereof is disclosed by the educational agency or institution to any party, the explanation shall also be disclosed to that party.

(20 U.S.C. 1232g(a)(2))

**§ 99.22 Conduct of the hearing.**

The hearing required to be held by § 99.21(a) shall be conducted according to procedures which shall include at least the following elements:

(a) The hearing shall be held within a reasonable period of time after the educational agency or institution has received the request, and the parent of the student or the eligible student shall be given notice of the date, place and time reasonably in advance of the hearing;

(b) The hearing may be conducted by any party, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing;

(c) The parent of the student or the eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised under § 99.21, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

(d) The educational agency or institution shall make its decision in writing within a reasonable period of time after the conclusion of the hearing; and

(e) The decision of the agency or institution shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

(20 U.S.C. 1232g(a)(2))

## Subpart D—Disclosure of Personally Identifiable Information From Education Records

**§ 99.30 Prior consent for disclosure required.**

(a)(1) An educational agency or institution shall obtain the written consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of a student, other than directory information, except as provided in § 99.31.

(2) Consent is not required under this section where the disclosure is to (i) the parent of a student who is not an eligible student, or (ii) the student himself or herself.

(b) Whenever written consent is required, an educational agency or institution may presume that the parent of the student or the eligible student giving consent has the authority to do so unless the agency or institution has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary.

(c) The written consent required by paragraph (a) of this section must be signed and dated by the parent of the student or the eligible student giving the consent and shall include:

(1) A specification of the records to be disclosed,

(2) The purpose or purposes of the disclosure, and

(3) The party or class of parties to whom the disclosure may be made.

(d) When a disclosure is made pursuant to paragraph (a) of this section, the educational agency or institution shall, upon request, provide a copy of the record which is disclosed to the parent of the student or the eligible student, and to the student who is not an eligible student if so requested by the student's parents.

(20 U.S.C. 1232g(b)(1) and (b)(2)(A))

**§ 99.31 Prior consent for disclosure not required.**

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student if the disclosure is—

(1) To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests;

(2) To officials of another school or school system in which the student seeks or intends to enroll, subject to the requirements set forth in § 99.34;

(3) Subject to the conditions set forth in § 99.35, to authorized representatives of:

(i) The Comptroller General of the United States,

(ii) The Secretary, or

(iii) State educational authorities;

(4) In connection with financial aid for which a student has applied or which a student has received; *Provided,* That personally identifiable information from the education records of the student may be disclosed only as may be necessary for such purposes as:

(i) To determine the eligibility of the student for financial aid,

(ii) To determine the amount of the financial aid,

(iii) To determine the conditions which will be imposed regarding the financial aid, or

(iv) To enforce the terms or conditions of the financial aid;

(5) To State and local officials or authorities to whom information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974. This subparagraph applies only to statutes which require that specific information be disclosed to State or local officials and does not apply to statutes which permit but do not require disclosure. Nothing in this paragraph shall prevent a State from further limiting the number or type of State or local officials to whom disclosures are made under this subparagraph;

(6) To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction; *Provided,* That the studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals other than representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted; the term "organizations" includes, but is not

limited to, Federal, State and local agencies, and independent organizations;

(7) To accrediting organizations in order to carry out their accrediting functions;

(8) To parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954;

(9) To comply with a judicial order or lawfully issued subpoena; *Provided,* That the educational agency or institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance therewith; and

(10) To appropriate parties in a health or safety emergency subject to the conditions set forth in § 99.36.

(b) This section shall not be construed to require or preclude disclosure of any personally identifiable information from the education records of a student by an educational agency or institution to the parties set forth in paragraph (a) of this section.

(20 U.S.C. 1232g(b)(1))

**§ 99.32 Record of requests and disclosures required to be maintained.**

(a) An educational agency or institution shall for each request for and each disclosure of personally identifiable information from the education records of a student, maintain a record kept with the education records of the student which indicates:

(1) The parties who have requested or obtained personally identifiable information from the education records of the student, and

(2) The legitimate interests these parties had in requesting or obtaining the information.

(b) Paragraph (a) of this section does not apply:

(i) To requests by or disclosure to a parent of a student or an eligible student;

(ii) To requests by or disclosures to school officials under § 99.31(a)(1);

(iii) If there is written consent of a parent of a student or an eligible student, or

(iv) To requests for or disclosure of directory information under § 99.37.

(c) The record of requests and disclosures may be inspected;

(1) By the parent of the student or the eligible student,

(2) By the school official and his or her assistants who are responsible for the custody of the records, and

(3) For the purpose of auditing the recordkeeping procedures of the educational agency or institution by the parties authorized in, and under the conditions set forth in § 99.31(a) (1) and (3).

(20 U.S.C. 1232g(b)(4)(A))

**§ 99.33 Limitation on redisclosure.**

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that the personally identifiable information which is disclosed to an institution, agency or organization may be used by its officers, employees and agents, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not preclude an agency or institution from disclosing personally identifiable information under § 99.31 with the understanding that the information will be redisclosed to other parties under that section; *Provided,* That the recordkeeping requirements of § 99.32 are met with respect to each of those parties.

(c) An educational agency or institution shall, except for the disclosure of directory information under § 99.37, inform the party to whom a disclosure is made of the requirement set forth in paragraph (a) of this section.

(20 U.S.C. 1232g(b)(4)(B))

**§ 99.34 Conditions for disclosure to officials of other schools and school systems.**

(a) An educational agency or institution transferring the education records of a student pursuant to § 99.31(a)(2) shall:

(1) Make a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at the last known address of the parent or eligible student, except:

(i) When the transfer of the records is initiated by the parent or eligible student at the sending agency or institution, or

(ii) When the agency or institution includes a notice in its policies and procedures formulated under § 99.5 that it forwards education records on request to a school in which a student seeks or intends to enroll; the agency or institution does not have to provide any further notice of the transfer;

(2) Provide the parent of the student or the eligible student, upon request, with a copy of the education records which have been transferred; and

(3) Provide the parent of the student or the eligible student, upon request, with an opportunity for a hearing under Subpart C of this part.

(b) If a student is enrolled in more than one school, or receives services from more than one school, the schools may disclose information from the education records of the student to each other without obtaining the written consent of the parent of the student or the eligible student; *Provided,* That the disclosure meets the requirements of paragraph (a) of this section.

(20 U.S.C. 1232g(b)(1)(B))

**§ 99.35 Disclosure to certain Federal and State officials for Federal program purposes.**

(a) Nothing in section 438 of the Act or this part shall preclude authorized representatives of officials listed in § 99.31(a)(3) from having access to student and other records which may be necessary in connection with the audit and evaluation of Federally supported education programs, or in connection with the enforcement of or compliance with the Federal legal requirements which relate to these programs.

(b) Except when the consent of the parent of a student or an eligible student has been obtained under § 99.30, or when the collection of personally identifiable information is specifically authorized by Federal law, any data collected by officials listed in § 99.31(a)(3) shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, or enforcement of or compliance with Federal legal requirements. 20 U.S.C. 1232g(b)(3))

**§ 99.36 Conditions for disclosure in health and safety emergencies.**

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) The factors to be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed under this section shall include the following:

(1) The seriousness of the threat to the health or safety of the student or other individuals;

(2) The need for the information to meet the emergency;

(3) Whether the parties to whom the information is disclosed are in a position to deal with the emergency; and

(4) The extent to which time is of the essence in dealing with the emergency.

(c) Paragraph (a) of this section shall be strictly construed.

(20 U.S.C. 1232g(b)(1)(I))

**§ 99.37 Conditions for disclosure of directory information.**

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student who is in attendance at the institution or agency if that information has been designated as directory information (as defined in § 99.3) under paragraph (c) of this section.

(b) An educational agency or institution may disclose directory information from the education records of an individual who is no longer in attendance at the agency or institution without following the procedures under paragraph (c) of this section.

(c) An educational agency or institution which wishes to designate directory information shall give public notice of the following:

(1) The categories of personally identifiable information which the institution has designated as directory information;

(2) The right of the parent of the student or the eligible student to refuse to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information; and

(3) The period of time within which the parent of the student or the eligible student must inform the agency or institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student.

(20 U.S.C. 1232g(a)(5) (A) and (B))

## Subpart E—Enforcement

**§ 99.60 Office and review board.**

(a) The Secretary is required to establish or designate an office and a review board under section 438(g) of the Act. The office will investigate, process, and review violations, and complaints which may be filed concerning alleged violations of the provisions of section 438 of the Act and the regulations in this part. The review board will adjudicate cases referred to it by the office under the procedures set forth in §§ 99.65–99.67.

(b) The following is the address of the office which has been designated under paragraph (a) of this section: The Family Educational Rights and Privacy Act Office (FERPA), Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

(20 U.S.C. 1232g(g))

**§ 99.61 Conflict with State or local law.**

An educational agency or institution which determines that it cannot comply with the requirements of section 438 of the Act or of this part because a State or local law conflicts with the provisions of section 438 of the Act or the regulations in this part shall so advise the office designated under § 99.60(b) within 45 days of any such determination, giving the text and legal citation of the conflicting law.

(20 U.S.C. 1232g(f))

**§ 99.62 Reports and records.**

Each educational agency or institution shall (a) submit reports in the form and containing such information as the Office of the Review Board may require to carry out their functions under this part, and (b) keep the records and afford access thereto as the Office or the Review Board may find necessary to assure the correctness of those reports and compliance with the provisions of sections 438 of the Act and this part.

(20 U.S.C. 1232g (f) and (g))

**§ 99.63 Complaint procedure.**

(a) Complaints regarding violations of rights accorded parents and eligible students by section 438 of the Act or the regulations in this part shall be submitted to the Office in writing.

(b)(1) The Office will notify each complainant and the educational agency or institution against which the violation has been alleged, in writing, that the complaint has been received.

(2) The notification to the agency or institution under paragraph (b)(1) of this section shall include the substance of the alleged violation and the agency or institution shall be given an opportunity to submit a written response.

(c) (1) The Office will investigate all timely complaints received to determine whether there has been a failure to comply with the provisions of section 438 of the Act or the regulations in this part, and may permit further written or oral submissions by both parties.

(2) Following its investigation the Office will provide written notification of its findings and the basis for such findings, to the complainant and the agency or institution involved.

(3) If the Office finds that there has been a failure to comply, it will include in its notification under paragraph (c)(2) of this section, the specific steps which must be taken by the agency or educational institution to bring the agency or institution into compliance. The notification shall also set forth a reasonable period of time, given all of the circumstances of the case, for the agency or institution to voluntarily comply.

(d) If the educational agency or institution does not come into compliance within the period of time set under paragraph (c)(3) of this section, the matter will be referred to the Review Board for a hearing under §§ 99.64–99.67, inclusive.

(20 U.S.C. 1232g(f))

**§ 99.64 Termination of funding.**

If the Secretary, after reasonable notice and opportunity for a hearing by the Review Board, (a) finds that an educational agency or institution has failed to comply with the provisions of section 438 of the Act, or the regulations in this part, and (b) determines that compliance cannot be secured by voluntary means, he shall issue a decision, in writing, that no funds under any of the Federal programs referenced in § 99.1(a) shall be made available to that educational agency or institution (or, at the Secretary's discretion, to the unit of the educational agency or institution affected by the failure to comply) until there is no longer any such failure to comply.

(20 U.S.C. 1232g(f))

**§ 99.65 Hearing procedures.**

(a) *Panels.* The Chairman of the Review Board shall designate Hearing Panels to conduct one or more hearings under § 99.64. Each Panel shall consist of not less than three members of the Review Board. The Review Board may, at its discretion, sit for any hearing or class of hearings. The Chairman of the Review Board shall designate himself or any other member of a Panel to serve as Chairman.

(b) *Procedural rules.* (1) With respect to hearings involving, in the opinion of the Panel, no dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall take appropriate steps to afford to each party to the proceeding an opportunity for presenting his case at the option of the Panel (i) in whole or in part in writing or (ii) in an informal conference before the Panel which shall afford each party: (A) Sufficient notice of the issues to be considered (where such notice has not previously been afforded); and (B) an opportunity to be represented by counsel.

(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 Panel shall afford each party an opportunity, which shall include, in addition to provisions required by subparagraph (1)(ii) of this paragraph, provisions

designed to assure to each party 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.

(20 U.S.C. 1232g(g))

**§ 99.66 Hearing before Panel or a Hearing Officer.**

A hearing pursuant to § 99.65(b)(2) shall be conducted, as determined by the Panel Chairman, either before the Panel or a hearing officer. The hearing officer may be (a) one of the members of the Panel or (b) a nonmember who is appointed as a hearing examiner under 5 U.S.C. 3105.

(20 U.S.C. 1232g(g))

**§ 99.67 Initial decision; final decision.**

(a) The Panel shall prepare an initial written decision, which shall include findings of fact and conclusions based thereon. When a hearing is conducted before a hearing officer alone, the hearing officer shall separately find and state the facts and conclusions which shall be incorporated in the initial decision prepared by the Panel.

(b) Copies of the initial decision shall be mailed promptly by the Panel to each party (or to the party's counsel), and to the Secretary with a notice affording the party an opportunity to submit written comments thereon to the Secretary within a specified reasonable time.

(c) The initial decision of the Panel transmitted to the Secretary shall become the final decision of the Secretary, unless, within 25 days after the expiration of the time for receipt of written comments, the Secretary advises the Review Board in writing of his determination to review the decision.

(d) In any case in which the Secretary modifies or reverses the initial decision of the Panel, he shall accompany that action with a written statement of the grounds for the modification or reversal, which shall promptly be filed with the Review Board.

(e) Review of any initial decision by the Secretary shall be based upon the decision, the written record, if any, of the Panel's proceedings, and written comments or oral arguments by the parties, or by their counsel, to the proceedings.

(f) No decision under this section shall become final until it is served upon the educational agency or institution involved or its attorney.

(20 U.S.C. 1232g(g))

3. The following parts are added to Title 34, Subtitle B, Chapter I:

**Subtitle B—Regulations of the Offices of the Department of Education**

**Chapter I—Office for Civil Rights**

Part
100 Nondiscrimination under programs receiving Federal assistance through the Department of Education effectuation of Title VI of the Civil Rights Act of 1964.
101 Practice and procedure for hearings under Part 100 of this Title.
104 Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.
106 Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance.

## PART 100—NONDISCRIMINATION UNDER PROGRAMS RECEIVING FEDERAL ASSISTANCE THROUGH THE DEPARTMENT OF EDUCATION EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.
100.1 Purpose.
100.2 Application of this regulation.
100.3 Discrimination prohibited.
100.4 Assurances required.
100.5 Illustrative application.
100.6 Compliance information.
100.7 Conduct of investigations.
100.8 Procedure for effecting compliance.
100.9 Hearings.
100.10 Decisions and notices.
100.11 Judicial review.
100.12 Effect on other regulations; forms and instructions.
100.13 Definitions.
Appendix A—Federal financial assistance to which these regulations apply.
Appendix B—Guidelines for eliminating discrimination and denial of services on the basis of race, color, national origin, sex, and handicap in vocational education programs.

Authority: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1, unless otherwise noted.

**§ 100.1 Purpose.**

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall; on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Education.

(Sec. 601, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d)

**§ 100.2 Application of this regulation.**

This regulation applies to any program for which Federal financial assistance is authorized to be extended to a recipient under a law administered by the Department, including the Federal assisted programs and activities listed in Appendix A of this regulation. It applies to money paid, property transferred, or other Federal financial assistance extended after the effective date of the regulation pursuant to an application approved prior to such effective date. This regulation does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended before the effective date of this regulation, (c) the use of any assistance by any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, or any employer, employment agency, or labor organization, except to the extent described in § 100.3. The fact that a type of Federal assistance is not listed in Appendix A shall not mean, if Title VI of the Act is otherwise applicable, that a program is not covered. Federal financial assistance under statutes now in force or hereinafter enacted may be added to this list by notice published in the Federal Register.

(Secs. 602, 604, Civil Rights Act of 1964; 78 Stat. 252, 253; 42 U.S.C. 2000d–1, 2000d–3)

**§ 100.3 Discrimination prohibited.**

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other

requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) In determining the site or location of a facilities, an applicant or recipient may not make selections with the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any programs to which this regulation applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

(4) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to which this regulation applies is to provide employment, a recipient may not (directly or through contractual or other arrangements) subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities), including programs where a primary objective of the Federal financial assistance is (i) to reduce the employment of such individuals or to help them through employment to meet subsistence needs, (ii) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training, (iii) to provide work experience which contributes to the education or training of such individuals, or (iv) to provide remunerative activity to such individuals who because of handicaps cannot be readily absorbed in the competitive labor market. The following, under existing laws, have one of the above objectives as a primary objective:

(A) Projects under the Public Works Acceleration Act, Public Law 87–658, 42 U.S.C. 2641–2643.

(B) Work-study under the Vocational Education Act of 1963, as amended, 20 U.S.C. 1371–1374.

(C) Programs assisted under laws listed in Appendix A as respects employment opportunities provided thereunder, or in facilities provided thereunder, which are limited, or for which preference is given, to students, fellows, or other persons in training for the same or related employments.

(D) Assistance to rehabilitation facilities under the Vocational Rehabilitation Act, 29 U.S.C. 32–34, 41a and 41b.

(2) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the foregoing provisions of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) *Indian Health and Cuban Refugee Services.* An individual shall not be deemed subjected to discrimination by reason of his exclusion from the benefits of a program limited by Federal law to individuals of a particular race, color, or national origin different from his.

(e) *Medical emergencies.* Notwithstanding the foregoing provisions of this section, a recipient of Federal financial assistance shall not be deemed to have failed to comply with paragraph (a) of this section if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health, and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with paragraph (a) of this section.

(Sec. 601, 602, 604, Civil Rights Act of 1964; 78 Stat. 252, 253, 42 U.S.C. 2000d, 2000d–1, 2000d–3)

### § 100.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during

which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible Department official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) Where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government the instrument effecting or recording the transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved but property is improved with Federal financial assistance, the recipient shall agree to include such a covenant to any subsequent transfer of the property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Department official, such a condition and right of reverter is appropriate to the statute under which the real property is obtained and to the nature of the grant and the grantee. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the responsible Department official may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(b) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this regulation applies (including the Federal financial assistance listed in Part 2 of Appendix A) shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this regulation, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible Department official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this regulation.

(c) *Elementary and secondary schools.* The requirements of paragraph (a) or (b) of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible Department official determines is adequate to accomplish the purposes of the Act and this part, at the earliest practicable time, and provides reasonable assurance that it will carry out such plan; in any case of continuing Federal financial assistance the responsible Department official may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and the regulations in this part. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

(d) *Assurance from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education (including assistance for construction, for research, for special training project, for student loans or for any other purpose), the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

(Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d-1. Sec. 182; 80 Stat. 1209; 42 U.S.C. 2000d-5)

### § 100.5 Illustrative application.

The following examples will illustrate the programs aided by Federal financial assistance of the Department. (In all cases the discrimination prohibited is discrimination on the ground of race, color, or national origin prohibited by Title VI of the Act and this regulation, as a condition of the receipt of Federal financial assistance).

(a) In federally-affected area assistance (P.L. 815 and P.L. 874) for construction aid and for general support of the operation of elementary or secondary schools, or in more limited support to such schools such as for the acquisition of equipment, the provision of vocational education, or the provision of guidance and counseling services, discrimination by the recipient school district in any of its elementary or secondary schools in the admission of students, or in the treatment of its students in any aspect of the educational process, is prohibited. In this and the following illustrations the prohibition of discrimination in the treatment of students or other trainees includes the prohibition of discrimination among the students or trainees in the availability or use of any academic, dormitory, eating, recreational, or other facilities of the grantee or other recipient.

(b) In a research, training, demonstration, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university unless it satisfies the responsible Department official that practices with respect to other parts or programs of the university will not interfere, directly or indirectly, with fulfillment of the assurance required with respect to the graduate school.

(c) In a training grant to a hospital or other nonacademic institution, discrimination is prohibited in the selection of individuals to be trained and in their treatment by the grantee during their training. In a research or demonstration grant to such an institution discrimination is prohibited with respect to any educational activity and any provision of medical or other services and any financial aid to individuals incident to the program.

(d) In grants to assist in the construction of facilities for the provision of health, educational or welfare services, assurances will be required that services will be provided without discrimination, to the same extent that discrimination would be prohibited as a condition of Federal operating grants for the support of such services. Thus, as a condition of grants for the construction of academic, research, or other facilities at institutions of higher education, assurances will be required that there will be no discrimination in the admission or treatment of students. In construction grants the assurances required will be adapted to the nature of the activities to be conducted in the facilities for construction of which the grants have been authorized by Congress.

(e) Upon transfers of real or personal surplus property for educational uses, discrimination is prohibited to the same extent as in the case of grants for the construction of facilities or the provision of equipment for like purposes.

(f) Each applicant for a grant for the construction of educational television facilities is required to provide an assurance that it will, in its broadcast services, give due consideration to the interests of all significant racial or ethnic groups within the population to be served by the applicant.

(g) A recipient may not take action that is calculated to bring about indirectly what this regulation forbids it to accomplish directly. Thus, a State, in selecting or approving projects or sites for the construction of public libraries which will receive Federal financial assistance, may not base its selections or approvals on criteria which have the effect of defeating or of substantially impairing accomplishments of the objectives of the Federal assistance as respects individuals of a particular race, color or national origin.

(h) In some situations, even though past discriminatory practices attributable to a recipient or applicant have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under § 100.6(d), to provide information as to the availability of the program or activity and the rights of beneficiaries under this regulation, have failed to overcome these consequences, it will become necessary under the requirement stated in (i) of § 100.3(b)(6) for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subject to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals or making selections which will insure that groups previously subjected to discrimination are adequately served.

(i) Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances, an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

(Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d–1)

### § 100.6 Compliance information.

(a) *Cooperation and assistance.* The responsible Department official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. For example, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of and participants in federally-assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information. Asserted considerations of privacy or confidentiality may not operate to bar the Department from evaluating or seeking to enforce compliance with this Part. Information of a confidential nature obtained in connection with compliance evaluation or enforcement shall not be disclosed except where necessary in formal enforcement proceedings or where otherwise required by law.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this regulation.

(Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d–1)

### § 100.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Department official or his

designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) *Investigations.* The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 100.8.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

(Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d–1)

**§ 100.8 Procedure for effecting compliance.**

(a) *General.* If there appears to be a failure or threatened failure to comply with this regulation, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 100.4.* If an applicant fails or refuses to furnish an assurance required under § 100.4 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

(Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d–1. Sec. 182, 80 Stat. 1209; 42 U.S.C. 2000d–5)

**§ 100.9 Hearings.**

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 100.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 100.8(c) of this regulation and consent to the making of a decision on the basis of such information as may be filed as the record.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at

a time fixed by the responsible Department official unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5–8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing. Any person (other than a Government employee considered to be on official business) who, having been invited or requested to appear and testify as a witness on the Government's behalf, attends at a time and place scheduled for a hearing provided for by this part, may be reimbursed for his travel and actual expenses of attendance in an amount not to exceed the amount payable under the standardized travel regulations to a Government employee traveling on official business.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or Joint Hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this regulation with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the responsible Department official may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with § 100.10.

(Sec. 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d–1)

**§ 100.10 Decisions and notices.**

(a) *Decisions by hearing examiners.* After a hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the reviewing authority for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient and to the complainant, if any. Where the initial decision referred to in this paragraph or in paragraph (c) of this section is made by the hearing examiner, the applicant or recipient or the counsel for the Department may, within the period provided for in the rules of procedure issued by the responsible Department official, file with the reviewing authority exceptions to the initial decision, with his reasons therefor. Upon the filing of such exceptions the reviewing authority shall review the initial decision and issue its own decision thereof including the reasons therefor. In the absence of exceptions the initial decision shall constitute the final decision, subject to the provisions of paragraph (e) of this section.

(b) *Decisions on record or review by the reviewing authority.* Whenever a record is certified to the reviewing authority for decision or it reviews the decision of a hearing examiner pursuant to paragraph (a) or (c) of this section, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of its contentions, and a copy of the final decision of the reviewing authority shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 100.9(a) the reviewing authority shall make its final decision on the record or refer the matter to a hearing examiner for an initial decision to be made on the record. A copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or reviewing authority shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Review in certain cases by the Secretary.* If the Secretary has not personally made the final decision referred to in paragraphs (a), (b), or (c) of this section, a recipient or applicant or the counsel for the Department may request the Secretary to review a decision of the Reviewing Authority in accordance with rules of procedure issued by the responsible Department official. Such review is not a matter of right and shall be granted only where the Secretary determines there are special and important reasons therefor. The Secretary may grant or deny such request, in whole or in part. He may also review such a decision upon his own motion in accordance with rules of procedure issued by the responsible Department official. In the absence of a review under this paragraph, a final decision referred to in paragraphs (a), (b), (c) of this section shall become the final decision of the Department when the Secretary transmits it as such to Congressional committees with the report required under section 602 of the Act. Failure of an applicant or recipient to file an exception with the Reviewing Authority or to request review under this paragraph shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which this regulation applies, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this regulation, including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended under such law or laws to the applicant or recipient

determined by such decision to be in default in its performance of an assurance given by it pursuant to this regulation, or to have otherwise failed to comply with this regulation unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this regulation.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part. An elementary or secondary school or school system which is unable to file an assurance of compliance with § 100.3 shall be restored to full eligibility to receive Federal financial assistance, if it files a court order or a plan for desegregation which meets the requirements of § 100.4(c), and provides reasonable assurance that it will comply with the court order or plan.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Department official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible Department official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Department official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Department official. The applicant or recipient will be restored to such eligibility if it proves at such hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

(Sec. 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d–1)

**§ 100.11 Judicial review.**

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

(Sec. 603, 78 Stat. 253; 42 U.S.C. 2000d–2)

**§ 100.12 Effect on other regulations, forms and instructions.**

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this regulation applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this regulation, except that nothing in this regulation shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this regulation. Nothing in this regulation, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Order 11063 and regulations issued thereunder, or any other regulations or instructions, insofar as such Order, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this regulation is inapplicable, or prohibit discrimination on any other ground; or (2) requirements for Emergency School Assistance as published in 35 FR 13442 and codified as 45 CFR Part 181.

(b) *Forms and instructions.* The responsible Department official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part.

(c) *Supervision and coordination.* The responsible Department official may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this regulation (other than responsibility for review as provided in § 100.10(e)), including the achievements of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title VI and this regulation to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or Agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the responsible official of this Department.

(Sec. 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d–1)

**§ 100.13 Definitions.**

As used in this part—

(a) The term "Department" means the Department of Education.

(b) The term "Secretary" means the Secretary of Education.

(c) The term "responsible Department official" means the Secretary or, to the extent of any delegation by the Secretary of authority to act in his stead under any one or more provisions of this part, any person or persons to whom the Secretary has heretofore delegated, or to whom the Secretary may hereafter delegate such authority.

(d) The term "reviewing authority" means the Secretary, or any person or persons (including a board or other body specially created for that purpose and also including the responsible Department official) acting pursuant to authority delegated by the Secretary to carry out responsibilities under § 100.10(a)–(d).

(e) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(f) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(g) The term "program" includes any program, project, or activity for the

provision of services, financial aid, or other benefits to individuals (including education or training, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for the provison of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(h) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(i) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(j) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(k) The term "applicant" means one who submits an application, request, or plan required to be approved by a Department official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.

(Sec. 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d-1)

Appendix A

Federal Financial Assistance to Which These Regulations Apply

*Part 1. Assistance other than for State-Administered Continuing Programs*

1. Loans for acquisition of equipment for academic subjects, and for minor remodeling (20 U.S.C. 445).
2. Construction of facilities for institutions of higher education (20 U.S.C. 701–758).
3. School Construction in federally-affected and in major disaster areas (20 U.S.C. 631–647).
4. Construction of educational broadcast facilities (47 U.S.C. 390–399).
5. Loan service of captioned films and educational media; research on, and production and distribution of, educational media for the handicapped, and training of persons in the use of such media for the handicapped (20 U.S.C. 1452).
6. Demonstration residential vocational education schools (20 U.S.C. 1321).
7. Research and related activities in education of handicapped children (20 U.S.C. 1441).
8. Educational research, dissemination and demonstration projects; research training; and construction under the Cooperation Research Act (20 U.S.C. 331–332(b)).
9. Research in teaching modern foreign languages (20 U.S.C. 512).
10. Training projects for manpower development and training (42 U.S.C. 2601, 2602, 2610a–2610c).
11. Research and training projects in Vocational Education (20 U.S.C. 1281(a), 1282–1284).
12. Allowances to institutions training NDEA graduate fellows (20 U.S.C. 461–465).
13. Grants for training in librarianship (20 U.S.C. 1031–1033).
14. Grants for training personnel for the education of handicapped children (20 U.S.C. 1431).
15. Allowances for institutions training teachers and related educational personnel in elementary and secondary education, or post-secondary vocational education (20 U.S.C. 1111–1118).
16. Recruitment, enrollment, training and assignment of Teacher Corps personnel (20 U.S.C. 1101–1107a).
17. Operation and maintenance of schools in Federally-affected and in major disaster areas (20 U.S.C. 236–241; 241–1; 242–244).
18. Grants or contracts for the operation of training institutes for elementary or secondary school personnel to deal with special educational problems occasioned by desegregation (42 U.S.C. 2000c–3).
19. Grants for in-service training of teachers and other schools personnel and employment of specialists in desegregation problems (42 U.S.C. 2000c–4).
20. Higher education students loan program (Title II, National Defense Education Act, 20 U.S.C. 421–429).
21. Educational Opportunity grants and assistance for State and private programs of low-interest insured loans and State loans to students in institutions of higher education (Title IV, Higher Education Act of 1965, 20 U.S.C. 1061–1087).
22. Grants and contracts for the conduct of Talent Search, Upward Bound, and Special Services Programs (20 U.S.C. 1068).
23. Land-grant college aid (7 U.S.C. 301–306; 321–326; 328–331).
24. Language and area centers (Title VI, National Defense Education Act, 20 U.S.C. 511).
25. American Printing House for the Blind (20 U.S.C. 101–105).
26. Future Farmers of America (36 U.S.C. 271–391) and similar programs.
27. Science clubs (P.L. 85–875, 20 U.S.C. 2, note).
28. Howard University (20 U.S.C. 121–129).
29. Gallaudet College (31 D.C. Code, Ch. 10).
30. Establishment and operation of a model secondary school for the deaf by Gallaudet College (31 D.C. Code 1051–1053; 80 Stat. 1027–1028).
31. Faculty development programs, workshops and institutes (20 U.S.C. 1131–1132).
32. National Technical Institute for the Deaf (20 U.S.C. 681–685).
33. Institutes and other programs for training educational personnel (Parts D, E, & F, Title V, Higher Education Act of 1965) (20 U.S.C. 1119–1119c–4).
34. Grants and contracts for research and demonstration projects in librarianship (20 U.S.C. 1034).
35. Acquisition of college library resources (20 U.S.C. 1021–1028).
36. Grants for strengthening developing institutions of higher education (20 U.S.C. 1051–1054); National Fellowships for teaching at developing institutions (20 U.S.C. 1055), and grants to retired professors to teach at developing institutions (20 U.S.C. 1056).
37. College Work-Study Program (42 U.S.C. 2751–2757).
38. Financial assistance for acquisition of higher education equipment, and minor remodeling (20 U.S.C. 1121–1129).

39. Grants for special experimental demonstration projects and teacher training in adult education (20 U.S.C. 1208).

40. Grant programs for advanced and undergraduate international studies (20 U.S.C. 1171–1176; 22 U.S.C. 2452(b)).

41. Experimental projects for developing State leadership or establishment of special services (20 U.S.C. 865).

42. Grants to and arrangements with State educational and other agencies to meet special educational needs of migratory children of migratory agricultural workers (20 U.S.C. 241e(c)).

43. Grants by the Secretary to local educational agencies for supplementary educational centers and services; guidance, counseling, and testing (20 U.S.C. 841–844; 844b).

44. Resource centers for improvement of education of handicapped children (20 U.S.C. 1421) and centers and services for deaf-blind children (20 U.S.C. 1422).

45. Recruitment of personnel and dissemination of information on education of handicapped (20 U.S.C. 1433).

46. Grants for research and demonstrations relating to physical education or recreation for handicapped children (20 U.S.C. 1442) and training of physical educators and recreation personnel (20 U.S.C. 1434).

47. Dropout prevention projects (20 U.S.C. 887).

48. Bilingual education programs (20 U.S.C. 880b–880b–6).

49. Grants to agencies and organizations for Cuban refugees (22 U.S.C. 2601(b)(4)).

50. Grants and contracts for special programs for children with specific learning disabilities including research and related activities, training and operating model centers (20 U.S.C. 1461).

51. Curriculum development in vocational and technical education (20 U.S.C. 1391).

52. Establishment, including construction, and operation of a National Center on Educational Media and Materials for the Handicapped (20 U.S.C. 1453).

53. Grants and contracts for the development and operation of experimental preschool and early education programs for handicapped (20 U.S.C. 1423).

54. Grants to public or private non-profit agencies to carry on the Follow Through Program in kindergarten and elementary schools (42 U.S.C. 2809 (a)(2)).

55. Grants for programs of cooperative education and grants and contracts for training and research in cooperative education (20 U.S.C. 1087a–1087c).

56. Grants and contracts to encourage the sharing of college facilities and resources (network for knowledge) (20 U.S.C. 1133–1133b).

57. Grants, contracts, and fellowships to improve programs preparing persons for public service and to attract students to public service (20 U.S.C. 1134–1134b).

58. Grants for the improvement of graduate programs (20 U.S.C. 1135–1135c).

59. Contracts for expanding and improving law school clinical experience programs (20 U.S.C. 1136–1136b).

60. Exemplary programs and projects in vocational education (20 U.S.C. 1301–1305).

61. Grants to reduce borrowing cost for construction of residential schools and dormitories (20 U.S.C. 1323).

62. Surplus real and related personal property disposal for educational purposes (40 U.S.C. 484(k)).

*Part 2—Continuing Assistance to State Administered Programs.*

1. Grants to States for public library service and construction, interlibrary cooperation and specialized State library services for certain State institutions and the physicallly handicapped (20 U.S.C. 351–355).

2. Grants to States for strengthening instruction in academic subjects (20 U.S.C. 441–444).

3. Grants to States for vocational education (20 U.S.C. 1241–1264).

4. Arrangements with State education agencies for training under the Manpower Development and Training Act (42 U.S.C. 2601–2602, 2610a).

5. Grants to States to assist in the elementary and secondary education of children of low-income families (20 U.S.C. 241a–242m).

6. Grants to States to provide for school library resources, textbooks and other instructional materials for pupils and teachers in elementary and secondary schools (20 U.S.C. 821–827).

7. Grants to States to strengthen State departments of education (20 U.S.C. 861–870).

8. Grants to States for community service programs (20 U.S.C. 1001–1011).

9. Grants to States for adult basic education and related research, teacher training and special projects (20 U.S.C. 1201–1211).

10. Grants to States educational agencies for supplementary educational centers and services, and guidance, counseling and testing (20 U.S.C. 841–847).

11. Grants to States for research and training in vocational education (20 U.S.C. 1281(b)).

12. Grants to States for exemplary programs and projects in vocational education (20 U.S.C. 1301–1305).

13. Grants to States for residential vocational education schools (20 U.S.C. 1321).

14. Grants to States for consumer and homemaking education (20 U.S.C. 1341).

15. Grants to States for cooperative vocational educational program (20 U.S.C. 1351–1355).

16. Grants to States for vocational work-study programs (20 U.S.C. 1371–1374).

17. Grants to States to attract and qualify teachers to meet critical teaching shortages (20 U.S.C. 1108–1110c).

18. Grants to States for education of handicapped children (20 U.S.C. 1411–1414).

19. Grants for administration of State plans and for comprehensive planning to determine construction needs of institutions of higher education (20 U.S.C. 715(b)).

**Appendix B—Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs.**

**I. Scope and Coverage 1a. application of guidelines 1a. application of guidelines**

These Guidelines apply to recipients of any Federal financial assistance from the Department of Education that offer or administer programs of vocational education or training. This includes State agency recipients.

**B. Definition of Recipient**

The definition of "recipient" of Federal financial assistance is established by Department regulations implementing Title VI, Title IX, and Section 504 (34 CFR 100.13(i), 106.2(h), 104.3(f).

For the purposes of Title VI:

The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such terms does not include any ultimate beneficiary [e.g., students] under any such program. (34 CFR 100.13(i)).

For the purposes of Title IX:

"Recipient" means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person to whom Federal financial assistance is extended, directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance, including any subunit, successor, assignee, or transferee thereof. (34 CFR 106.2(h)).

For the purposes of Section 504:

"Recipient" means any State or its political subdivision any instrumentality of a State or its political subdivision, any public or private agency, institution, or organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. (34 CFR 104.3(f)).

**C. Examples of Recipients Covered by These Guidelines**

The following education agencies, when they provide vocational education, are examples of recipients covered by these Guidelines:

1. The board of education of a public school district and its administrative agency.

2. The administrative board of a specialized vocational high school serving students from more than one shcool district.

3. The administrative board of a technical or vacational school that is used exclusively or principally for the provision of vocational education to persons who have completed or left high school (including persons seeking a

certificate or an associate degree through a vocational program offered by the school) and who are available for study in preparation for entering the labor market.

4. The administrative board of a postsecondary institution, such as a technical institute, skill center, junior college, community college, or four year college that has a department or division that provides vocational education to students seeking immediate employment, a certificate or an associate degree,

5. The administrative board of a proprietary (private) vocational education school.

6. A State agency recipient itself operating a vocational education facility.

D. Examples of Schools to Which These Guidelines Apply

The following are examples of the types of schools to which these Guidelines apply.

1. A junior high school, middle school, or those grades of a comprehensive high school that offers instruction to inform, orient, or prepare students for vocational education at the secondary level.

2. A vocational education facility operated by a State agency.

3. A comprehensive high school that has a department exclusively or principally used for providing vocational education; or that offers at least one vocational program to secondary level students who are available for study in preparation for entering the labor market; or that offers adult vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market.

4. A comprehensive high school, offering the activities described above, that recieves students on a contract basis from other school districts for the purpose of providing vocational education.

5. A specialized high school used exclusively or principally for the provision of vocational education, that enrolls students form one or more school districts for the purpose of providing vocational education.

6. A technical or vocational school that primarily provides vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market, including students seeking an associate degree or certificate through a course of vocational instruction offered by the school.

7. A junior college, a community college, or four-year college that has a department or division that provides vocational education to students seeking immediate employment, an associate degree or a certificate through a course of vocational instruction offered by the school.

8. A proprietary school, licensed by the State that offers vocational education.

Note.—Subsequent sections of these Guidelines may use the term *secondary vocational education center* in referring to the institutions described in paragraphs 3, 4 and 5 above or the term *postsecondary vocational education center* in referring to institutions described in paragraphs 6 and 7 above or the term *vocational education center* in referring to any or all institutions described above.

II. Responsibilities Assigned Only to State Agency Recipients

A. Responsibilities of All State Agency Recipients

State agency recipients, in addition to complying with all other provisions of the Guidelines relevant to them, may not require, approve of, or engage in any discrimination or denial of services on the basis of race, color, national origin, sex, or handicap in performing any of the following activities:

1. Establishment of criteria or formulas for distribution of Federal or State funds to vocational education programs in the State;

2. Establishment of requirements for admission to or requirements for the administration of vocational education programs;

3. Approval of action by local entities providing vocational education. (For example, a State agency must ensure compliance with Section IV of these Guidelines if and when it reviews a vocational education agency decision to create or change a geographic service area.);

4. Conducting its own programs. (For example, in employing its staff it may not discriminate on the basis of sex or handicap.)

B. State Agencies Performing Oversight Responsibilities

The State agency responsible for the administration of vocational education programs must adopt a compliance program to prevent, identify and remedy discrimination on the basis of race, color, national origin, sex or handicap by its subrecipients. (A "subrecipient," in this context, is a local agency or vocational education center that receives financial assistance through a State agency.) This compliance program must include:

1. Collecting and analyzing civil rights related data and information that subrecipients compile for their own purposes or that are submitted to State and Federal officials under existing authorities;

2. Conducting periodic compliance reviews of selected subrecipients (i.e., an investigation of a subrecipient to determine whether it engages in unlawful discrimination in any aspect of its program); upon finding unlawful discrimination, notifying the subrecipient of steps it must take to attain compliance and attempting to obtain voluntary compliance;

3. Providing technical assistance upon request to subrecipients. This will include assisting subrecipients identify unlawful discrimination and instructing them in remedies for and prevention of such discrimination;

4. Periodically reporting its activities and findings under the foregoing paragraphs, including findings of unlawful discrimination under paragraph 2, immediately above, to the Office for Civil Rights.

State agencies are not required to terminate or defer assistance to any subrecipient. Nor are they required to conduct hearings. The responsibilities of the Office for Civil Rights to collect and analyze data, to conduct compliance reviews, to investigate complaints and to provide technical assistance are not diminished or attenuated by the requirements of Section II of the Guidelines.

C. Statement of Procedures and Practices

Within one year from the publication of these Guidelines in final form, each State agency recipient performing oversight responsibilities must submit to the Office for Civil Rights the methods of administration and related procedures it will follow to comply with the requirements described in paragraphs A and B immediately above. The Department will review each submission and will promptly either approve it, or return it to State officials for revision.

III. Distribution of Federal Financial Assistance and Other Funds for Vocational Education

A. Agency Responsibilities

Recipients that administer grants for vocational education must distribute Federal, State, or local vocational education funds so that no student or group of students is unlawfully denied an equal opportunity to benefit from vocational education on the basis of race, color, national origin, sex, or handicap.

B. Distribution of Funds

Recipients may not adopt a formula or other method for the allocation of Federal, State, or local vocational education funds that has the effect of discriminating on the basis of race, color, national origin, sex, or handicap. However, a recipient may adopt a formula or other method of allocation that uses as a factor race, color, national origin, sex, or handicap [or an index or proxy for race, color, national origin, sex, or handicap e.g., number of persons receiving Aid to Families with Dependent Children or with limited English speaking ability] if the factor is included to compensate for past discrimination or to comply with those provisions of the Vocational Education Amendments of 1976 designed to assist specified protected groups.

C. Example of a Pattern Suggesting Unlawful Discrimination

In each State it is likely that some local recipients will enroll greater proportions of minority students in vocational education than the State-wide proportion of minority students in vocational education. A funding formula or other method of allocation that results in such local recipients receiving per-pupil allocations of Federal or State vocational education funds lower than the State-wide average per-pupil allocation will be presumed unlawfully discriminatory.

D. Distribution Through Competitive Grants or Contracts

Each State agency that establishes criteria for awarding competitive vocational education grants or contracts must establish and apply the criteria without regard to the race, color, national origin, sex, or handicap of any or all of a recipient's students, except to compensate for past discrimination.

E. Application Processes for Competitive or Discretionary Grants

State agencies must disseminate information needed to satisfy the

requirements of any application process for competitive or discretionary grants so that all recipients, including those having a high percentage of minority or handicapped students, are informed of and able to seek funds. State agencies that provide technical assistance for the completion of the application process must provide such assistance without discrimination against any one recipient or class of recipients.

F. Alteration of Fund Distribution to Provide Equal Opportunity

If the Office for Civil Rights finds that a recipient's system for distributing vocational education funds unlawfully discriminates on the basis of race, color, national origin, sex, or handicap, it will require the recipient to adopt an alternative nondiscriminatory method of distribution. The Office for Civil Rights may also require the recipient to compensate for the effects of its past unlawful discrimination in the distribution of funds.

IV. Access and Admission of Students To Vocational Education Programs

A. Recipient Responsibilities

Criteria controlling student eligibility for admission to vocational education schools, facilities and programs may not unlawfully discriminate on the basis of race, color, national origin, sex, or handicap. A recipient may not develop, impose, maintain, approve, or implement such discriminatory admissions criteria.

B. Site Selection for Vocational Schools

State and local recipients may not select or approve a site for a vocational education facility for the purpose or with the effect of excluding, segregating, or otherwise discriminating against students on the basis of race, color, or national origin. Recipients must locate vocational education facilities at sites that are readily accessible to both nonminority and minority communities, and that do not tend to identify the facility or program as intended for nonminority or minority students.

C. Eligibility for Admission to Vocational Education Centers Based on Residence

Recipients may not establish, approve or maintain geographic boundaries for a vocational education center service area or attendance zone, (hereinafter "service area"), that unlawfully exclude students on the basis of race, color, or national origin. The Office for Civil Rights will presume, subject to rebuttal, that any one or combination of the following circumstances indicates that the boundaries of a given service area are unlawfully constituted:

1. A school system or service area contiguous to the given service area, contains minority or nonminority students in substantially greater proportion than the given service area;

2. A substantial number of minority students who reside outside the given vocational education center service area, and who are not eligible for the center reside, nonetheless, as close to the center as a substantial number of non-minority students who are eligible for the center;

3. The over-all vocational education program of the given service area in comparison to the over-all vocational education program of a contiguous school system or service area enrolling a substantially greater proportion of minority students: (a) provides its students with a broader range of curricular offerings, facilities and equipment; or (b) provides its graduates greater opportunity for employment in jobs: (i) for which there is a demonstrated need in the community or region; (ii) that pay higher entry level salaries or wages; or (iii) that are generally acknowledged to offer greater prestige or status.

D. Additions and Renovations to Existing Vocational Education Facilities

A recipient may not add to, modify, or renovate the physical plant of a vocational education facility in a manner that creates, maintains, or increases student segregation on the basis of race, color, national origin, sex, or handicap.

E. Remedies for Violations of Site Selection and Geographic service area requirements

If the conditions specified in paragraphs IV, A, B, C, or D, immediately above, are found and not rebutted by proof of nondiscrimination, the Office for Civil Rights will require the recipient(s) to submit a plan to remedy the discrimination. The following are examples of steps that may be included in the plan, where necessary to overcome the discrimination: (1) redrawing of the boundaries of the vocational education center's service area to include areas unlawfully excluded and/or to exclude areas unlawfully included; (2) provision of transportation to students residing in areas unlawfully excluded; (3) provision of additional programs and services to students who would have been eligible for attendance at the vocational education center but for the discriminatory service area or site selection; (4) reassignment of students; and (5) construction of new facilities or expansion of existing facilities.

F. Eligibility for Admission to Secondary Vocational Education Centers Based on Numerical Limits Imposed on Sending Schools

A recipient may not adopt or maintain a system for admission to a secondary vocational education center or program that limits admission to a fixed number of students from each sending school included in the center's service area if such a system disproportionately excludes students from the center on the basis of race, sex, national origin or handicap. (Example: Assume 25 percent of a school district's high school students are black and that most of those black students are enrolled in one high school; the white students, 75 percent of the district's total enrollment, are generally enrolled in the five remaining high schools. This paragraph prohibits a system of admission to the secondary vocational education center that limits eligibility to a fixed and equal number of students from each of the district's six high schools.)

G. Remedies for Violation of Eligibility Based on Numerical Limits Requirements

If the Office for Civil Rights finds a violation of paragraph F, above, the recipient must implement an alternative system of admissions that does not disproportionately exclude students on the basis of race, color, national origin, sex, or handicap.

H. Eligibility for Admission to Vocational Education Centers, Branches or Annexes Based Upon Student Option

A vocational education center, branch or annex, open to all students in a service area and predominantly enrolling minority students or students of one race, national origin or sex, will be presumed unlawfully segregated if: 1) it was established by a recipient for members of one race, national origin or sex; or 2) it has since its construction been attended primarily by members of one race, national origin or sex; or 3) most of its program offerings have traditionally been selected predominantly by members of one race, national origin or sex.

I. Remedies for Facility Segregation Under Student Option Plans

If the conditions specified in paragraph IV-H are found and not rebutted by proof of nondiscrimination, the Office for Civil Rights will require the recipient(s) to submit a plan to remedy the segregation. The following are examples of steps that may be included in the plan, where necessary to overcome the discrimination:

(1) elimination of program duplication in the segregated facility and other proximate vocational facilities; (2) relocation or "clustering" of programs or courses; 3) adding programs and courses that traditionally have been identified as intended for members of a particular race, national origin or sex to schools that have traditionally served members of the other sex or traditionally served persons of a different race or national origin; 4) merger of programs into one facility through school closings or new construction; 5) intensive outreach recruitment and counseling; 6) providing free transportation to students whose enrollment would promote desegregation.

[Paragraph J omitted]

K. Eligibility Based on Evaluation of Each Applicant Under Admissions Criteria

Recipients may not judge candidates for admission to vocational education programs on the basis of criteria that have the effect of disproportionately excluding persons of a particular race, color, national origin, sex, or handicap. However, if a recipient can demonstrate that such criteria have been validated as essential to participation in a given program and that alternative equally valid criteria that do not have such a disproportionate adverse effect are unavailable, the criteria will be judged nondiscriminatory. Examples of admissions criteria that must meet this test are past academic performance, record of disciplinary infractions, counselors' approval, teachers' recommendations, interest inventories, high school diplomas and standardized tests, such as the Test of Adult Basic Education (TABE).

An introductory, preliminary, or exploratory course may not be established as

a prerequisite for admission to a program unless the course has been and is available without regard to race, color, national origin, sex, and handicap. However, a course that was formerly only available on a discriminatory basis may be made a prerequisite for admission to a program if the recipient can demonstrate that: (a) the course is essential to participation in the program; *and* (b) the course is presently available to those seeking enrollment for the first time and to those formerly excluded.

L. Eligibility of National Origin Minority Persons With Limited English Language Skills

Recipients may not restrict an applicant's admission to vocational education programs because the applicant, as a member of a national origin minority with limited English language skills, cannot participate in and benefit from vocational instruction to the same extent as a student whose primary language is English. It is the responsibility of the recipient to identify such applicants and assess their ability to participate in vocational instruction.

Acceptable methods of identification include: (1) identification by administrative staff, teachers, or parents of secondary level students; (2) identification by the student in postsecondary or adult programs; and (3) appropriate diagnostic procedures, if necessary.

Recipients must take steps to open all vocational programs to these national origin minority students. A recipient must demonstrate that a concentration of students with limited English language skills in one or a few programs is not the result of discriminatory limitations upon the opportunities available to such students.

M. Remedial Action in Behalf of Persons With Limited English Language Skills

If the Office for Civil Rights finds that a recipient has denied national origin minority persons admission to a vocational school or program because of their limited English language skills or has assigned students to vocational programs solely on the basis of their limited English language skills, the recipient will be required to submit a remedial plan that insures national origin minority students equal access to vocational education programs.

N. Equal Access for Handicapped Students

Recipients may not deny handicapped students access to vocational education programs or courses because of architectural or equipment barriers, or because of the need for related aids and services or auxiliary aids. If necessary, recipients must: (1) modify instructional equipment; (2) modify or adapt the manner in which the courses are offered; (3) house the program in facilities that are readily accessible to mobility impaired students or alter facilities to make them readily accessible to mobility impaired students; and (4) provide auxiliary aids that effectively make lectures and necessary materials available to postsecondary handicapped students; (5) provide related aids or services that assure secondary students an appropriate education.

Academic requirements that the recipient can demonstrate are essential to a program of instruction or to any directly related licensing requirement will not be regarded as discriminatory. However, where possible, a recipient must adjust those requirements to the needs of individual handicapped students.

Access to vocational programs or courses may not be denied handicapped students on the ground that employment opportunities in any occupation or profession may be more limited for handicapped persons than for non-handicapped persons.

O. Public Notification

Prior to the beginning of each school year, recipients must advise students, parents, employees and the general public that all vocational opportunities will be offered without regard to race, color, national origin, sex, or handicap. Announcement of this policy of non-discrimination may be made, for example, in local newspapers, recipient publications and/or other media that reach the general public, program beneficiaries, minorities (including national origin minorities with limited English language skills), women, and handicapped persons. A brief summary of program offerings and admission criteria should be included in the announcement; also the name, address and telephone number of the person designated to coordinate Title IX and Section 504 compliance activity.

If a recipient's service area contains a community of national origin minority persons with limited English language skills, public notification materials must be disseminated to that community in its language and must state that recipients will take steps to assure that the lack of English language skills will not be a barrier to admission and participation in vocational education programs.

V. Counseling and Prevocational Programs

A. Recipient Responsibilities

Recipients must insure that their counseling materials and activities (including student program selection and career/employment selection), promotional, and recruitment efforts do not discriminate on the basis of race, color, national origin, sex, or handicap.

B. Counseling and Prospects for Success

Recipients that operate vocational education programs must insure that counselors do not direct or urge any student to enroll in a particular career or program, or measure or predict a student's prospects for success in any career or program based upon the student's race, color, national origin, sex, or handicap. Recipients may not counsel handicapped students toward more restrictive career objectives than nonhandicapped students with similar abilities and interests. If a vocational program disproportionately enrolls male or female students, minority or nonminority students, or handicapped students, recipients must take steps to insure that the disproportion does not result from unlawful discrimination in counseling activities.

C. Student Recruitment Activities

Recipients must conduct their student recruitment activities so as not to exclude or limit opportunities on the basis of race, color, national origin, sex, or handicap. Where recruitment activities involve the presentation or portrayal of vocational and career opportunities, the curricula and programs described should cover a broad range of occupational opportunities and not be limited on the basis of the race, color, national origin, sex, or handicap of the students or potential students to whom the presentation is made. Also, to the extent possible, recruiting teams should include persons of different races, national origins, sexes, and handicaps.

D. Counseling of Students With Limited English-Speaking Ability or Hearing Impairments

Recipients must insure that counselors can effectively communicate with national origin minority students with limited English language skills and with students who have hearing impairments. This requirement may be satisfied by having interpreters available.

E. Promotional Activities

Recipients may not undertake promotional efforts (including activities of school officials, counselors, and vocational staff) in a manner that creates or perpetuates stereotypes or limitations based on race, color, national origin, sex or handicap. Examples of promotional efforts are career days, parents' night, shop demonstrations, visitations by groups of prospective students and by representatives from business and industry. Materials that are part of promotional efforts may not create or perpetuate stereotypes through text or illustration. To the extent possible they should portray males or females, minorities or handicapped persons in programs and occupations in which these groups traditionally have not been represented. If a recipient's service area contains a community of national origin minority persons with limited English language skills, promotional literature must be distributed to that community in its language.

VI. Equal Opportunity in the Vocational Education Instructional Setting

A. Accommodations For Handicapped Students

Recipients must place secondary level handicapped students in the regular educational environment of any vocational education program to the maximum extent appropriate to the needs of the student unless it can be demonstrated that the education of the handicapped person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Handicapped students may be placed in a program only after the recipient satisfies the provisions of the Department's Regulation, 34 CFR Part 104, relating to evaluation, placement, and procedural safeguards. If a separate class or facility is identifiable as being for handicapped persons, the facility, the programs, and the services must be comparable to the facilities, programs, and services offered to nonhandicapped students.

B. Student Financial Assistance

Recipients may not award financial assistance in the form of loans, grants, scholarships, special funds, subsidies, compensation for work, or prizes to vocational education students on the basis of race, color, national origin, sex, or handicap, except to overcome the effects of past discrimination. Recipients may administer sex restricted financial assistance where the assistance and restriction are established by will, trust, bequest, or any similar legal instrument, if the overall effect of all financial assistance awarded does not discriminate on the basis of sex. Materials and information used to notify students of opportunities for financial assistance may not contain language or examples that would lead applicants to believe the assistance is provided on a discriminatory basis. If a recipient's service area contains a community of national origin minority persons with limited English language skills, such information must be disseminated to that community in its language.

C. Housing In Residential Postsecondary Vocational Education Centers

Recipients must extend housing opportunities without discrimination based on race, color, national origin, sex, or handicap. This obligation extends to recipients that provide on-campus housing and/or that have agreements with providers of off-campus housing. In particular, a recipient postsecondary vocational education program that provides on-campus or off-campus housing to its nonhandicapped students must provide, at the same cost and under the same conditions, comparable convenient and accessible housing to handicapped students.

D. Comparable Facilities

Recipients must provide changing rooms, showers, and other facilities for students of one sex that are comparable to those provided to students of the other sex. This may be accomplished by alternating use of the same facilities or by providing separate, comparable facilities.

Such facilities must be adapted or modified to the extent necessary to make the vocational education program readily accessible to handicapped persons.

VII. Work Study, Cooperative Vocational Education, Job Placement, and Apprentice Training

A. Responsibilities in Cooperative Vocational Education Programs, Work-Study Programs, and Job Placement Programs

A recipient must insure that: (a) it does not discriminate against its students on the basis of race, color, national origin, sex, or handicap in making available opportunities in cooperative education, work study and job placement programs; and (b) students participating in cooperative education, work study and job placement programs are not discriminated against by employers or prospective employers on the basis of race, color, national origin, sex, or handicap in recruitment, hiring, placement, assignment to work tasks, hours of employment, levels of responsibility, and in pay.

If a recipient enters into a written agreement for the referral or assignment of students to an employer, the agreement must contain an assurance from the employer that students will be accepted and assigned to jobs and otherwise treated without regard to race, color, national origin, sex, or handicap.

Recipients may not honor any employer's request for students who are free of handicaps or for students of a particular race, color, national origin, or sex. In the event an employer or prospective employer is or has been subject to court action involving discrimination in employment, school officials should rely on the court's findings if the decision resolves the issue of whether the employer has engaged in unlawful discrimination.

B. Apprentice Training Programs

A recipient may not enter into any agreement for the provision or support of apprentice training for students or union members with any labor union or other sponsor that discriminates against its members or applicants for membership on the basis of race, color, national origin, sex, or handicap. If a recipient enters into a written agreement with a labor union or other sponsor providing for apprentice training, the agreement must contain an assurance from the union or other sponsor: (1) that it does not engage in such discrimination against its membership or applicants for membership; and (2) that apprentice training will be offered and conducted for its membership free of such discrimination.

VIII. Employment of Faculty and Staff

A. Employment Generally

Recipients may not engage in any employment practice that discriminates against any employee or applicant for employment on the basis of sex or handicap. Recipients may not engage in any employment practice that discriminates on the basis of race, color, or national origin if such discrimination tends to result in segregation, exclusion or other discrimination against students.

B. Recruitment

Recipients may not limit their recruitment for employees to schools, communities, or companies disproportionately composed of persons of a particular race, color, national origin, sex, or handicap except for the purpose of overcoming the effects of past discrimination. Every source of faculty must be notified that the recipient does not discriminate in employment on the basis of race, color, national origin, sex, or handicap.

C. Patterns Of Discrimination

Whenever the Office for Civil Rights finds that in light of the representation of protected groups in the relevant labor market there is a significant underrepresentation or overrepresentation of protected group persons on the staff of a vocational education school or program, it will presume that the disproportion results from unlawful discrimination. This presumption can be overcome by proof that qualified persons of the particular race, color, national origin, or sex, or that qualified handicapped persons are not in fact available in the relevant labor market.

D. Salary Policies

Recipients must establish and maintain faculty salary scales and policy based upon the conditions and responsibilities of employment, without regard to race, color, national origin, sex or handicap.

E. Employment Opportunities For Handicapped Applicants

Recipients must provide equal employment opportunities for teaching and administrative positions to handicapped applicants who can perform the essential functions of the position in question. Recipients must make reasonable accommodation for the physical or mental limitations of handicapped applicants who are otherwise qualified unless recipients can demonstrate that the accommodation would impose an undue hardship.

F. The Effects Of Past Discrimination

Recipients must take steps to overcome the effects of past discrimination in the recruitment, hiring, and assignment of faculty. Such steps may include the recruitment or reassignment of qualified persons of a particular race, national origin, or sex, or who are handicapped.

G. Staff Of State Advisory Councils Of Vocational Education

State Advisory Councils of Vocational Education are recipients of Federal financial assistance and therefore must comply with Section VIII of the Guidelines.

H. Employment at State Operated Vocational Education Centers Through State Civil-Service Authorities

Where recruitment and hiring of staff for State operated vocational education centers is conducted by a State civil service employment authority, the State education agency operating the program must insure that recruitment and hiring of staff for the vocational education center is conducted in accordance with the requirements of these Guidelines.

IX. Proprietary Vocational Education Schools

A. Recipient Responsibilities

Proprietary vocational education schools that are recipients of Federal financial assistance through Federal student assistance programs or otherwise are subject to all of the requirements of the Department's regulations and these Guidelines.

B. Enforcement authority

Enforcement of the provisions of Title IX of the Education Amendments of 1972 and Section 504 of the Rehabilitation Act of 1973 is the responsibility of the Department of Education. However, authority to enforce Title VI of the Civil rights Act of 1964 for proprietary vocational education schools has been delegated to the Veterans Administration.

When the Office for Civil Rights receives a Title VI complaint alleging discrimination by a proprietary vocational education school it will forward the complaint to the Veterans Administration and cite the applicable

requirements of the Department's regulations and these Guidelines. The complainant will be notified of such action.

## PART 101—PRACTICE AND PROCEDURE FOR HEARINGS UNDER PART 100 OF THIS TITLE


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Authority: 5 U.S.C. 301

### Subpart A—General Information

#### § 101.1 Scope of rules.

The rules of procedure in this part supplement §§ 100.9 and 100.10 of this subtitle and govern the practice for hearings, decisions, and administrative review conducted by the Department of Education, pursuant to Title VI of the Civil Rights Act of 1964 (sec. 602, 78 Stat. 252) and Part 100 of this subtitle.

#### § 101.2 Records to be public.

All pleadings, correspondence, exhibits, transcripts, of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the Civil Rights hearing clerk. Inquiries may be made at the Department of Education, 400 Maryland Avenue SW., Washington, D.C. 20202.

#### § 101.3 Use of gender and number.

As used in this part, words importing the singular number may extend and be applied to several persons or things, and vice versa. Words importing the masculine gender may be applied to females or organizations.

#### § 101.4 Suspension of rules.

Upon notice to all parties, the reviewing authority or the presiding officer, with respect to matters pending before them, may modify or waive any rule in this part upon determination that no party will be unduly prejudiced and the ends of justice will thereby be served.

### Subpart B—Appearance and Practice

#### § 101.11 Appearance.

A party may appear in person or by counsel and participate fully in any proceeding. A State agency or a corporation may appear by any of its officers or by any employee it authorizes to appear on its behalf. Counsel must be members in good standing of the bar of a State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

#### § 101.12 Authority for representation.

Any individual acting in a representative capacity in any proceeding may be required to show his authority to act in such capacity.

#### § 101.13 Exclusion from hearing for misconduct.

Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at any hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

### Subpart C—Parties

#### § 101.21 Parties.

(a) The term party shall include an applicant or recipient or other person to whom a notice of hearing or opportunity for hearing has been mailed naming him a respondent.

(b) The Assistant Secretary for Civil Rights of the Department of Education, shall be deemed a party to all proceedings.

#### § 101.22 Amici curiae.

(a) Any interested person or organization may file a petition to participate in a proceeding as an amicus curiae. Such petition shall be filed prior to the prehearing conference, or if none is held, before the commencement of the hearing, unless the petitioner shows good cause for filing the petition later. The presiding officer may grant the petition if he finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome, and may contribute materially to the proper disposition thereof. An amicus curiae is not a party and may not introduce evidence at a hearing.

(b) An amicus curiae may submit a statement of position to the presiding officer prior to the beginning of a hearing, and shall serve a copy on each party. The amicus curiae may submit a brief on each occasion a decision is to

be made or a prior decision is subject to review. His brief shall be filed and served on each party within the time limits applicable to the party whose position he deems himself to support; or if he does not deem himself to support the position of any party, within the longest time limit applicable to any party at that particular stage of the proceedings.

(c) When all parties have completed their initial examination of a witness, any amicus curiae may request the presiding officer to propound specific questions to the witness. The presiding officer, in his discretion, may grant any such request if he believes the proposed additional testimony may assist materially in elucidating factual matters at issue between the parties and will not expand the issues.

**§ 101.23 Complainants not parties.**

A person submitting a complaint pursuant to § 100.7(b) of this title is not a party to the proceedings governed by this part, but may petition, after proceedings are initiated, to become an amicus curiae.

## Subpart D—Form, Execution, Service and Filing of Documents

**§ 101.31 Form of documents to be filed.**

Documents to be filed under the rules in this part shall be dated, the original signed in ink, shall show the docket description and title of the proceeding, and shall show the title, if any, and address of the signatory. Copies need not be signed but the name of the person signing the original shall be reproduced. Documents shall be legible and shall not be more than 8½ inches wide and 12 inches long.

**§ 101.32 Signature of documents.**

The signature of a party, authorized officer, employee or attorney constitutes a certificate 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. If a document is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may proceed as though the document had not been filed. Similar action may be taken if scandalous or indecent matter is inserted.

**§ 101.33 Filing and service.**

All notices by a Department official, and all written motions, requests, petitions, memoranda, pleadings, exceptions, briefs, decisions, and correspondence to a Department official from a party, or vice versa, relating to a proceeding after its commencement shall be filed and served on all parties. Parties shall supply the original and two copies of documents submitted for filing. Filings shall be made with the Civil Rights hearing clerk at the address stated in the notice of hearing or notice of opportunity for hearing, during regular business hours. Regular business hours are every Monday through Friday (legal holidays in the District of Columbia excepted) from 9 a.m. to 5:30 p.m., eastern standard or daylight saving time, whichever is effective in the District of Columbia at the time. Originals only on exhibits and transcripts of testimony need be filed. For requirements of service on amici curiae, see § 101.107.

**§ 101.34 Service—how made.**

Service shall be made by personal delivery of one copy to each person to be served or by mailing by first-class mail, properly addressed with postage prepaid. When a party or amicus has appeared by attorney or other representative, service upon such attorney or representative will be deemed service upon the party or amicus. Documents served by mail preferably should be mailed in sufficient time to reach the addressee by the date on which the original is due to be filed, and should be air mailed if the addressee is more than 300 miles distant.

**§ 101.35 Date of service.**

The date of service shall be the day when the matter is deposited in the U.S. mail or is delivered in person, except that the date of service of the initial notice of hearing or opportunity for hearing shall be the date of its delivery, or of its attempted delivery if refused.

**§ 101.36 Certificate of service.**

The original of every document filed and required to be served upon parties to a proceeding shall be endorsed with a certificate of service signed by the party making service or by his attorney or representative, stating that such service has been made, the date of service, and the manner of service, whether by mail or personal delivery.

## Subpart E—Time

**§ 101.41 Computation.**

In computing any period of time under the rules in this part or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed in the District of Columbia, in which event it includes the next following business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

**§ 101.42 Extension of time or postponement.**

Requests for extension of time should be served on all parties and should set forth the reasons for the application. Applications may be granted upon a showing of good cause by the applicant. From the designation of a presiding officer until the issuance of his decision such requests should be addressed to him. Answers to such requests are permitted, if made promptly.

**§ 101.43 Reduction of time to file documents.**

For good cause, the reviewing authority or the presiding officer, with respect to matters pending before them, may reduce any time limit prescribed by the rules in this part, except as provided by law or in Part 80 of this title.

## Subpart F—Proceedings Prior to Hearing

**§ 101.51 Notice of hearing or opportunity for hearing.**

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing to an affected applicant or recipient, pursuant to § 100.9 of this title.

**§ 101.52 Answer to notice.**

The respondent, applicant or recipient may file an answer to the notice within 20 days after service thereof. Answers shall admit or deny specifically and in detail each allegation of the notice, unless the respondent party is without knowledge, in which case his answer should so state, and the statement will be deemed a denial. Allegations of fact in the notice not denied or controverted by answer shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered. Failure of the respondent to file an answer within the 20-day period following service of the notice may be deemed an admission of all matters of fact recited in the notice.

**§ 101.53 Amendment of notice or answer.**

The Assistant Secretary for Civil Rights may amend the notice of hearing or opportunity for hearing once as a matter of course before an answer thereto is served, and each respondent may amend his answer once as a matter of course not later than 10 days before the date fixed for hearing but in no event later than 20 days from the date of service of his original answer. Otherwise a notice or answer may be

amended only by leave of the presiding officer. A respondent shall file his answer to an amended notice within the time remaining for filing the answer to the original notice or within 10 days after service of the amended notice, whichever period may be the longer, unless the presiding officer otherwise orders.

**§ 101.54 Request for hearing.**

Within 20 days after service of a notice of opportunity for hearing which does not fix a date for hearing the respondent, either in his answer or in a separate document, may request a hearing. Failure of the respondent to request a hearing shall be deemed a waiver of the right to a hearing and to constitute his consent to the making of a decision on the basis of such information as is available.

**§ 101.55 Consolidation.**

The responsible Department official may provide for proceedings in the Department to be joined or consolidated for hearing with proceedings in other Federal departments or agencies, by agreement with such other departments or agencies. All parties to any proceeding consolidated subsequently to service of the notice of hearing or opportunity for hearing shall be promptly served with notice of such consolidation.

**§ 101.56 Motions.**

Motions and petitions shall state the relief sought, the authority relied upon, and the facts alleged. If made before or after the hearing, these matters shall be in writing. If made at the hearing, they may be stated orally; but the presiding officer may require that they be reduced to writing and filed and served on all parties in the same manner as a formal motion. Motions, answers, and replies shall be addressed to the presiding officer, if the case is pending before him. A repetitious motion will not be entertained.

**§ 101.57 Responses to motions and petitions.**

Within 8 days after a written motion or petition is served, or such other period as the reviewing authority or the presiding officer may fix, any party may file a response thereto. An immediate oral response may be made to an oral motion.

**§ 101.58 Disposition of motions and petitions.**

The reviewing authority or the presiding officer may not sustain or grant a written motion or petition prior to expiration of the time for filing responses thereto, but may overrule or deny such motion or petition without awaiting response: *Provided, however,* That prehearing conferences, hearings and decisions need not be delayed pending disposition of motions or petitions. Oral motions and petitions may be ruled on immediately. Motions and petitions submitted to the reviewing authority or the presiding officer, respectively, and not disposed of in separate rulings or in their respective decisions will be deemed denied. Oral arguments shall not be held or written motions or petitions unless the presiding officer in his discretion expressly so orders.

## Subpart G—Responsibilities and Duties of Presiding Officer

**§ 101.61 Who presides.**

A hearing examiner assigned under 5 U.S.C. 3105 or 3344 (formerly sec. 11 of the Administrative Procedure Act) shall preside over the taking of evidence in any hearing to which these rules of procedure apply.

**§ 101.62 Designation of hearing examiner.**

The designation of the hearing examiner as presiding officer shall be in writing, and shall specify whether the examiner is to make an initial decision or to certify the entire record including his recommended findings and proposed decision to the reviewing authority, and may also fix the time and place of hearing. A copy of such order shall be served on all parties. After service of an order designating a hearing examiner to preside, and until such examiner makes his decision, motions and petitions shall be submitted to him. In the case of the death, illness, disqualification or unavailability of the designated hearing examiner, another hearing examiner may be designated to take his place.

**§ 101.63 Authority of presiding officer.**

The presiding officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He shall have all powers necessary to these ends, including (but not limited to) the power to:

(a) Arrange and issue notice of the date, time, and place of hearings, or, upon due notice to the parties, to change the date, time, and place of hearings previously set.

(b) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(c) Require parties and amici curiae to state their position with respect to the various issues in the proceeding.

(d) Administer oaths and affirmations.

(e) Rule on motions, and other procedural items on matters pending before him.

(f) Regulate the course of the hearing and conduct of counsel therein.

(g) Examine witnesses and direct witnesses to testify.

(h) Receive, rule on, exclude or limit evidence.

(i) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him.

(j) Issue initial or recommended decisions.

(k) Take any action authorized by the rules in this part or in conformance with the provisions of 5 U.S.C. 551–559 (the Administrative Procedure Act).

## Subpart H—Hearing Procedures

**§ 101.71 Statement of position and trial briefs.**

The presiding officer may require parties and amici curiae to file written statements of position prior to the beginning of a hearing. The presiding officer may also require the parties to submit trial briefs.

**§ 101.72 Evidentiary purpose.**

(a) The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, which shall be limited to statement of the party's position and what he intends to prove, may be made at hearings.

(b) Hearings for the reception of evidence will be held only in cases where issues of fact must be resolved in order to determine whether the respondent has failed to comply with one or more applicable requirements of Part 100 of this title. In any case where it appears from the respondent's answer to the notice of hearing or opportunity for hearing, from his failure timely to answer, or from his admissions or stipulations in the record, that there are no matters of material fact in dispute, the reviewing authority or presiding officer may enter an order so finding, vacating the hearing date if one has been set, and fixing the time for filing briefs under § 101.101. Thereafter the proceedings shall go to conclusion in accordance with Subpart J of this part. The presiding officer may allow an appeal from such order in accordance with § 101.86.

**§ 101.73 Testimony.**

Testimony shall be given orally under oath or affirmation by witnesses at the hearing; but the presiding officer, in his

discretion, may require or permit that the direct testimony of any witness be prepared in writing and served on all parties in advance of the hearing. Such testimony may be adopted by the witness at the hearing, and filed as part of the record thereof. Unless authorized by the presiding officer, witnesses will not be permitted to read prepared testimony into the record. Except as provided in §§ 101.75 and 101.76, witnesses shall be available at the hearing for cross-examination.

**§ 101.74 Exhibits.**

Proposed exhibits shall be exchanged at the prehearing conference, or otherwise prior to the hearing if the presiding officer so requires. Proposed exhibits not so exchanged may be denied admission as evidence. The authenticity of all proposed exhibits exchanged prior to hearing will be deemed admitted unless written objection thereto is filed prior to the hearing or unless good cause is shown at the hearing for failure to file such written objection.

**§ 101.75 Affidavits.**

An affidavit is; not inadmissible as such. Unless the presiding officer fixes other time periods affidavits shall be filed and served on the parties not later than 15 days prior to the hearing; and not less than 7 days prior to hearing a party may file and serve written objection to any affidavit on the ground that he believes it necessary to test the truth of assertions therein at hearing. In such event the assertions objected to will not be received in evidence unless the affiant is made available for cross-examination, or the presiding officer determines that cross-examination is not necessary for the full and true disclosure of facts referred to in such assertions. Notwithstanding any objection, however, affidavits may be considered in the case of any respondent who waives a hearing.

**§ 101.76 Depositions.**

Upon such terms as may be just, for the convenience of the parties or of the Department, the presiding officer may authorize or direct the testimony of any witness to be taken by deposition.

**§ 101.77 Admissions as to facts and documents.**

Not later than 15 days prior to the scheduled date of the hearing except for good cause shown, or prior to such earlier date as the presiding officer may order, any party may serve upon an opposing party a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters of which an admission is requested shall be deemed admitted, unless within a period designated in the request (not less than 10 days after service thereof, or within such further time as the presiding officer or the reviewing authority if no presiding officer has yet been designated may allow upon motion and notice) the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny such matters. Copies of requests for admission and answers thereto shall be served on all parties. Any admission made by a party to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement of any order entered therein, and shall not constitute and admission by him for any other purpose or be used against him in any other proceeding or action.

**§ 101.78 Evidence.**

Irrelevant, immaterial, unreliable, and unduly repetitious evidence will be excluded.

**§ 101.79 Cross-examination.**

A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his direct examination.

**§ 101.80 Unsponsored written material.**

Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

**§ 101.81 Objections.**

Objections to evidence shall be timely and briefly state the ground relied upon.

**§ 101.82 Exceptions to rulings of presiding officer unnecessary.**

Exceptions to rulings of the presiding officer are unnecessary. It is sufficient that a party, at the time the ruling of the presiding officer is sought, makes known the action which he desires the presiding officer to take, or his objection to an action taken, and his grounds therefor.

**§ 101.83 Official notice.**

Where official notice is taken or is to be taken of a material fact not appearing in the evidence of record, any party, on timely request, shall be afforded an opportunity to show the contrary.

**§ 101.84 Public document items.**

Whenever there is offered (in whole or in part) a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations), or a similar document issued by a State or its agencies, and such document (or part thereof) has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered for official notice, as a public document item by specifying the document or relevant part thereof.

**§ 101.85 Offer of proof.**

An offer of proof made in connection with an objection taken to any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall accompany the record as the offer of proof.

**§ 101.86 Appeals from ruling of presiding officer.**

Rulings of the presiding officer may not be appealed to the reviewing authority prior to his consideration of the entire proceeding except with the consent of the presiding officer and where he certifies on the record or in writing that the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expense, or prejudice to any party, or substantial detriment to the public interest. If an appeal is allowed, any party may file a brief with the reviewing authority within such period as the presiding officer directs. No oral argument will be heard unless the reviewing authority directs otherwise. At any time prior to submission of the proceeding to it for decisions, the reviewing authority may direct the presiding officer to certify any question or the entire record to it for decision. Where the entire record is so certified, the presiding officer shall recommend a decision.

## Subpart I—The Record

### § 101.91 Official transcript.

The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

### § 101.92 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision shall constitute the exclusive record for decision.

## Subpart J—Posthearing Procedures, Decisions

### § 101.101 Posthearing briefs: proposed findings and conclusions.

(a) The presiding officer shall fix the time for filing posthearing briefs, which may contain proposed findings of fact and conclusions of law, and, if permitted, reply briefs.

(b) Briefs should include a summary of the evidence relied upon together with references to exhibit numbers and pages of the transcript, with citations of the authorities relied upon.

### § 101.102 Decisions following hearing.

When the time for submission of posthearing briefs has expired, the presiding officer shall certify the entire record, including his recommended findings and proposed decision, to the responsible Department official; or if so authorized he shall make an initial decision. A copy of the recommended findings and proposed decision, or of the initial decision, shall be served upon all parties, and amici, if any.

### § 101.103 Exceptions to initial or recommended decisions.

Within 20 days after the mailing of an initial or recommended decision, any party may file exceptions to the decision, stating reasons therefor, with the reviewing authority. Any other party may file a response thereto within 30 days after the mailing of the decision. Upon the filing of such exceptions, the reviewing authority shall review the decision and issue its own decision thereon.

### § 101.104 Final decisions.

(a) Where the hearing is conducted by a hearing examiner who makes an initial decision, if no exceptions thereto are filed within the 20-day period specified in § 101.103, such decision shall become the final decision of the Department, and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 (formerly section 10(c) of the Administrative Procedure Act), subject to the provisions of § 101.106.

(b) Where the hearing is conducted by a hearing examiner who makes a recommended decision, or upon the filing of exceptions to a hearing examiner's initial decision, the reviewing authority shall review the recommended or initial decision and shall issue its own decision thereon, which shall become the final decision of the Department, and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 (formerly section 10(c) of the Administrative Procedure Act), subject to the provisions of § 101.106.

(c) All final decisions shall be promptly served on all parties, and amici, if any.

### § 101.105 Oral argument to the reviewing authority.

(a) If any party desires to argue a case orally on exceptions or replies to exceptions to an initial or recommended decision, he shall make such request in writing. The reviewing authority may grant or deny such requests in its discretion. If granted, it will serve notice of oral argument on all parties. The notice will set forth the order of presentation, the amount of time allotted, and the time and place for argument. The names of persons who will argue should be filed with the Department hearing clerk not later than 7 days before the date set for oral argument.

(b) The purpose of oral argument is to emphasize and clarify the written argument in the briefs. Reading at length from the brief or other texts is not favored. Participants should confine their arguments to points of controlling importance and to points upon which exceptions have been filed. Consolidations of appearances at oral argument by parties taking the same side will permit the parties' interests to be presented more effectively in the time allotted.

(c) Pamphlets, charts, and other written material may be presented at oral argument only if such material is limited to facts already in the record and is served on all parties and filed with the Department hearing clerk at least 7 days before the argument.

### § 101.106 Review by the Secretary.

Within 20 days after an initial decision becomes a final decision pursuant to § 101.104(a) or within 20 days of the mailing of a final decision referred to in § 101.104(b), as the case may be, a party may request the Secretary to review the final decision. The Secretary may grant or deny such request, in whole or in part, or serve notice of his intent to review the decision in whole or in part upon his own motion. If the Secretary grants the requested review, or if he serves notice of intent to review upon his own motion, each party to the decision shall have 20 days following notice of the Secretary's proposed action within which to file exceptions to the decision and supporting briefs and memoranda, or briefs and memoranda in support of the decision. Failure of a party to request review under this paragraph shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

### § 101.107 Service on amici curiae.

All briefs, exceptions, memoranda, requests, and decisions referred to in this subpart J shall be served upon amici curiae at the same times and in the same manner required for service on parties. Any written statements of position and trial briefs required of parties under § 101.71 shall be served on amici.

## Subpart K—Judicial Standards of Practice

### § 101.111 Conduct.

Parties and their representatives are expected to conduct themselves with honor and dignity and observe judicial standards of practice and ethics in all proceedings. They should not indulge in offensive personalities, unseemly wrangling, or intemperate accusations or characterizations. A representative of any party whether or not a lawyer shall observe the traditional responsibilities of lawyers as officers of the court and use his best efforts to restrain his client from improprieties in connection with a proceeding.

### § 101.112 Improper conduct.

With respect to any proceeding it is improper for any interested person to attempt to sway the judgement of the reviewing authority by undertaking to bring pressure or influence to bear upon any officer having a responsibility for a decision in the proceeding, or his decisional staff. It is improper that such interested persons or any members of

the Department's staff or the presiding officer give statements to communications media, by paid advertisement or otherwise, designed to influence the judgement of any officer having a responsibility for a decision in the proceeding, or his decisional staff. It is improper for any person to solicit communications to any such officer, or his decisional staff, other than proper communications by parties or amici curiae.

**§ 101.113 Ex parte communications.**

Only persons employed by or assigned to work with the reviewing authority who perform no investigative or prosecuting function in connection with a proceeding shall communicate ex parte with the reviewing authority, or the presiding officer, or any employee or person involved in the decisional process in such proceedings with respect to the merits of that or a factually related proceeding. The reviewing authority, the presiding officer, or any employee or person involved in the decisional process of a proceeding shall communicate ex parte with respect to the merits of that or a factually related proceeding only with persons employed by or assigned to work with them and who perform no investigative or prosecuting function in connection with the proceeding.

**§ 101.114 Expeditious treatment.**

Requests for expeditious treatment of matters pending before the responsible Department official or the presiding officer are deemed communications on the merits, and are improper except when forwarded from parties to a proceeding and served upon all other parties thereto. Such communications should be in the form of a motion.

**§ 101.115 Matters not prohibited.**

A request for information which merely inquires about the status of a proceeding without discussing issues or expressing points of view is not deemed an ex parte communication. Such requests should be directed to the Civil Rights hearing clerk. Communications with respect to minor procedural matters or inquiries or emergency requests for extensions of time are not deemed ex parte communications prohibited by § 101.113. Where feasible, however, such communications should be by letter with copies to all parties. Ex parte communications between a respondent and the responsible Department official or the Secretary with respect to securing such respondent's voluntary compliance with any requirement of Part 100 of this title are not prohibited.

**§ 101.116 Filing of ex parte communications.**

A prohibited communication in writing received by the Secretary, the reviewing authority, or by the presiding officer, shall be made public by placing it in the correspondence file of the docket in the case and will not be considered as part of the record for decision. If the prohibited communication is received orally a memorandum setting forth its substance shall be made and filed in the correspondence section of the docket in the case. A person referred to in such memorandum may file a comment for inclusion in the docket if he considers the memorandum to be incorrect.

## Subpart L—Posttermination Proceedings

**§ 101.121 Posttermination proceedings.**

(a) An applicant or recipient adversely affected by the order terminating, discontinuing, or refusing Federal financial assistance in consequence of proceedings pursuant to this title may request the responsible Department official for an order authorizing payment, or permitting resumption, of Federal financial assistance. Such request shall be in writing and shall affirmatively show that since entry of the order, it has brought its program or activity into compliance with the requirements of the Act, and with the Regulation thereunder, and shall set forth specifically, and in detail, the steps which it has taken to achieve such compliance. If the responsible Department official denies such request the applicant or recipient shall be given an expeditious hearing if it so requests in writing and specifies why it believes the responsible Department official to have been in error. The request for such a hearing shall be addressed to the responsible Department official and shall be made within 30 days after the applicant or recipient is informed that the responsible Department official has refused to authorize payment or permit resumption of Federal financial assistance.

(b) In the event that a hearing shall be requested pursuant to subparagraph (a) of this section, the hearing procedures established by this part shall be applicable to the proceedings, except as otherwise provided in this section.

## Subpart M—Definitions

**§ 101.131 Definitions.**

The definitions contained in § 100.13 of this subtitle apply to this part, unless the context otherwise requires, and the term "reviewing authority" as used herein includes the Secretary of Education, with respect to action by that official under § 101.108.

Transition provisions: (a) The amendments herein shall become effective upon publication in the Federal Register.

(b) These rules shall apply to any proceeding or part thereof to which Part 100 of this title applies. In the case of any proceeding or part thereof governed by the provisions of 45 CFR Part 80 (Title VI regulations of the Department of Health, Education, and Welfare) as that part existed prior to the amendments published in the Federal Register on Oct. 19, 1967 (effective on that date), the rules in this Part 101 shall apply as if those amendments were not in effect.

# PART 104—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

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Authority: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794); sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 88 Stat. 1619 (29 U.S.C. 706); sec. 606, Education of the Handicapped Act (20 U.S.C. 1405), as amended by Pub. L. 94–142, 89 Stat. 795.

## Subpart A—General Provisions

### § 104.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

### § 104.2 Application.

This part applies to each recipient of Federal financial assistance from the Department of Education and to each program or activity that receives or benefits from such assistance.

### § 104.3 Definitions.

As used in this part, the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93–112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 29 U.S.C. 794.

(b) "Section 504" means section 504 of the Act.

(c) "Education of the Handicapped Act" means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94–142, 20 U.S.C. 1401 et seq.

(d) "Department" means the Department of Education.

(e) "Assistant Secretary" means the Assistant Secretary for Civil Rights of the Department of Education.

(f) "Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(h) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) "Handicapped person." (1) "Handicapped persons" means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) "Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public preschool elementary, secondary, or adult educational services, a handicappped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under § 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(l) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

### § 104.4 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activitiy which receives or

benefits from Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Programs limited by Federal law.* The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

**§ 104.5 Assurances required.**

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Assistant Secretary, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Assistant Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

**§ 104.6 Remedial action, voluntary action, and self-evaluation.**

(a) *Remedial action.* (1) If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Assistant Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Assistant Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Assistant Secretary upon request: (i) a list of the interested persons consulted (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

**§ 104.7 Designation of responsible employee and adoption of grievance procedures.**

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

**§104.8 Notice.**

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applications, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to § 104.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

**§ 104.9 Administrative requirements for small recipients.**

The Assistant Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with §§ 104.7 and 104.8, in whole or in part, when the Assistant Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

**§ 104.10 Effect of state or local law or other requirements and effect of employment opportunities.**

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

## Subpart B—Employment Practices

**§ 104.11 Discrimination prohibited.**

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs assisted under that Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this subparagraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe

benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) *Specific activities:* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absense, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

**§ 104.12 Reasonable accommodation.**

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include: (1) making facilities used by employees readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

**§ 104.13 Employment criteria.**

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless: (1) the test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

**§ 104.14 Preemployment inquiries.**

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 84.6 (a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 84.6(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, *Provided,* That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, *Provided,* That: (1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

**§§ 104.15-104.20 [Reserved]**

## Subpart C—Program Accessibility

**§ 104.21 Discrimination prohibited.**

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

**§ 104.22 Existing facilities.**

(a) *Program accessibility.* A recipient shall operate each program or activity to

which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of § 104.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Small health, welfare, or other social service providers.* If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.

(d) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicappped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify the steps of that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usuable by handicapped persons.

**§ 104.23 New construction.**

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) *American National Standards Institute accessibility standards.* Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A117.1–1961 (R1971)), which is incorporated by reference in this part, shall constitute compliance with paragraphs (a) and (b) of this section. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided. Incorporation by reference provisions approved by the Director of the Federal Register, May 27, 1975. Incorporated documents are on file at the Office of the Federal Register.

Copies obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018.

**§§ 104.24–104.30 [Reserved]**

## Subpart D—Preschool, Elementary, and Secondary Education

**§ 104.31 Application of this subpart.**

Subpart D applies to preschool, elementary, secondary, and adult education programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

**§ 104.32 Location and notification.**

A recipient that operates a public elementary or secondary education program shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

**§ 104.33 Free appropriate public education.**

(a) *General.* A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) *Appropriate education.* (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36.

(2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person in or refer such person to a program other than the one

that it operates as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) *Free education*—(1) *General.* For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) *Transportation.* If a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient.

(3) *Residential placement.* If placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the program, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) *Placement of handicapped persons by parents.* If a recipient has made available, in conformance with the requirements of this section and § 104.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or otherwise regarding the question of financial responsibility are subject to the due process procedures of § 104.36.

(d) *Compliance.* A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

**§ 104.34 Educational setting.**

(a) *Academic setting.* A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) *Nonacademic settings.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) *Comparable facilities.* If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

**§ 104.35 Evaluation and placement.**

(a) *Preplacement evaluation.* A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is belived to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement.

(b) *Evaluation procedures.* A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) *Placement procedures.* In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with § 104.34.

(d) *Reevaluation.* A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

**§ 104.36 Procedural safeguards.**

A recipient that operates a public elementary or secondary education

program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

**§ 104.37 Nonacademic services.**

(a) *General.* (1) A recipient to which this subpart applies shall provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) *Counseling services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of § 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

**§ 104.38 Preschool and adult education programs.**

A recipient to which this subpart applies that operates a preschool education or day care program or activity or an adult education program or activity may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided under the program or activity.

**§ 104.39 Private education programs.**

(a) A recipient that operates a private elementary or secondary education program may not, on the basis of handicap, exclude a qualified handicapped person from such program if the person can, with minor adjustments, be provided an appropriate education, as defined in § 104.33(b)(1), within the recipient's program.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that operates special education programs shall operate such programs in accordance with the provisions of §§ 104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of §§ 104.34, 104.37, and 104.38.

**§ 104.40 [Reserved]**

## Subpart E—Postsecondary Education

**§ 104.41 Application of this subpart.**

Subpart E applies to postsecondary education programs and activities, including postsecondary vocational education programs and activities, that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

**§ 104.42 Admissions and recruitment.**

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Assistant Secretary to be available.

(3) Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) *Preadmission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 104.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 104.6(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped, *Provided,* That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the

information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) *Validity studies.* For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

**§ 104.43 Treatment of students; general.**

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, and education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its programs and activities in the most integrated setting appropriate.

**§ 104.44 Academic adjustments.**

(a) *Academic requirements.* A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) *Other rules.* A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) *Course examinations.* In its course examinations or other procedures for evaluating students' academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

**§ 104.45 Housing.**

(a) *Housing provided by the recipient.* A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in Subpart C, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations is, as a whole, comparable to that of nonhandicapped students.

(b) *Other housing.* A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

**§ 104.46 Financial and employment assistance to students.**

(a) *Provision of financial assistance.* (1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not (i), on the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or (ii) assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) *Assistance in making available outside employment.* A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate Subpart B if they were provided by the recipient.

(c) *Employment of students by recipients.* A recipient that employs any of its students may not do so in a manner that violates Subpart B.

**§ 104.47 Nonacademic services.**

(a) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not disacriminate on the basis of handicap. A recipient

that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of § 104.43(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) *Counseling and placement services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) *Social organizations.* A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

**§§ 104.48–104.50 [Reserved]**

## Subpart F—Health, Welfare, and Social Services

**§ 104.51 Application of this subpart.**

Subpart F applies to health, welfare, and other social service programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

**§ 104.52 Health, welfare, and other social services.**

(a) *General.* In providing health, welfare, or other social services or benefits, a recipient may not, on the basis of handicap:

(1) Deny a qualified handicapped person these benefits or services;

(2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;

(3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in § 104.4(b)) as the benefits or services provided to others;

(4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or

(5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) *Notice.* A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) *Emergency treatment for the hearing impaired.* A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(2) The Assistant Secretary may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(3) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

**§ 104.53 Drug and alcohol addicts.**

A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.

**§ 104.54 Education of institutionalized persons.**

A recipient to which this subpart applies and that operates or supervises a program or activity for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person, as defined in § 104.3(k)(2), in its program or activity is provided an appropriate education, as defined in § 104.33(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under Subpart D.

**§§ 104.55–104.60 [Reserved]**

## Subpart G—Procedures

**§ 104.61 Procedures.**

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§ 100.6–100.10 and Part 101 of this Title.

**§§ 104.62–104.99 [Reserved]**

## Appendix A—Analysis of Final Regulation

### Subpart A—General Provisions

*Definitions*—1. *"Recipient".* Section 104.23 contains definitions used throughout the regulation.

One comment requested that the regulation specify that nonpublic elementary and secondary schools that are not otherwise recipients do not become recipients by virtue of the fact their students participate in certain federally funded programs. The Secretary believes it unnecessary to amend the regulation in this regard, because almost identical language in the Department's regulations implementing title VI and title IX of the Education Amendments of 1972 has consistently been interpreted so as not to render such schools recipients. These schools, however, are indirectly subject to the substantive requirements of this regulation through the application of § 104.4(b)(iv), which prohibits recipients from assisting agencies that discriminate on the basis of handicap in providing services to beneficiaries of the recipients' programs.

2. *"Federal financial assistance".* In § 104.3(h), defining federal financial assistance, a clarifying change has been made: procurement contracts are specifically excluded. They are covered, however, by the Department of Labor's regulation under section 503. The Department has never considered such contracts to be contracts of assistance; the explicit exemption has been added only to avoid possible confusion.

The proposed regulation's exemption of contracts of insurance or guaranty has been retained. A number of comments argued for its deletion on the ground that section 504, unlike title VI and title IX, contains no statutory exemption for such contracts. There is no indication, however, in the legislative history of the Rehabilitation Act of 1973 or of the amendments to that Act in 1974, that Congress intended section 504 to have a

broader application, in terms of federal financial assistance, than other civil rights statutes. Indeed, Congress directed that section 504 be implemented in the same manner as titles VI and IX. In view of the long established exemption of contracts of insurance or guaranty under title VI, we think it unlikely that Congress intended section 504 to apply to such contracts.

3. *"Handicapped person".* Section 104.3(j), which defines the class of persons protected under the regulation, has not been substantially changed. The definition of handicapped person in paragraph (j)(1) conforms to the statutory definition of handicapped person that is applicable to section 504, as set forth in section 111(a) of the Rehabilitation Act Amendments of 1974, Pub. L. 93-516.

The first of the three parts of the statutory and regulatory definition includes any person who has a physical or mental impairment that substantially limits one or more major life activities. Paragraph (j)(2)(i) further defines physical or mental impairments. The definition does not set forth a list of specific diseases and conditions that constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of any such list. The term includes, however, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and, as discussed below, drug addiction and alcoholism.

It should be emphasized that a physical or mental impairment does not constitute a handicap for purposes of section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities. Several comments observed the lack of any definition in the proposed regulation of the phrase "substantially limits." The Department does not believe that a definition of this term is possible at this time.

A related issue raised by several comments is whether the definition of handicapped person is unreasonably broad. Comments suggested narrowing the definition in various ways. The most common recommendation was that only "traditional" handicaps be covered. The Department continues to believe, however, that it has no flexibility within the statutory definition to limit the term to persons who have those severe, permanent, or progressive conditions that are most commonly regarded as handicaps. The Department intends, however, to give particular attention in its enforcement of section 504 to eliminating discrimination against persons with the severe handicaps that were the focus of concern in the Rehabilitation Act of 1973.

The definition of handicapped person also includes specific limitations on what persons are classified as handicapped under the regulation. The first of the three parts of the definition specifies that only physical and mental handicaps are included. Thus, environmental, cultural, and economic disadvantage are not in themselves covered; nor are prison records, age, or homosexuality. Of course, if a person who has any of these characteristics also has a physical or mental handicap, the person is included within the definition of handicapped person.

In paragraph (j)(2)(i), physical or mental impairment is defined to include, among other impairments, specific learning disabilities. The Department will interpret the term as it is used in section 602 of the Education of the Handicapped Act, as amended. Paragraph (15) of section 602 uses the term "specific learning disabilities" to describe such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Paragraph (j)(2)(i) has been shortened, but not substantively changed, by the deletion of clause (C), which made explicit the inclusion of any condition which is mental or physical but whose precise nature is not at present known. Clauses (A) and (B) clearly comprehend such conditions.

The second part of the statutory and regulatory definition of handicapped person includes any person who has a record of a physical or mental impairment that substantially limits a major life activity. Under the definition of "record" in paragraph (j)(2)(iii), persons who have a history of a handicapping condition but no longer have the condition, as well as persons who have been incorrectly classified as having such a condition, are protected from discrimination under section 504. Frequently occurring examples of the first group are persons with histories of mental or emotional illness, heart disease, or cancer; of the second group, persons who have been misclassified as mentally retarded.

The third part of the statutory and regulatory definition of handicapped person includes any person who is regarded as having a physical or mental impairment that substantially limits one or more major life activities. It includes many persons who are ordinarily considered to be handicapped but who do not technically fall within the first two parts of the statutory definition, such as persons with a limp. This part of the definition also includes some persons who might not ordinarily be considered handicapped, such as persons with disfiguring scars, as well as persons who have no physical or mental impairment but are treated by a recipient as if they were handicapped.

4. *Drug addicts and alcoholics.* As was the case during the first comment period, the issue of whether to include drug addicts and alcoholics within the definition of handicapped person was of major concern to many commenters. The arguments presented on each side of the issue were similar during the two comment periods, as was the preference of commenters for exclusion of this group of persons. While some comments reflected misconceptions about the implications of including alcoholics and drug addicts within the scope of the regulation, the Secretary understands the concerns that underlie the comments on this question and recognizes that application of section 504 to active alcoholics and drug addicts presents sensitive and difficult questions that must be taken into account in interpretation and enforcement.

The Secretary has carefully examined the issue and has obtained a legal opinion from the Attorney General. That opinion concludes that drug addiction and alcoholism are "physical or mental impairments" within the meaning of section 7(6) of the Rehabilitation Act of 1973, as amended, and that drug addicts and alcoholics are therefore handicapped for purposes of section 504 if their impairment substantially limits one of their major life activities. The Secretary therefore believes that he is without authority to exclude these conditions from the definition. There is a medical and legal consensus that alcoholism and drug addiction are diseases, although there is disagreement as to whether they are primarily mental or physical. In addition, while Congress did not focus specifically on the problems of drug addiction and alcoholism in enacting section 504, the committees that considered the Rehabilitation Act of 1973 were made aware of the Department's long-standing practice of treating addicts and alcoholics as handicapped individuals eligible for rehabilitation services under the Vocational Rehabilitation Act.

The Secretary wishes to reassure recipients that inclusion of addicts and alcoholics within the scope of the regulation will not lead to the consequences feared by many commenters. It cannot be emphasized too strongly that the statute and the regulation apply only to discrimination against qualified handicapped persons solely by reason of their handicap. The fact that drug addiction and alcoholism may be handicaps does not mean that these conditions must be ignored in determining whether an individual is qualified for services or employment opportunities. On the contrary, a recipient may hold a drug addict or alcoholic to the same standard of performance and behavior to which it holds others, even if any unsatisfactory performance or behavior is related to the person's drug addiction or alcoholism. In other words, while an alcoholic or drug addict may not be denied services or disqualified from employment solely because of his or her condition, the behavioral manifestations of the condition may be taken into account in determining whether he or she is qualified.

With respect to the employment of a drug addict or alcoholic, if it can be shown that the addiction or alcoholism prevents successful performance of the job, the person need not be provided the employment opportunity in question. For example, in making employment decisions, a recipient may judge addicts and alcoholics on the same basis it judges all other applicants and employees. Thus, a recipient may consider—for all applicants including drug addicts and alcoholics—past personnel records, absenteeism, disruptive, abusive, or dangerous behavior, violations of rules and unsatisfactory work performance. Moreover, employers may enforce rules prohibiting the possession or use of alcohol or drugs in the work-place, provided that such rules are enforced against all employees.

With respect to other services, the implications of coverage, of alcoholics and drug addicts are two-fold: first, no person may be excluded from services solely by

reason of the presence or history of these conditions; second, to the extent that the manifestations of the condition prevent the person from meeting the basic eligibility requirements of the program or cause substantial interference with the operation of the program, the condition may be taken into consideration. Thus, a college may not exclude an addict or alcoholic as a student, on the basis of addiction or alcoholism, if the person can successfully participate in the education program and complies with the rules of the college and if his or her behavior does not impede the performance of other students.

Of great concern to many commenters was the question of what effect the inclusion of drug addicts and alcoholics as handicapped persons would have on school disciplinary rules prohibiting the use or possession of drugs or alcohol by students. Neither such rules nor their application to drug addicts or alcoholics is prohibited by this regulation, provided that the rules are enforced evenly with respect to all students.

5. *"Qualified handicapped person."* Paragraph (k) of § 104.3 defines the term "qualified handicapped person." Throughout the regulation, this term is used instead of the statutory term "otherwise qualified handicapped person." The Department believes that the omission of the word "otherwise" is necessary in order to comport with the intent of the statute because, read literally, "otherwise" qualified handicapped persons include persons who are qualified except for their handicap, rather than in spite of their handicap. Under such a literal reading, a blind person possessing all the qualifications for driving a bus except sight could be said to be "otherwise qualified" for the job of driving. Clearly, such a result was not intended by Congress. In all other respects, the terms "qualified" and "otherwise qualified" are intended to be interchangeable.

Section 104.3(k)(1) defines a qualified handicapped person with respect to employment as a handicapped person who can, with reasonable accommodation, perform the essential functions of the job in question. The term "essential functions" does not appear in the corresponding provision of the Department of Labor's section 503 regulation, and a few commenters objected to its inclusion on the ground that a handicapped person should be able to perform all job tasks. However, the Department believes that inclusion of the phrase is useful in emphasizing that handicapped persons should not be disqualified simply because they may have difficulty in performing tasks that bear only a marginal relationship to a particular job. Further, we are convinced that inclusion of the phrase is not inconsistent with the Department of Labor's application of its definition.

Certain commenters urged that the definition of qualified handicapped person be amended so as explicitly to place upon the employer the burden of showing that a particular mental or physical characteristic is essential. Because the same result is achieved by the requirement contained in paragraph (a) of § 104.13, which requires an employer to establish that any selection criterion that tends to screen out handicapped persons is job-related, that recommendation has not been followed.

Section 104.3(k)(2) defines qualified handicapped person, with respect to preschool, elementary, and secondary programs, in terms of age. Several commenters recommended that eligibility for the services be based upon the standard of substantial benefit, rather than age, because of the need of many handicapped children for early or extended services if they are to have an equal opportunity to benefit from education programs. No change has been made in this provision, again because of the extreme difficulties in administration that would result from the choice of the former standard. Under the remedial action provisions of § 104.6(a)(3), however, persons beyond the age limits prescribed in § 104.3(k)(2) may in appropriate cases be required to be provided services that they were formerly denied because of a recipient's violation of section 504.

Section 104.3(k)(2) states that a handicapped person is qualified for preschool, elementary, or secondary services if the person is of an age at which nonhandicapped persons are eligible for such services or at which state law mandates the provision of educational services to handicapped persons. In addition, the extended age ranges for which recipients must provide full educational opportunity to all handicapped persons in order to be eligible for assistance under the Education of the Handicapped Act—generally, 3–18 as of September 1978, and 3–21 as of September 1980 are incorporated by reference in this paragraph.

Section 104.3(k)(3) defines qualified handicapped person with respect to postsecondary educational programs. As revised, the paragraph means that both academic and technical standards must be met by applicants to these programs. The term "technical standards" refers to all nonacademic admissions criteria that are essential to participation in the program in question.

6. *General prohibitions against discrimination.* Section 104.4 contains general prohibitions against discrimination applicable to all recipients of assistance from this Department.

Paragraph (b)(1)(i) prohibits the exclusion of qualified handicapped persons from aids, benefits, or services, and paragraph (ii) requires that equal opportunity to participate or benefit be provided. Paragraph (iii) requires that services provided to handicapped persons be as effective as those provided to the nonhandicapped. In paragraph (iv), different or separate services are prohibited except when necessary to provide equally effective benefits.

In this context, the term "equally effective," defined in paragraph (b)(2), is intended to encompass the concept of equivalent, as opposed to identical, services and to acknowledge the fact that in order to meet the individual needs of handicapped persons to the same extent that the corresponding needs of nonhandicapped persons are met, adjustments to regular programs or the provision of different programs may sometimes be necessary. This standard parallels the one established under title VI of Civil Rights Act of 1964 with respect to the provision of educational services to students whose primary language is not English. See *Lau v. Nichols,* 414 U.S. 563 (1974). To be equally effective, however, an aid, benefit, or service need not produce equal results; it merely must afford an equal opportunity to achieve equal results.

It must be emphasized that, although separate services must be required in some instances, the provision of unnecessarily separate or different services is discriminatory. The addition to paragraph (b)(2) of the phrase "in the most integrated setting appropriated to the person's needs" is intended to reinforce this general concept. A new paragraph (b)(3) has also been added to § 104.4, requiring recipients to give qualified handicapped persons the option of participating in regular programs despite the existence of permissibly separate or different programs. The requirement has been reiterated in §§ 104.38 and 104.47 in connection with physical education and athletics programs.

Section 104.4(b)(1)(v) prohibits a recipient from supporting another entity or person that subjects participants or employees in the recipient's program to discrimination on the basis of handicap. This section would, for example, prohibit financial support by a recipient to a community recreational group or to a professional or social organization that discriminates against handicapped persons. Among the criteria to be considered in each case are the substantiality of the relationship between the recipient and the other entity, including financial support by the recipient, and whether the other entity's activities relate so closely to the recipient's program or activity that they fairly should be considered activities of the recipient itself. Paragraph (b)(1)(vi) was added in response to comment in order to make explicit the prohibition against denying qualified handicapped persons the opportunity to serve on planning and advisory boards responsible for guiding federally assisted programs or activities.

Several comments appeared to interpret § 104.4(b)(5), which proscribes discriminatory site selection, to prohibit a recipient that is located on hilly terrain from erecting any new buildings at its present site. That, of course, is not the case. This paragraph is not intended to apply to construction of additional buildings at an existing site. Of course, any such facilities must be made accessible in accordance with the requirements of § 104.23.

7. *Assurances of compliance.* Section 104.5(a) requires a recipient to submit to the Assistant Secretary an assurance that each of its programs and activities receiving or benefiting from Federal financial assistance from this Department will be conducted in compliance with this regulation. Many commenters also sought relief from the paperwork requirements imposed by the Department's enforcement of its various civil rights responsibilities by requesting the Department to issue one form incorporating title VI, title IX, and section 504 assurances. The Secretary is sympathetic to this request.

While it is not feasible to adopt a single civil rights assurance form at this time, the Office for Civil Rights will work toward that goal.

8. *Private rights of action.* Several comments urged that the regulation incorporate provision granting beneficiaries a private right of action against recipients under section 504. To confer such a right is beyond the authority of the executive branch of Government. There is, however, case law holding that such a right exists. *Lloyd* v. *Regional Transportation Authority,* 548 F. 2d 1277 (7th Cir. 1977); *see Hairston* v. *Drosick,* Civil No. 75-0691 (S.D. W. Va., Jan. 14, 1976); *Gurmankin* v. *Castanzo,* 411 F. Supp. 982 (E.D. Pa. 1976); *cf. Lau* v. *Nichols, supra.*

9. *Remedial action.* Where there has been a finding of discrimination, § 104.6 requires a recipient to take remedial action to overcome the effects of the discrimination. Actions that might be required under paragraph (a)(1) include provision of services to persons previously discriminated against, reinstatement of employees and development of a remedial action plan. Should a recipient fail to take required remedial action, the ultimate sanctions of court action or termination of Federal financial assistance may be imposed.

Paragraph (a)(2) extends the responsibility for taking remedial action to a recipient that exercises control over a noncomplying recipient. Paragraph (a)(3) also makes clear that handicapped persons who are not in the program at the time that remedial action is required to be taken may also be the subject of such remedial action. This paragraph has been revised in response to comments in order to include persons who would have been in the program if discriminatory practices had not existed. Paragraphs (a) (1), (2), and (3) have also been amended in response to comments to make plain that, in appropriate cases, remedial action might be required to redress clear violations of the statute itself that occurred before the effective date of this regulation.

10. *Voluntary action.* In § 104.6(b), the term "voluntary action" has been substituted for the term "affirmative action" because the use of the latter term led to some confusion. We believe the term "voluntary action" more accurately reflects the purpose of the paragraph. This provision allows action, beyond that required by the regulation, to overcome conditions that led to limited participation by handicapped persons, whether or not the limited participation was caused by any discriminatory actions on the part of the recipient. Several commenters urged that paragraphs (a) and (b) be revised to require remedial action to overcome effects of prior discriminatory practices regardless of whether there has been an express finding of discrimination. The self-evaluation requirement in paragraph (c) accomplishes much the same purpose.

11. *Self-evaluation.* Paragraph (c) requires recipients to conduct a self-evaluation in order to determine whether their policies or practices may discriminate against handicapped persons and to take steps to modify any discriminatory policies and practices and their effects. The Department received many comments approving of the addition to paragraph (c) of a requirement that recipients seek the assistance of handicapped persons in the self-evaluation process. This paragraph has been further amended to require consultation with handicapped persons or organizations representing them before recipients undertake the policy modifications and remedial steps prescribed in paragraphs (c) (ii) and (iii).

Paragraph (c)(2), which sets forth the recordkeeping requirements concerning self-evaluation, now applies only to recipients with fifteen or more employees. This change was made as part of an effort to reduce unnecessary or counterproductive administrative obligations on small recipients. For those recipients required to keep records, the requirements have been made more specific; records must include a list of persons consulted and a description of areas examined, problems identified, and corrective steps taken. Moreover, the records must be made available for public inspection.

12. *Grievance procedure.* Section 104.7 requires recipients with fifteen or more employees to designate an individual responsible for coordinating its compliance efforts and to adopt a grievance procedure. Two changes were made in the section in response to comment. A general requirement that appropriate due process procedures be followed has been added. It was decided that the details of such procedures could not at this time be specified because of the varied nature of the persons and entities who must establish the procedures and of the programs to which they apply. A sentence was also added to make clear that grievance procedures are not required to be made available to unsuccessful applicants for employment or to applicants for admission to colleges and universities.

The regulation does not require that grievance procedures be exhausted before recourse is sought from the Department. However, the Secretary believes that it is desirable and efficient in many cases for complainants to seek resolution of their complaints and disputes at the local level and therefore encourages them to use available grievance procedures.

A number of comments asked whether compliance with this section or the notice requirements of § 104.8 could be coordinated with comparable action required by the title IX regulation. The Department encourages such efforts.

13. *Notice.* Section 104.8 (formerly § 84.9) sets forth requirements for dissemination of statements of nondicrimination policy by recipients.

It is important that both handicapped persons and the public at large be aware of the obligations of recipients under section 504. Both the Department and recipients have responsibilities in this regard. Indeed the Department intends to undertake a major public information effort to inform persons of their rights under section 504 and this regulation. In § 104.8 the Department has sought to impose a clear obligation on major recipients to notify beneficiaries and employees of the requirements of section 504, without dictating the precise way in which this notice must be given. At the same time, we have avoided imposing requirements on small recipients (those with fewer than fifteen employees) that would create unnecessary and counterproductive paper work burdens on them and unduly stretch the enforcement resources of the Department.

Section 104.8(a), as simplified, requires recipients with fifteen or more employees to take appropriate steps to notify beneficiaries and employees of the recipient's obligations under section 504. The last sentence of § 104.8(a) has been revised to list possible, rather than required, means of notification. Section 104.8(b) requires recipients to include a notification of their policy of nondiscrimination in recruitment and other general information materials.

In response to a number of comments, § 104.8 has been revised to delete the requirements of publication in local newspapers, which has proved to be both troublesome and ineffective. Several commenters suggested that notification on separate forms be allowed until present stocks of publications and forms are depleted. The final regulation explicitly allows this method of compliance. The separate form should, however, be included with each significant publication or form that is distributed.

§ 104 which prohibited the use of materials that might give the impression that a recipient excludes qualified handicapped persons from its program, has been deleted. The Department is convinced by the comments that this provision is unnecessary and difficult to apply. The Department encourages recipients, however, to include in their recruitment and other general information materials photographs of handicapped persons and ramps and other features of accessible buildings.

Under new § 104.9 the Assistant Secretary may, under certain circumstances, require recipients with fewer than fifteen employees to comply with one or more of these requirements. Thus, if experience shows a need for imposing notice or other requirements on particular recipients or classes of small recipients, the Department is prepared to expand the coverage of these sections.

14. *Inconsistent State laws.* Section 104.10(a) states that compliance with the regulation is not excused by state or local laws limiting the eligibility of qualified handicapped persons to receive services or to practice an occupation. The provision thus applies only with respect to state or local laws that unjustifiably differentiate on the basis of handicap.

Paragraph (b) further points out that the presence of limited employment opportunities in a particular profession, does not excuse a recipient from complying with the regulation. Thus, a law school could not deny admission to a blind applicant because blind laywers may find it more difficult to find jobs than do nonhandicapped lawyers.

**Subpart B—Employment Practices**

Subpart B prescribes requirements for nondiscrimination in the employment practices of recipients of Federal financial assistance administered by the Department. This subpart is consistent with the employment provisions of the Department's

regulation implementing title IX of the Education Amendments of 1972 (34 CFR Part 106) and the regulation of the Department of Labor under section 503 of the Rehabilitation Act, which requries certain Federal contractors to take affirmative action in the employment and advancement of qualified handicapped persons. All recipients subject to title IX are also subject to this regulation. In addition, many recipients subject to this regulation receive Federal procurement contracts in excess of $2,500 and are therefore also subject to section 503.

15. *Discriminatory practices.* Section 104.11 sets forth general provisions with respect to discrimination in-employment. A new paragraph (a)(2) has been added to clarify the employment obligations of recipients that receive Federal funds under Part B of the Education of the Handicapped Act, as amended (EHA). Section 606 of the EHA obligates elementary or secondary school systems that receive EHA funds to take positive steps to employ and advance in employment qualified handicapped persons. This obligation is similar to the nondiscrimination requirement of section 504 but requires recipients to take additional steps to hire and promote handicapped persons. In enacting section 606 Congress chose the words "positive steps" instead of "affirmative action" advisedly and did not intend section 606 to incorporate the types of activities required under Executive Order 11246 (affirmative action on the basis of race, color, sex, or national origin) or under sections 501 and 503 of the Rehabilitation Act of 1973.

Paragraph (b) of § 104.11 sets forth the specific aspects of employment covered by the regulation. Paragraph (c) provides that inconsistent provisions of collective bargaining agreements do not excuse noncompliance.

16. *Reasonable accommodation.* The reasonable accommodation requirement of § 104.12 generated a substantial number of comments. The Department remains convinced that its approach is both fair and effective. Moreover, the Department of Labor reports that it has experienced little difficulty in administering the requirements of reasonable accommodation. The provision therefore remains basically unchanged from the proposed regulation.

Section 104.12 requires a recipient to make reasonable accommodation to the known physical or mental limitations of a handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program. Where a handicapped person is not qualified to perform a particular job, where reasonable accommodation does not overcome the effects of a person's handicap, or where reasonable accommodation causes undue hardship to the employer, failure to hire or promote the handicapped person will not be considered discrimination.

Section 104.12(b) lists some of the actions that constitute reasonable accommodation. The list is neither all-inclusive nor meant to suggest that employers must follow all of the actions listed.

Reasonable accommodation includes modification of work schedules, including part-time employment, and job restructuring. Job restructuring may entail shifting nonessential duties to other employees. In other cases, reasonable accommodation may include physical modifications or relocation of particular offices or jobs so that they are in facilities or parts of facilities that are accessible to and usable by handicapped persons. If such accommodations would cause undue hardship to the employer, they need not be made.

Paragraph (c) of this section sets forth the factors that the Office for Civil Rights will consider in determining whether an accommodation necessary to enable an applicant or employee to perform the duties of a job would impose an undue hardship. The weight given to each of these factors in making the determination as to whether an accommodation constitutes undue hardship will vary depending on the facts of a particular situation. Thus, a small day-care center might not be required to expend more than a nominal sum, such as that necessary to equip a telephone for use by a secretary with impaired hearing, but a large school district might be required to make available a teacher's aide to a blind applicant for a teaching job. The reasonable accommodation standard in § 104.12 is similar to the obligation imposed upon Federal contractors in the regulation implementing section 503 of the Rehabilitation Act of 1973, administered by the Department of Labor. Although the wording of the reasonable accommodation provisions of the two regulations is not identical, the obligation that the two regulations impose is the same, and the Federal Government's policy in implementing the two sections will be uniform. The Department adopted the factors listed in paragraph (c) instead of the "business necessity" standard of the Labor regulation because that term seemed inappropriate to the nature of the programs operated by the majority of institutions subject to this regulation, e.g., public school systems, colleges and universities. The factors listed in paragraph (c) are intended to make the rationale underlying the business necessity standard applicable to an understandable by recipients of ED funds.

17. *Tests and selection criteria.* Revised § 104.13(a) prohibits employers from using test or other selection criteria that screen out or tend to screen out handicapped persons unless the test or criterion is shown to be job-related and alternative tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Assistant Secretary to be available. This paragraph is an application of the principle established under title VII of the Civil Rights Act of 1964 in *Griggs* v. *Duke Power Company*, 401 U.S. 424 (1971).

Under the proposed section, a statistical showing of adverse impact on handicapped persons was required to trigger an employer's obligation to show that employment criteria and qualifications relating to handicap were necessary. This requirement was changed because the small number of handicapped persons taking tests would make statistical showings of "disproportionate, adverse effect" difficult and burdensome. Under the altered, more workable provision, once it is shown that an employment test substantially limits the opportunities of handicapped persons, the employer must show the test to be job-related. A recipient is no longer limited to using predictive validity studies as the method for demonstrating that a test or other selection criterion is in fact job-related. Nor, in all cases, are predictive validity studies sufficient to demonstrate that a test or criterion is job-related. In addition, § 104.13(a) has been revised to place the burden on the Assistant Secretary, rather than the recipient, to identify alternate tests.

Section 104.13(b) requires that a recipient take into account that some tests and criteria depend upon sensory, manual, or speaking skills that may not themselves be necessary to the job in question but that may make the handicapped person unable to pass the test. The recipient must select and administer tests so as best to ensure that the test will measure the handicapped person's ability to perform on the job rather than the person's ability to see, hear, speak, or perform manual tasks, except, of course, where such skills are the factors that the test purports to measure. For example, a person with a speech impediment may be perfectly qualified for jobs that do not or need not, with reasonable accommodation, require ability to speak clearly. Yet, if given an oral test, the person will be unable to perform in a satisfactory manner. The test results will not, therefore, predict job performance but instead will reflect impaired speech.

18. *Preemployment inquiries.* Section 104.14, concerning preemployment inquiries, generated a large number of comments. Commenters representing handicapped persons strongly favored a ban on preemployment inquiries on the ground that such inquiries are often used to discriminate against handicapped persons and are not necessary to serve any legitimate interests of employers. Some recipients, on the other hand, argued that preemployment inquiries are necessary to determine qualifications of the applicant, safety hazards caused by a particular handicapping condition, and accommodations that might be required.

The Secretary has concluded that a general prohibition of preemployment inquiries is appropriate. However, a sentence has been added to paragraph (a) to make clear that an employer may inquire into an applicant's ability to perform job-related tasks but may not ask if the person has a handicap. For example, an employer may not ask on an employment form if an applicant is visually impaired but may ask if the person has a current driver's license (if that is a necessary qualification for the position in question). Similarly, employers may make inquiries about an applicant's ability to perform a job safely. Thus, an employer may not ask if an applicant is an epileptic but may ask whether the person can perform a particular job without endangering other employees.

Section 104.14(b) allows preemployment inquiries only if they are made in conjunction with required remedial action to correct past discrimination, with voluntary action to overcome past conditions that have limited the participation of handicapped persons, or with obligations under section 503 of the Rehabilitation Act of 1973. In these instances,

paragraph (b) specifies certain safeguards that must be followed by the employer.

Finally, the revised provision allows an employer to condition offers of employment to handicapped persons on the results of medical examinations, so long as the examinations are administered to all employees in a nondiscriminatory manner and the results are treated on a confidential basis.

19. *Specific acts of Discrimination.* Sections 104.15 (recruitment), 104.16 (compensation), 104.17 (job classification and structure) and 104.18 (fringe benefits) have been deleted from the regulation as unnecessarily duplicative of § 104.11 (discrimination prohibited). The deletion of these sections in no way changes the substantive obligations of employers subject to this regulation from those set forth in the July 16 proposed regulation. These deletions bring the regulation closer in form to the Department of Labor's section 503 regulation.

A proposed section, concerning fringe benefits, had allowed for differences in benefits or contributions between handicapped and nonhandicapped persons in situations only where such differences could be justified on an actuarial basis. Section 104.11 simply bars discrimination in providing fringe benefits and does not address the issue of actuarial differences. The Department believes that currently available data and experience do not demonstrate a basis for promulgating a regulation specifically allowing for differences in benefits or contributions.

Subpart C—Program Accessibility

In general, Subpart C prohibits the exclusion of qualified handicapped persons from federally assisted programs or activities because a recipient's facilities are inaccessible or unusable.

20. *Existing facilities.* Section 104.22 maintains the same standard for nondiscrimination in regard to existing facilities as was included in the proposed regulation. The section states that a recipients program or activity, when viewed in its entirety, must be readily accessible to and usable by handicapped persons. Paragraphs (a) and (b) make clear that a recipient is not required to make each of its existing facilities accessible to handicapped persons if its program as a whole is accessible. Accessibility to the recipient's program or activity may be achieved by a number of means, including redesign of equipment, reassignment of classes or other services to accessible buildings, and making aides available to beneficiaries. In choosing among methods of compliance, recipients are required to give priority consideration to methods that will be consistent with provision of services in the most appropriate integrated setting. Structural changes in existing facilities are required only where there is no other feasible way to make the recipient's program accessible.

Under § 104.22, a university does not have to make all of its existing classroom buildings accessible to handicapped students if some of its buildings are already accessible and if it is possible to reschedule or relocate enough classes so as to offer all required courses and a reasonable selection of elective courses in accessible facilities. If sufficient relocation of classes is not possible using existing facilities, enough alterations to ensure program accessibility are required. A university may not exclude a handicapped student from a specifically requested course offering because it is not offered in an accessible location, but it need not make every section of that course accessible.

Commenters representing several institutions of higher education have suggested that it would be appropriate for one postsecondary institution in a geographical area to be made accessible to handicapped persons and for other colleges and universities in that area to participate in that school's program, thereby developing an educational consortium for the postsecondary education of handicapped students. The Department believes that such a consortium, when developed and applied only to handicapped persons, would not constitute compliance with § 104.22, but would discriminate against qualified handicapped persons by restricting their choice in selecting institutions of higher education and would, therefore, be inconsistent with the basic objectives of the statute.

Nothing in this regulation, however, should be read as prohibiting institutions from forming consortia for the benefit of all students. Thus, if three colleges decide that it would be cost-efficient for one college to offer biology, the second physics, and the third chemistry to all students at the three colleges, the arrangement would not violate section 504. On the other hand, it would violate the regulation if the same institutions set up a consortium under which one college undertook to make its biology lab accessible, another its physics lab, and a third its chemistry lab, and under which mobility-impaired handicapped students (but not other students) were required to attend the particular college that is accessible for the desired courses.

Similarly, while a public school district need not make each of its buildings completely accessible, it may not make only one facility or part of a facility accessible if the result is to segregate handicapped students in a single setting.

All recipients that provide health, welfare, or other social services may also comply with § 104.22 by delivering services at alternate accessible sites or making home visits. Thus, for example, a pharmacist might arrange to make home deliveries of drugs. Under revised § 104.22(c), small providers of health, welfare, and social services (those with fewer than fifteen employees) may refer a beneficiary to an accessible provider of the desired service, but only if no means of meeting the program accessibility requirement other than a significant alteration in existing facilities is available. The referring recipient has the responsibility of determining that the other provider is in fact accessible and willing to provide the service.

A recent change in the tax law may assist some recipients in meeting their obligations under this section. Under section 2122 of the Tax Reform Act of 1976, recipients that pay federal income tax are eligible to claim a tax deduction of up to $25,000 for architectural and transportation modifications made to improve accessibility for handicapped persons. See 42 FR 17870 (April 4, 1977), adopting 26 CFR 7.190.

Several commenters expressed concern about the feasibility of compliance with the program accessibility standard. The Secretary believes that the standard is flexible enough to permit recipients to devise ways to make their programs accessible short of extremely expensive or impractical physical changes in facilities. Accordingly, the section does not allow for waivers. The Department is ready at all times to provide technical assistance to recipients in meeting their program accessibility responsibilities. For this purpose, the Department is establishing a special technical assistance unit. Recipients are encouraged to call upon the unit staff for advice and guidance both on structural modifications and on other ways of meeting the program accessibility requirement.

Paragraph (d) has been amended to require recipients to make all nonstructural adjustments necessary for meeting the program accessibility standard within sixty days. Only where structural changes in facilities are necessary will a recipient be permitted up to three years to accomplish program accessibility. It should be emphasized that the three-year time period is not a waiting period and that all changes must be accomplished as expeditiously as possible. Further, it is the Department's belief, after consultation with experts in the field, that outside ramps to buildings can be constructed quickly and at relatively low cost. Therefore, it will be expected that such structural additions will be made promptly to comply with § 104.22(d).

The regulation continues to provide, as did the proposed version, that a recipient planning to achieve program accessibility by making structural changes must develop a transition plan for such changes within six months of the effective date of the regulation. A number of commenters suggested extending that period to one year. The secretary believes that such an extension is unnecessary and unwise. Planning for any necessary structural changes should be undertaken promptly to ensure that they can be completed within the three-year period. The elements of the transition plan as required by the regulation remain virtually unchanged from the proposal but § 104.22(d) now includes a requirement that the recipient make the plan available for public inspection.

Several commenters expressed concern that the program accessibility standard would result in the segregation of handicapped persons in educational institutions. The regulation will not be applied to permit such a result. See § 104.4(c)(2)(iv), prohibiting unnecessarily separate treatment; § 104.35, requiring that students in elementary and secondary schools be educated in the most integrated setting appropriate to their needs; and now § 104.43(d), applying the same standard to postsecondary education.

We have received some comments from organizations of handicapped persons on the subject of requiring, over an extended period of time, a barrier-free environment—that is,

requiring the removal of all architectural barriers in existing facilities. The Department has considered these comments but has decided to take no further action at this time concerning these suggestions, believing that such action should only be considered in light of experience in implementing the program accessibility standard.

21. *New construction.* Section 104.23 requires that all new facilities, as well as alterations that could affect access to and use of existing facilities, be designed and constructed in a manner so as to make the facility accessible to and usable by handicapped persons. Section 104.23(a) has been amended so that it applies to each newly constructed facility if the construction was commenced after the effective date of the regulation. The words "if construction has commenced" will be considered to mean "if groundbreaking has taken place." Thus, a recipient will not be required to alter the design of a facility that has progressed beyond groundbreaking prior to the effective date of the regulation.

Paragraph (b) requires certain alterations to conform to the requirement of physical accessibility in paragraph (a). If an alteration is undertaken to a portion of a building the accessibility of which could be improved by the manner in which the alteration is carried out, the alteration must be made in that manner. Thus, if a doorway or wall is being altered, the door or other wall opening must be made wide enough to accommodate wheelchairs. On the other hand, if the alteration consists of altering ceilings, the provisions of this section are not applicable because this alteration cannot be done in a way that affects the accessibility of that portion of the building. The phrase "to the maximum extent feasible" has been added to allow for the occasional case in which the nature of an existing facility is such as to make it impractical or prohibitively expensive to renovate the building in a manner that results in its being entirely barrier-free. In all such cases, however, the alteration should provide the maximum amount of physical accessibility feasible.

As proposed, § 104.23(c) required compliance with the American National Standards Institute (ANSI) standard on building accessibility as the minimum necessary for compliance with the accessibility requirement of §§104.23 (a) and (b). The reference to the ANSI standard created some ambiguity, since the standard itself provides for waivers where other methods are equally effective in providing accessibility to the facility.
Moreover, the Secretary does not wish to discourage innovation in barrier-free construction by requiring absolute adherence to a rigid design standard. Accordingly, § 104.23 (c) has been revised to permit departures from particular requirements of the ANSI standard where the recipient can demonstrate that equivalent access to the facility is provided.

Section 104.23(d) of the proposed regulation, providing for a limited deferral of action concerning facilities that are subject to section 502 as well as section 504 of the Act, has been deleted. The Secretary believes that the provision is unnecessary and inappropriate to this regulation. The Department will, however, seek to coordinate enforcement activities under this regulation with those of the Architectural and Transportation Barriers Compliance Board.

Subpart D—Preschool, Elementary, and Secondary Education

Subpart D sets forth requirements for nondiscrimination in preschool, elementary, secondary, and adult education programs and activities, including secondary vocational education programs. In this context, the term "adult education" refers only to those educational programs and activities for adults that are operated by elementary and secondary schools.

The provisions of Subpart D apply to state and local educational agencies. Although the subpart applies, in general, to both public and private education programs and activities that are federally assisted, §§ 104.32 and 104.33 apply only to public programs and § 104.39 applies only to private programs; §§ 104.35 and 104.36 apply both to public programs and to those private programs that include special services for handicapped students.

Subpart B generally conforms to the standards established for the education of handicapped persons in *Mills* v. *Board of Education of the District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972), *Pennsylvania Association for Retarded Children* v. *Commonwealth of Pennsylvania*, 344 F. Supp. 1257 (E.D. 1971), 343 F. Supp. 279 (E.D. Pa. 1972), and *Lebanks* v. *Spears*, 60, F.R.D. 135 (E.D. La. 1973), as well as in the Education of the Handicapped Act, as amended by Public Law 94-142 (the EHA).

The basic requirements common to those cases, to the EHA, and to this regulation are (1) that handicapped persons, regardless of the nature or severity of their handicap, be provided a free appropriate public education, (2) that handicapped students be educated with nonhandicapped students to the maximum extent appropriate to their needs, (3) that educational agencies undertake to identify and locate all unserved handicapped children, (4) that evaluation procedures be improved in order to avoid the inappropriate education that results from the misclassification of students, and (5) that procedural safeguard be established to enable parents and guardians to influence decisions regarding the evaluation and placement of their children. These requirements are designed to ensure that no handicapped child is excluded from school on the basis of handicap and, if a recipient demonstrates that placement in a regular educational setting cannot be achieved satisfactorily, that the student is provided with adequate alternative services suited to the student's needs without additional cost to the student's parents or guardian. Thus, a recipient that operates a public school system must either educate handicapped children in its regular program or provide such children with an appropriate alternative education at public expense.

It is not the intention of the Department, except in extraordinary circumstances, to review the result of individual placement and other educational decisions, so long as the school district complies with the "process" requirements of this subpart (concerning identification and location, evaluation, and due process procedures). However, the Department will place a high priority on investigating cases which may involve exclusion of a child from the education system or a pattern or practice of discriminatory placements or education.

22. *Location and notification.* Section 104.32 requires public schools to take steps annually to identify and locate handicapped children who are not receiving an education and to publicize to handicapped children and their parents the rights and duties established by section 504 and this regulation. This section has been shortened without substantive change.

23. *Free appropriate public education.* Under § 104.33(a), a recipient is responsible for providing a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction. The word "in" encompasses the concepts of both domicile and actual residence. If a recipient places a child in a program other than its own, it remains financially responsible for the child, whether or not the other program is operated by another recipient or educational agency. Moreover, a recipient may not place a child in a program that is inappropriate or that otherwise violates the requirements of Subpart D. And in no case may a recipient refuse to provide services to a handicapped child in its jurisdiction because of another person's or entity's failure to assume financial responsibility.

Section 104.33(b) concerns the provision of appropriate educational services to handicapped children. To be appropriate, such services must be designed to meet handicapped children's individual educational needs to the same extent that those of nonhandicapped children are met. An appropriate education could consist of education in regular classes, education in regular classes with the use of supplementary services, or special education and related services. Special education may include specially designed instruction in classrooms, at home, or in private or public institutions and may be accompanied by such related services as developmental, corrective, and other supportive services (including psychological, counseling, and medical diagnostic services). The placement of the child must however, be consistent with the requirements of § 104.34 and be suited to his or her educational needs.

The quality of the educational services provided to handicapped students must equal that of the services provided to nonhandicapped students; thus, handicapped student's teachers must be trained in the instruction of persons with the handicap in question and appropriate materials and equipment must be available. The Department is aware that the supply of adequately trained teachers may, at least at the outset of the imposition of this requirement, be insufficient to meet the demand of all recipients. This factor will be considered in determining the appropriateness of the remedy for noncompliance with this section. A new

§ 104.33(b)(2) has been added, which allows this requirement to be met through the full implementation of an individualized education program developed in accordance with the standards of the EHA.

Paragraph (c) of § 104.33 sets forth the specific financial obligations of a recipient. If a recipient does not itself provide handicapped persons with the requisite services, it must assume the cost of any alternate placement. If, however, a recipient offers adequate services and if alternate placement is chosen by a student's parent or guardian, the recipient need not assume the cost of the outside services. (If the parent or guardian believes that his or her child cannot be suitably educated in the recipient's program, he or she may make use of the procedures established in § 104.36.) Under this paragraph, a recipient's obligation extends beyond the provision of tuition payments in the case of placement outside the regular program. Adequate transportation must also be provided. Recipients must also pay for psychological services and those medical services necessary for diagnostic and evaluative purposes.

If the recipient places a student, because of his or her handicap, in a program that necessitates his or her being away from home, the payments must also cover room and board and nonmedical care (including custodial and supervisory care). When residential care is necessitated not by the student's handicap but by factors such as the student's home conditions, the recipient is not required to pay the cost of room and board.

Two new sentences have been added to paragraph (c)(1) to make clear that a recipient's financial obligations need not be met solely through its own funds. Recipients may rely on funds from any public or private source including insurers and similar third parties.

The EHA requires a free appropriate education to be provided to handicapped children "no later than September 1, 1978," but section 504 contains no authority for delaying enforcement. To resolve this problem, a new paragraph (d) has been added to § 104.33. Section 104.33(d) requires recipients to achieve full compliance with the free appropriate public education requirements of § 104.33 as expeditiously as possible, but in no event later than September 1, 1978. The provision also makes clear that, as of the effective date of this regulation, no recipient may exclude a qualified handicapped child from its educational program. This provision against exclusion is consistent with the order of providing services set forth in section 612(3) of the EHA, which places the highest priority on providing services to handicapped children who are not receiving an education.

24. *Educational setting.* Section 104.34 prescribes standards for educating handicapped persons with nonhandicapped persons to the maximum extent appropriate to the needs of the handicapped person in question. A handicapped student may be removed from the regular educational setting only where the recipient can show that the needs of the student would, on balance, be served by placement in another setting.

Although under § 104.34, the needs of the handicapped person are determinative as to proper placement, it should be stressed that, where a handicapped student is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore, regular placement would not be appropriate to his or her needs and would not be required by § 104.34.

Among the factors to be considered in placing a child is the need to place the child as close to home as possible. A new sentence has been added to paragraph (a) requiring recipients to take this factor into account. As pointed out in several comments, the parents' right under § 104.36 to challenge the placement of their child extends not only to placement in special classes or separate schools but also to placement in a distant school and, in particular, to residential placement. An equally appropriate educational program may exist closer to home; this issue may be raised by the parent or guardian under §§ 104.34 and 104.36.

New paragraph (b) specified that handicapped children must also be provided nonacademic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided opportunities for participation with other children.

Section 104.34(c) requires that any facilities that are identifiable as being for handicapped students be comparable in quality to other facilities of the recipient. A number of comments objected to this section on the basis that it encourages the creation and maintenance of such facilities. This is not the intent of the provision. A separate facility violates section 504 unless it is indeed necessary to the provision of an appropriate education to certain handicapped students. In those instances in which such facilities are necessary (as might be the case, for example, for severely retarded persons), this provision requires that the educational services provided be comparable to those provided in the facilities of the recipient that are not identifiable as being for handicapped persons.

25. *Evaluation and placement.* Because the failure to provide handicapped persons with an appropriate education is so frequently the result of misclassification or misplacement, section 104.33(b)(1) makes compliance with its provisions contingent upon adherence to certain procedures designed to ensure appropriate classification and placement. These procedures, delineated in §§ 104.35 and 104.36, are concerned with testing and other evaluation methods and with procedural due process rights.

Section 104.35(a) requires that an individual evaluation be conducted before any action is taken with respect either to the initial placement of a handicapped child in a regular or special education program or to any subsequent significant change in that placement. Thus, a full reevaluation is not required every time an adjustment in placement is made. "Any action" includes denials of placement.

Paragraphs (b) and (c) of § 104.35 establishes procedures designed to ensure that children are not misclassified, unnecessarily labeled as being handicapped, or incorrectly placed because of inappropriate selection, administration, or interpretation of evaluation materials. This problem has been extensively documented in "Issues in the Classification of Children," a report by the Project on Classification of Exceptional Children, in which the HEW Interagency Task Force participated. The provisions of these paragraphs are aimed primarily at abuses in the placement process that result from misuse of, or undue or misplaced reliance on, standardized scholastic aptitude tests.

Paragraph (b) has been shortened but not substantively changed. The requirement in former subparagraph (1) that recipients provide and administer evaluation materials in the native language of the student has been deleted as unnecessary, since the same requirement already exists under title VI and is more appropriately covered under that statute. Subparagraphs (1) and (2) are, in general, intended to prevent misinterpretation and similar misuse of test scores and, in particular, to avoid undue reliance on general intelligence tests. Subparagraph (3) requires a recipient to administer tests to a student with impaired sensory, manual, or speaking skills in whatever manner is necessary to avoid distortion of the test results by the impairment. Former subparagraph (4) has been deleted as unnecessarily repetitive of the other provisions of this paragraph.

Paragraph (c) requires a recipient to draw upon a variety of sources in the evaluation process so that the possibility of error in classification is minimized. In particular, it requires that all significant factors relating to the learning process, including adaptive behavior, be considered. (Adaptive behavior is the effectiveness with which the individual meets the standards of personal independence and social responsibility expected of his or her age and cultural group.) Information from all sources must be documented and considered by a group of persons, and the procedure must ensure that the child is placed in the most integrated setting appropriate.

The proposed regulation would have required a complete individual reevaluation of the student each year. The Department has concluded that it is inappropriate in the section 504 regulation to require full reevaluations on such a rigid schedule. Accordingly, § 104.35(c) requires periodic reevaluations and specifies that reevaluations in accordance with the EHA will constitute compliance. The proposed regulation implementing the EHA allows reevaluation at three-year intervals except under certain specified circumstances.

Under § 104.36, a recipient must establish a system of due process procedures to be afforded to parents or guardians before the recipient takes any action regarding the identification, evaluation, or educational placement of a person who, because of handicap, needs or is believed to need special education or related services. This section has been revised. Because the due

process procedures of the EHA, incorporated by reference in the proposed section 504 regulation, are inappropriate for some recipients not subject to that Act, the section now specifies minimum necessary procedures: notice, a right to inspect records, an impartial hearing with a right to representation by counsel, and a review procedure. The EHA procedures remain one means of meeting the regulation's due process requirements, however, and are recommended to recipients as a model.

26. *Nonacademic services.* Section 104.37 requires a recipient to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation. Because these services and activities are part of a recipient's education program, they must, in accordance with the provisions of § 104.34, be provided in the most integrated setting appropriate.

Revised paragraph (c)(2) does permit separation or differentiation with respect to the provision of physical education and athletics activities, but only if qualified handicapped students are also allowed the opportunity to compete for regular teams or participate in regular activities. Most handicapped students are able to participate in one or more regular physical education and athletics activities. For example, a student in a wheelchair can participate in regular archery course, as can a deaf student in a wrestling course.

Finally, the one-year transition period provided in a proposed section was deleted in response to the almost unanimous objection of commenters to that provision.

27. *Preschool and adult education.* Section 104.38 prohibits discrimination on the basis of handicap in preschool and adult education programs. Former paragraph (b), which emphasized that compensatory programs for disadvantaged children are subject to section 504, has been deleted as unnecessary, since it is comprehended by paragraph (a).

28. *Private education.* Section 104.39 sets forth the requirements applicable to recipients that operate private education programs and activities. The obligations of these recipients have been changed in two significant respects: first, private schools are subject to the evaluation and due process provisions of the subpart only if they operate special education programs; second, under § 104.39(b), they may charge more for providing services to handicapped students than to nonhandicapped students to the extent that additional charges can be justified by increased costs.

Paragraph (a) of § 104.39 is intended to make clear that recipients that operate private education programs and activities are not required to provide an appropriate education to handicapped students with special educational needs if the recipient does not offer programs designed to meet those needs. Thus, a private school that has no program for mentally retarded persons is neither required to admit such a person into its program nor to arrange or pay for the provision of the person's education in another program. A private recipient without a special program for blind students, however, would not be permitted to exclude, on the basis of blindness, a blind applicant who is able to participate in the regular program with minor adjustments in the manner in which the program is normally offered.

Subpart E—Postsecondary Education

Subpart E prescribes requirements for nondiscrimination in recruitment, admission, and treatment of students in postsecondary education programs and activities, including vocational education.

29. *Admission and recruitment.* In addition to a general prohibition of discrimination on the basis of handicap in § 104.42(a), the regulation delineates, in § 104.42(b), specific prohibitions concerning the establishment of limitations on admission of handicapped students, the use of tests or selection criteria, and preadmission inquiry. Several changes have been made in this provision.

Section 104.42(b) provides that postsecondary educational institutions may not use any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons unless it has been validated as a predictor of academic success and alternate tests or criteria with a less disproportionate, adverse effect are shown by the Department to be available. There are two significant changes in this approach from the July 16 proposed regulation.

First, many commenters expressed concern that § 104.42(b)(2)(ii) could be interpreted to require a "global search" for alternate tests that do not have a disproportionate, adverse impact on handicapped persons. This was not the intent of the provision and, therefore, it has been amended to place the burden on the Assistant Secretary for Civil Rights, rather than on the recipient, to identify alternate tests.

Second, a new paragraph (d), concerning validity studies, has been added. Under the proposed regulation, overall success in an education program, not just first-year grades, was the criterion against which admissions tests were to be validated. This approach has been changed to reflect the comment of professional testing services that use of first year grades would be less disruptive of present practice and that periodic validity studies against overall success in the education program would be sufficient check on the reliability of first-year grades.

Section 104.42(b)(3) also requires a recipient to assure itself that admissions tests are selected and administered to applicants with impaired sensory, manual, or speaking skills in such manner as is necessary to avoid unfair distortion of test results. Methods have been developed for testing the aptitude and achievement of persons who are not able to take written tests or even to make the marks required for mechanically scored objective tests; in addition, methods for testing persons with visual or hearing impairments are available. A recipient, under this paragraph, must assure itself that such methods are used with respect to the selection and administration of any admissions tests that it uses.

Section 104.42(b)(3)(iii) has been amended to require that admissions tests be administered in facilities that, on the whole, are accessible. In this context, "on the whole" means that not all of the facilities need be accessibile so long as a sufficient number of facilities are available to handicapped persons.

Revised § 104.42(b)(4) generally prohibits preadmission inquiries as to whether an applicant has a handicap. The considerations that led to this revision are similar to those underlying the comparable revision of § 104.14 on preemployment inquiries. The regulation does, however, allow inquiries to be made, after admission but before enrollment, as to handicaps that may require accommodation.

New paragraph (c) parallels the section on preemployment inquiries and allows postsecondary institutions to inquire about applicants' handicaps before admission, subject to certain safeguards, if the purpose of the inquiry is to take remedial action to correct past discrimination or to take voluntary action to overcome the limited participation of handicapped persons in postsecondary educational institutions.

Proposed § 104.42(c), which would have allowed different admissions criteria in certain cases for handicapped persons, was widely misinterpreted in comments from both handicapped persons and recipients. We have concluded that the section is unnecessary, and it has been deleted.

30. *Treatment of students.* Section 104.43 contains general provisions prohibiting the discriminatory treatment of qualified handicapped applicants. Paragraph (b) requires recipients to ensure that equal opportunities are provided to its handicapped students in education programs and activities that are not operated by the recipient. The recipient must be satisfied that the outside education program or activity as a whole is nondiscriminatory. For example, a college must ensure that discrimination on the basis of handicap does not occur in connection with teaching assignments of student teachers in elementary or secondary schools not operated by the college. Under the "as a whole" wording, the college could continue to use elementary or secondary school systems that discriminate if, and only if, the college's student teaching program, when viewed in its entirety, offered handicapped student teachers the same range and quality of choice in student teaching assignments afforded nonhandicapped students.

Paragraph (c) of this section prohibits a recipient from excluding qualified handicapped students from any course, course of study, or other part of its education program or activity. This paragraph is designed to eliminate the practice of excluding handicapped persons from specific courses and from areas of concentration because of factors such as ambulatory difficulties of the student or assumptions by the recipient that no job would be available in the area in question for a person with that handicap.

New paragraph (d) requires postsecondary institutions to operate their programs and activities so that handicapped students are provided services in the most integrated setting appropriate. Thus, if a college had several elementary physics classes and had moved one such class to the first floor of the science building to accommodate students in wheelchairs, it would be a violation of this

paragraph for the college to concentrate handicapped students with no mobility impairments in the same class.

31. *Academic adjustments.* Paragraph (a) of § 104.44 requires that a recipient make certain adjustments to academic requirements and practices that discriminate or have the effect of discriminating on the basis of handicap. This requirement, like its predecessor in the proposed regulation, does not obligate an institution to waive course or other academic requirements. But such institutions must accommodate those requirements to the needs of individual handicapped students. For example, an institution might permit an otherwise qualified handicapped student who is deaf to substitute an art appreciation or music history course for a required course in music appreciation or could modify the manner in which the music appreciation course is conducted for the deaf student. It shoud be stressed that academic requirements that can be demonstrated by the recipient to be essential to its program of instruction or to particular degrees need not be changed.

Paragraph (b) provides that postsecondary institutions may not impose rules that have the effect of limiting the participation of handicapped students in the education program. Such rules include prohibition of tape recorders or braillers in classrooms and dog guides in campus buildings. Several recipients expressed concern about allowing students to tape record lectures because the professor may later want to copyright the lectures. This problem may be solved by requiring students to sign agreements that they will not release the tape recording or transcription or otherwise hinder the professor's ability to obtain a copyright.

Paragraph (c) of this section, concerning the administration of course examinations to students with impaired sensory, manual, or speaking skills, parallels the regulation's provisions on admissions testing (§ 104.42(b)) and will be similarly interpreted.

Under § 104.44(d), a recipient must ensure that no handicapped student is subject to discrimination in the recipient's program because of the absence of necessary auxiliary educational aids. Colleges and universities expressed concern about the costs of compliance with this provision.

The Department emphasizes that recipients can usually meet this obligation by assisting students in using existing resources for auxiliary aids such as state vocational rehabilitation agencies and private charitable organizations. Indeed, the Department anticipates that the bulk of auxiliary aids will be paid for by state and private agencies, not by colleges or universities. In those circumstances where the recipient institution must provide the educational auxiliary aid, the institution has flexibility in choosing the methods by which the aids will be supplied. For example, some universities have used students to work with the institution's handicapped students. Other institutions have used existing private agencies that tape texts for handicapped students free of charge in order to reduce the number of readers needed for visually impaired students.

As long as no handicapped person is excluded from a program because of the lack of an appropriate aid, the recipient need not have all such aids on hand at all times. Thus, readers need not be available in the recipient's library at all times so long as the schedule of times when a reader is available is established, is adhered to, and is sufficient. Of course, recipients are not required to maintain a complete braille library.

32. *Housing.* Section 104.45(a) requires postsecondary institutions to provide housing to handicapped students at the same cost as they provide it to other students and in a convenient, accessible, and comparable manner. Commenters, particularly blind persons pointed out that some handicapped persons can live in any college housing and need not wait to the end of the transition period in Subpart C to be offered the same variety and scope of housing accommodations given to nonhandicapped persons. The Department concurs with this position and will interpret this section accordingly.

A number of colleges and universities reacted negatively to paragraph (b) of this section. It provides that, if a recipient assists in making off-campus housing available to its students, it should develop and implement procedures to assure itself that off-campus housing, as a whole, is available to handicapped students. Since postsecondary institutions are presently required to assure themselves that off-campus housing is provided in a manner that does not discriminate on the basis of sex (§ 106.32 of the title IX regulation), they may use the procedures developed under title IX in order to comply with § 104.45(b). It should be emphasized that not every off-campus living accommodation need be made accessible to handicapped persons.

33. *Health and insurance.* A proposed section, providing that recipients may not discriminate on the basis of handicap in the provision of health related services, has been deleted as duplicative of the general provisions of section 104.43. This deletion represents no change in the obligation of recipients to provide nondiscriminatory health and insurance plans. The Department will continue to require that nondiscriminatory health services be provided to handicapped students. Recipients are not required, however, to provide specialized services and aids to handicapped persons in health programs. If, for example, a college infirmary treats only simple disorders such as cuts, bruises, and colds, its obligation to handicapped persons is to treat such disorders for them.

34. *Financial assistance.* Section 104.46(a), prohibiting discrimination in providing financial assistance, remains substantively the same. It provides that recipients may not provide less assistance to or limit the eligibility of qualified handicapped persons for such assistance, whether the assistance is provided directly by the recipient or by another entity through the recipient's sponsorship. Awards that are made under wills, trusts, or similar legal instruments in a discriminatory manner are permissible, but only if the overall effect of the recipient's provision of financial assistance is not discriminatory on the basis of handicap.

It will not be considered discriminatory to deny, on the basis of handicap, an athletic scholarship to a handicapped person if the handicap renders the person unable to qualify for the award. For example, a student who has a neurological disorder might be denied a varsity football scholarship on the basis of his inability to play football, but a deaf person could not, on the basis of handicap, be denied a scholarship for the school's diving team. The deaf person could, however, be denied a scholarship on the basis of comparative diving ability.

Commenters on § 104.46(b), which applies to assistance in obtaining outside employment for students, expressed similar concerns to those raised under § 104.43(b), concerning cooperative programs. This paragraph has been changed in the same manner as § 104.43(b) to include the "as a whole" concept and will be interpreted in the same manner as § 104.43(b).

35. *Nonacademic services.* Section 104.47 establishes nondiscrimination standards for physical education and athletics counseling and placement services, and social organizations. This section sets the same standards as does § 104.38 of Subpart D, discussed above, and will be interpreted in a similar fashion.

**Subpart F—Health, Welfare, and Social Services**

Subpart F applies to recipients that operate health, welfare, and social service programs. The Department received fewer comments on this subpart than on others.

Although many commented that Subpart F lacked specificity, these commenters provided neither concrete suggestions nor additions. Nevertheless, some changes have been made, pursuant to comment, to clarify the obligations of recipients in specific areas. In addition, in an effort to reduce duplication in the regulation, the section governing recipients providing health services has been consolidated with the section regulating providers of welfare and social services. Since the separate provisions that appeared in the proposed regulation were almost identical, no substantive change should be inferred from their consolidation.

Several commenters asked whether Subpart F applies to vocational rehabilitation agencies whose purpose is to assist in the rehabilitation of handicapped persons. To the extent that such agencies receive financial assistance from the Department, they are covered by Subpart F and all other relevant subparts of the regulation. Nothing in this regulation, however, precludes such agencies from servicing only handicapped persons. Indeed, § 104.4(c) permits recipients to offer services or benefits that are limited by federal law to handicapped persons or classes of handicapped persons.

Many comments suggested requiring state social service agencies to take an active role in the enforcement of section 504 with regard to local social service providers. The Department believes that the possibility for federal-state cooperation in the administration and enforcement of section 504 warrants further consideration.

A number of comments also discussed whether section 504 should be read to require payment of compensation to institutionalized handicapped patients who perform services

for the institution in which they reside. The Department of Labor has recently issued a proposed regulation under the Fair Labor Standards Act (FLSA) that covers the question of compensation for institutionalized persons. 42 FR 15224 (March 18, 1977). This Department will seek information and comment from the Department of Labor concerning that agency's experience administering the FLSA regulation.

36. *Health, welfare, and other social service providers.* Section 104.52(a) has been expanded in several respects. The addition of new paragraph (a)(2) is intended to make clear the basic requirement of equal opportunity to receive benefits or services in the health, welfare, and social service areas. The paragraph parallels §§ 104.4(b)(ii) and 104.43(b). New paragaph (a)(3) requires the provision of effective benefits or services, as defined in § 104.4(b)(2) (i.e., benefits or services which "afford handicapped persons equal opportunity to obtain the same result (or) to gain the same benefit * * *").

Section 104.52(a) also includes provisions concerning the limitation of benefits or services to handicapped persons and the subjection of handicapped persons to different eligibility standards. One common misconception about the regulation is that it would require specialized hospitals and other health care providers to treat all handicapped persons. The regulation makes no such requirement. Thus, a burn treatment center need not provide other types of medical treatment to handicapped persons unless it provides such medical services to nonhandicapped persons. It could not, however, refuse to treat the burns of a deaf person because of his or her deafness.

Commenters had raised the question of whether the prohibition against different standards of eligibility might preclude recipients from providing special services to handicapped persons or classes of handicapped persons. The regulation will not be so interpreted, and the specific section in question has been eliminated. Section 104.4(c) makes clear that special programs for handicapped persons are permitted.

A new paragraph (a)(5) concerning the provision of different or separate services or benefits has been added. This provision prohibits such treatment unless necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

Section 104.52(b) has been amended to cover written material concerning waivers of rights or consent to treatment as well as general notices concerning health benefits or services. The section requires the recipient to ensure that qualified handicapped persons are not denied effective notice because of their handicap. For example, recipients could use several different types of notice in order to reach persons with impaired vision or hearing, such as brailled messages, radio spots, and tacticle devices on cards or envelopes to inform blind persons of the need to call the recipient for further information.

Section 104.52(c) is a new section requiring recipient hospitals to establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care. Although it would be appropriate for a hospital to fulfill its responsibilities under this section by having a full-time interpreter for the deaf on staff, there may be other means of accomplishing the desired result of assuring that some means of communication is immediately available for deaf persons needing emergency treatment.

Section 104.52(c), also a new provision, requires recipients with fifteen or more employees to provide appropriate auxiliary aids for persons with impaired sensory, manual, or speaking skills. Further, the Assistant Secretary may require a small provider to furnish auxiliary aids where the provision of aids would not adversely affect the ability of the recipient to provide its health benefits or service.

37. *Treatment of Drug Addicts and Alcoholics.* Section 104.53 is a new section that prohibits discrimination in the treatment and admission of drug and alcohol addicts to hospitals and outpatient facilities. Section 104.53 prohibits discrimination against drug abusers by operators of outpatient facilities, despite the fact that section 407 pertains only to hospitals, because of the broader application of section 504. This provision does not mean that all hospitals and outpatient facilities must treat drug addiction and alcoholism. It simply means, for example, that a cancer clinic may not refuse to treat cancer patients simply because they are also alcoholics.

38. *Education of institutionalized persons.* The regulation retains § 104.54 of the proposed regulation that requires that an appropriate education be provided to qualified handicapped persons who are confined to residential institutions or day care centers.

Subpart G—Procedures

In § 104.61, the Secretary has adopted the title VI complaint and enforcement procedures for use in implementing section 504 until such time as they are superseded by the issuance of a consolidated procedureal regulation applicable to all of the civil rights statutes and executive orders administered by the Department.

Appendix B—Guidelines for Eliminating Discrimination and Denial Of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs

Note.—For the text of these guidelines, see 34 CFR Part 100, Appendix B

## PART 106—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

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Subject Index to Title IX Preamble and Regulation

**Appendix A—Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs.**

## Subpart A—Introduction

### § 106.1 Purpose and effective date.

The purpose of this part is to effectuate title IX of the Education Amendments of 1972, as amended by Pub. L. 93–568, 88 Stat. 1855 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part. This part is also intended to effectuate section 844 of the Education Amendments of 1974, Pub. L. 93–380, 88 Stat. 484. The effective date of this part shall be July 21, 1975.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682, as amended by Pub. L. 93–568, 88 Stat. 1855, and Sec. 844, Education Amendments of 1974, 88 Stat. 484, Pub. L. 93–380)

### § 106.2 Definitions.

As used in this part, the term—

(a) *"Title IX"* means title IX of the Education Amendments of 1972, Pub. L. 92–318, as amended by section 3 of Pub. L. 93–568, 88 Stat. 1855, except sections 904 and 906 thereof; 20 U.S.C. 1681, 1682, 1683, 1685, 1686.

(b) *"Department"* means the Department of Health, Education, and Welfare.

(c) *"Secretary"* means the Secretary of Education.

(d) *"Assistant Secretary"* means the Assistant Secretary for Civil Rights of the Department.

(e) *"Reviewing Authority"* means that component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this part.

(f) *"Administrative law judge"* means a person appointed by the reviewing authority to preside over a hearing held under this part.

(g) *"Federal financial assistance"* means any of the following, when authorized or extended under a law administered by the Department:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

(h) *"Recipient"* means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance, including any subunit, successor, assignee, or transferee thereof.

(i) *"Applicant"* means one who submits an application, request, or plan required to be approved by a Department official, or by a recipient, as a condition to becoming a recipient.

(j) *"Educational institution"* means a local educational agency (L.E.A.) as defined by section 801(f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 881), a preschool, a private elementary or secondary school, or an applicant or recipient of the type defined by paragraph (k), (l), (m), or (n) of this section.

(k) *"Institution of graduate higher education"* means an institution which:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

(l) *"Institution of undergraduate higher education"* means:

(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.

(m) *"Institution of professional education"* means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary.

(n) *"Institution of vocational education"* means a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.

(o) *"Administratively separate unit"* means a school, department or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

(p) *"Admission"* means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

(q) *"Student"* means a person who has gained admission.

(r) *"Transition plan"* means a plan subject to the approval of the Secretary pursuant to section 901(a)(2) of the Education Amendments of 1972, under

which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.3 Remedial and affirmative action and self-evaluation.**

(a) *Remedial action.* If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

(c) *Self-evaluation.* Each recipient education institution shall, within one year of the effective date of this part:

(1) Evaluate, in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices which do not or may not meet the requirements of this part; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the Assistant Secretary upon request, a description of any modifications made pursuant to paragraph (c) (ii) of this section and of any remedial steps taken pursuant to paragraph (c) (iii) of this section.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[40 FR 21428, June 4, 1975; 40 FR 39506, Aug. 28, 1975]

**§ 106.4 Assurance required.**

(a) *General.* Every application for Federal financial assistance for any education program or activity shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Assistant Secretary, that each education program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the Assistant Secretary if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 86.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Assistant Secretary of such assurance.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Form.* The Director will specify the form of the assurances required by paragraph (a) of this section and the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.5 Transfers of property.**

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee which operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of Subpart B of this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.6 Effect of other requirements.**

(a) *Effect of other Federal provisions.* The obligations imposed by this part are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; sections 799A and 845 of the Public Health Service Act (42 U.S.C. 295h–9 and 298b–2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); the Equal Pay Act (29 U.S.C. 206 and 206(d)); and any other Act of Congress or Federal regulation.

(Secs. 901, 902, 905, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1685)

(b) *Effect of State or local law or other requirements.* The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives or benefits from Federal financial assistance.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.7 Effect of employment opportunities.**

The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.8 Designation of responsible employee and adoption of grievance procedures.**

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part.

The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompty and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.9 Dissemination of policy.**

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities which it operates, and that is required by title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the Assistant Secretary finds necessary to a prise such persons of the protections against discrimination assured them by title IX and this part, but shall state at least that the requirement not to discriminate in education programs and activities extends to employment therein, and to admission thereto unless Subpart C does not apply to the recipient, and that inquiries concerning the application of title IX and this part to such recipient may be referred to the employee designated pursuant to § 106.8, or to the Assistant Secretary.

(2) Each recipient shall make the initial notification required by paragraph (a) (1) of this section within 90 days of the effective date of this part or of the date this part first applies to such recipient, whichever comes later, which notification shall include publication in: (i) Local newspapers; (ii) newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and (iii) memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form which it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in this paragraph which suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by this part.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and require such representatives to adhere to such policy.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

## Subpart B—Coverage

**§ 106.11 Application.**

Except as provided in this subpart, this Part 86 applies to every recipient and to each education program or activity operated by such recipient which receives or benefits from Federal financial assistance.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.12 Educational institutions controlled by religious organizations.**

(a) *Application.* This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization.

(b) *Exemption.* An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section, shall do so by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.13 Military and merchant marine educational institutions.**

This part does not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.14 Membership practices of certain organizations.**

(a) *Social fraternities and sororities.* This part does not apply to the membership practices of social fraternities and sororities which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts and Camp Fire Girls.* This part does not apply to the membership practices of the Young Men's Christian Association, the Young Women's Christian Association, the Girl Scouts, the Boy Scouts and Camp Fire Girls.

(c) *Voluntary youth service organizations.* This part does not apply to the membership practices of voluntary youth service organizations which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954 and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; Sec. 3(a) of P.L. 93-568, 88 Stat. 1862 amending Sec. 901)

**§ 106.15 Admissions.**

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by this part.

(b) *Administratively separate units.* For the purposes only of this section, §§ 86.16 and 86.17, and Subpart C, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of Subpart C.* Except as provided in paragraphs (d) and (e) of this section, Subpart C applies to each recipient. A recipient to which Subpart C applies shall not discriminate on the basis of sex in admission or recruitment in violation of that subpart.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients which are educational institutions, Subpart C applies only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* Subpart C does not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.16 Educational institutions eligible to submit transition plans.**

(a) *Application.* This section applies to each educational institution to which Subpart C applies which:

(1) Admitted only students of one sex as regular students as of June 23, 1972; or

(2) Admitted only students of one sex as regular students as of June 23, 1965, but thereafter admitted as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of Subpart C unless it is carrying out a transition plan approved by the Secretary as described in § 106.17, which plan provides for the elimination of such discrimination by the earliest practicable date but in no event later than June 23, 1979.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.17 Transition plans.**

(a) *Submission of plans.* An institution to which § 106.16 applies and which is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the Secretary a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education (FICE) Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes, as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which § 106.16 applies shall result in treatment of applicants to or students of such recipient in violation of Subpart C unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § 106.16 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs which emphasize the institution's commitment to enrolling students of the sex previously excluded.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§§ 106.18–106.20 [Reserved]**

## Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

**§ 106.21 Admission.**

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided in §§ 106.16 and 106.17.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this Subpart applies shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;

(3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admision, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.22 Preference in admission.**

A recipient to which this subpart applies shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which admits as students or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.23 Recruitment.**

(a) *Nondiscriminatory recruitment.* A recipient to which this subpart applies shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 106.3(a), and may choose to undertake such efforts as affirmative action pursuant to § 106.3(b).

(b) *Recruitment at certain institutions.* A recipient to which this subpart applies shall not recruit primarily or exclusively at educational institutions, schools or

entities which admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§§ 106.24–106.30 [Reserved]

## Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

### § 106.31 Education programs and activities.

(a) *General.* Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives of benefits from Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which Subpart C does not apply, or (2) an entity, not a recipient, to which Subpart C would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Discriminate against any person in the application of any rules of appearance;

(6) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, which are designed to provide opportunities to study abroad, and which are awarded to students who are already matriculating at or who are graduates of the recipient institution; *Provided,* a recipient educational institution which administers or assists in the administration of such scholarships, fellowship, or other awards which are restricted to members of one sex provides, or otherwise makes available reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Programs not operated by recipient.* (1) This paragraph applies to any recipient which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient;

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient which this part would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

### § 106.32 Housing.

(a) *Generally.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than provided by such recipient.

(2) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole: (i) Proportionate in quantity and (ii) comparable in quality and cost to the student. A recipient may render such assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

(Secs. 901, 902, 907, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1686)

### § 106.33 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374)

### § 106.34 Access to course offerings.

A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(b) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective

standards of individual performance developed and applied without regard to sex.

(c) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(d) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have such effect.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(f) Recipients may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.35 Access to schools operated by L.E.A.s.**

A recipient which is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.36 Counseling and use of appraisal and counseling materials.**

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.37 Financial assistance.**

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not: (1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate; (2) through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or (3) apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein; *Provided,* That the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in subparagraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under subparagraph (b)(2)(i) of this paragraph; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and § 106.41.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

**§ 106.38 Employment assistance to students.**

(a) *Assistance by recipient in making available outside employment.* A recipient which assists any agency, organization or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient which employs any of its students shall not do so in a manner which violates Subpart E of this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.39 Health and insurance benefits and services.**

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate

Subpart E of this part if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.40 Marital or parental status.**

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the instructional program in the separate program is comparable to that offered to non-pregnant students.

(4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.41 Athletics.**

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose of major activity of which involves bodily contact.

(c) *Equal opportunity.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

(1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(2) The provision of equipment and supplies;

(3) Scheduling of games and practice time;

(4) Travel and per diem allowance;

(5) Opportunity to receive coaching and academic tutoring;

(6) Assignment and compensation of coaches and tutors;

(7) Provision of locker rooms, practice and competitive facilities;

(8) Provision of medical and training facilities and services;

(9) Provision of housing and dining facilities and services;

(10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

**§ 106.42 Textbooks and curricular material.**

Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.43-106.50 [Reserved]**

## Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

**§ 106.51 Employment.**

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives or benefits from Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way

which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this Subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

(b) *Application.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.52 Employment criteria.**

A recipient shall not administer or operate any test or other criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.53 Recruitment.**

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.54 Compensation.**

A recipient shall not make or enforce any policy or practice which, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.55 Job classification and structure.**

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex, unless sex is a bona-fide occupational qualification for the positions in question as set forth in § 106.61.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.56 Fringe benefits.**

(a) *"Fringe benefits" defined.* For purposes of this part, "fringe benefits" means: Any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of § 106.54.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.57 Marital or parental status.**

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job related purposes, including commencement, duration and extensions of leave,

payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.58 Effect of State or local law or other requirements.**

(a) *Prohibitory requirements.* The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.

(b) *Benefits.* A recipient which provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.59 Advertising.**

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a *bona-fide* occupational qualification for the particular job in question.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.60 Pre-employment inquiries.**

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.61 Sex as a bona-fide occupational qualification.**

A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona-fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§§ 106.62–106.70 [Reserved]**

## Subpart F—Procedures [Interim]

**§ 106.71 Procedures.**

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 34 CFR 100.6–100.11 and 34 CFR Part 101.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

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Appendix A—Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs

Note.—For the text of these guidelines, see 34 CFR Part 100, Appendix B
[44 FR 17168, Mar. 21, 1979]

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# Part III

# Department of Labor

## Employment Standards Administration

## Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

## 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 in construction activity 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. 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 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 not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

#### New General Wage Determination Decisions

None.

#### 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.

| | |
|---|---|
| Kansas: | |
| KS80-4009 | Apr. 4, 1980. |
| KS80-4010 | Apr. 4, 1980. |
| KS80-4011 | Apr. 4, 1980. |
| Maryland: | |
| MD79-3010 | May 11, 1979. |
| MD79-3031 | Nov. 30, 1979. |
| Mississippi: | |
| MS80-1032 | Jan. 11, 1980. |
| Missouri: | |
| MO80-4023 | Apr. 11, 1980. |
| New Jersey: | |
| NJ79-3029 | Jan. 4, 1980. |
| New York: | |
| NY79-3028 | Sept. 7, 1979. |
| NY80-3008 | Feb. 15, 1980. |
| NY80-3023 | Apr. 11, 1980. |

#### 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. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

| | |
|---|---|
| Arkansas: | |
| AR78-4074 (AR80-4029) | July 28, 1978. |
| Louisiana: | |
| AR78-4074 (AR80-4029) | July 28, 1978. |
| Mississippi: | |
| AR78-4074 (AR80-4029) | July 28, 1978. |
| Tennessee: | |
| AR78-4074 (AR80-4029) | July 28, 1978. |
| Washington, D.C.: | |
| DC76-3171 (DC80-3039) | May 21, 1976. |

#### Cancellation of General Wage Determination Decisions

None.

Signed at Washington, D.C., this 2nd day of May 1980.

**Dorothy P. Come,**

*Assistant Administrator, Wage and Hour Division.*

BILLING CODE 4510-27-M

MODIFICATION PAGE 1

DECISION NO. KS80-4009 Mod.#1
(45 FR 23252 April 4, 1980)
Shawnee County, Kansas

Building Construction

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Change: | | | | | |
| Sprinkler fitters | $14.10 | .85 | 1.20 | | .08 |

DECISION NO. KS80-4010 Mod.#1
(45 FR 23257 April 4, 1980)
Shawnee County, Kansas

Residential Construction

| | | | | | |
|---|---|---|---|---|---|
| Change: | | | | | |
| Sprinkler fitters | 14.10 | .85 | 1.20 | | .08 |

DECISION NO. KS80-4011 Mod.#1
(45 FR 23255 April 4, 1980)
Sedgwick County, Kansas

Building Construction

| | | | | | |
|---|---|---|---|---|---|
| Change: | | | | | |
| Sprinkler fitters | 14.10 | .85 | 1.20 | | .08 |

MODIFICATION PAGE 2

DECISION NO. MD79-3010-Mod.#3
(43FR 27873-May 11, 1979)
Allegany and Garrett Counties, Maryland

Change:

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Asbestos Workers | $13.47 | .85 | 1.25 | | |
| Boilermakers | 13.575 | 1.175 | 1.00 | | .04 |
| Electricians: | | | | | |
| Allegany County | 11.40 | .80 | 3%+.60 | | 1% |
| Garrett County | 11.80 | .80 | 3%+.60 | | 1% |
| Linemen-Allegany County | | | | | |
| Linemen | 11.40 | .80 | 3%+.60 | | |
| Equipment Operator | 10.84 | .80 | 3%+.60 | | |
| Truck Driver | 7.42 | .80 | 3%+.60 | | |
| Groundmen | 4.56 | .80 | 3%+.60 | | |
| Roofers | | | | | |
| Composition | 10.35 | .50 | .40 | | |
| Mopmen-composition | 10.60 | .50 | .40 | | |
| Slaters | 10.50 | .50 | .40 | | |
| Sprinkler fitters | 13.90 | .85 | 1.20 | | .08 |
| Change: | | | | | |
| Truck Drivers | | | | | |
| Group 1 | 8.83 | .90 | 1.15 | | |
| Group 2 | 8.98 | .90 | 1.15 | | |
| Group 3 | 9.18 | .90 | 1.15 | | |
| Group 4 | 9.37 | .90 | 1.15 | | |
| Group 5 | 9.61 | .90 | 1.15 | | |

DECISION NO. MD79-3031-Mod. #3
(44 R69110-November 30, 1979)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Counties of Anne Arundel (excluding the D.C. Training School), Baltimore, Baltimore City, Maryland, and for Heavy Construction projects in Harford and Howard Counties Maryland | | | | | |
| Change: | | | | | |
| Boilermakers | $13.575 | 1.175 | 1.00 | | .04 |
| Laborers: | | | | | |
| Common Laborers | 9.10 | .40 | .60 | | .075 |
| Powertool Operators | 9.20 | .40 | .60 | | .075 |
| Pipelayers (Concrete + Clay) | 9.30 | .40 | .60 | | .075 |
| Wagon Drill Operator, Jack hammer Operator (80# or over), Barco Tampers | 9.35 | .40 | .60 | | .075 |
| Plasterers Laborers | 9.25 | .40 | .60 | | .075 |
| Hod Carrier, Gunnite Nozzle + Gun Operator | 9.40 | .40 | .60 | | .075 |
| Burners (Demolition) | 9.60 | .40 | .60 | | .075 |
| Painters: | | | | | |
| Brush and Roller | 9.90 | 1.10 | .65 | | .09 |
| Spackling, taping, & wallcovering | 10.05 | 1.10 | .65 | | .09 |
| Spray Painting (except steel) | 10.15 | 1.10 | .65 | | .09 |
| Sprinkler fitters: | | | | | |
| Harford & Howard Counties and the remainder of Anne Arundel and Baltimore Counties | 13.90 | .85 | 1.20 | | .08 |
| Tile and Terrazzo Workers | 9.81 | .70 | .50 | | .04 |

DECISION #MS-80-1032- Mod. #1
(54 FR 2494- January 11, 1980)
Hinds County, Mississippi

| | | | | | |
|---|---|---|---|---|---|
| CHANGE: | | | | | |
| Plumbers, Steamfitters, Pipefitters | $11.03 | 1.05 | 1.00 | | |



DECISION #MO80-4023 - Mod. #1
(45 FR 24997 - April 11, 1980)
Statewide, Missouri

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Change: | | | | | |
| Cement Masons: | | | | | |
| Zone 4 | $13.52 | .65 | .50 | | |
| Laborers: | | | | | |
| Zone 5 | | | | | |
| Group 1 | 10.50 | .60 | .60 | 1.00 | .10 |
| Group 2 | 10.65 | .60 | .60 | 1.00 | .10 |
| Group 3 | 10.80 | .60 | .60 | 1.00 | .10 |
| Group 4 | 11.00 | .60 | .60 | 1.00 | .10 |
| Group 5 | 11.30 | .60 | .60 | 1.00 | .10 |
| Power Equipment Operators: | | | | | |
| Zone 1 | | | | | |
| Group 1 | 12.45 | .85 | 1.00 | 1.05 | .15 |
| Group 2 | 12.20 | .85 | 1.00 | 1.05 | .15 |
| Group 3 | 11.50 | .85 | 1.00 | 1.05 | .15 |
| Truck Drivers: | | | | | |
| Zone 2 | | | | | |
| Group 1 | 10.91 | 1.00 | 1.25 | .75 | |
| Group 2 | 11.11 | 1.00 | 1.25 | .75 | |
| Group 3 | 11.42 | 1.00 | 1.25 | .75 | |
| Group 4 | 11.57 | 1.00 | 1.25 | .75 | |
| Group 5 | 10.69 | 1.00 | 1.25 | .75 | |
| Omit: | | | | | |
| Power Equipment Operators: | | | | | |
| Zone 1 | | | | | |
| Group I | | | | | |
| Mechanics & welders, field or shop | 11.90 | .75 | 1.00 | .75 | .10 |
| Group III | | | | | |
| Roller oper., other than dredge | 10.95 | .75 | 1.00 | .75 | .10 |
| Group IV | 9.45 | .75 | 1.00 | .75 | .10 |
| Group V | 9.95 | .75 | 1.00 | .75 | .10 |
| Group VI | 12.15 | .75 | 1.00 | .75 | .10 |
| Group VII | 10.90 | .75 | 1.00 | .75 | .10 |

MODIFICATION PAGE 5

| DECISION #MO80-4023 (Cont'd) | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Add: | | | | | |
| Power Equipment Operators: | | | | | |
| Zone I | | | | | |
| Group I | | | | | |
| Mechanics & welders | $12.45 | .85 | 1.00 | 1.05 | .15 |
| Group IV | | | | | |
| (a) Oiler | 9.03 | .85 | 1.00 | 1.05 | .15 |
| (b) Oiler drivers, all types | 10.50 | .85 | 1.00 | 1.05 | .15 |
| Group V | | | | | |
| Clamshells 3 yds. capacity or over; crane or rigs, 80 ft. of boom or over (including jib); draglines, 3 yds. capacity or over; piledrivers, 80 ft. of boom or over (including jib); shovels & backhoes, 3 yds. capacity or over | 12.70 | .85 | 1.00 | 1.05 | .15 |
| Group VI | | | | | |
| Hoists (each additional drum over 1 drum) | 12.45 | .85 | 1.00 | 1.05 | .15 |

MODIFICATION PAGE 6

DECISION #NJ79-3029-Mod. #2
(44 FR 1350 - January 4, 1980)

| Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union, and Warren Counties, New Jersey | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Change: | | | | | |
| Bricklayers, Stone Masons, Cement Masons, & Plasterers: | | | | | |
| Zone 1 | $12.75 | .92 | 1.00 | | .05 |
| Zone 3 | 12.25 | 1.22 | 1.70 | | .03 |
| Zone 7 | 13.15 | .50 | .70 | | .02 |
| Zone 8 | 12.54 | .85 | .85 | | .11 |
| Carpenters, Insulators, and Millwrights: | | | | | |
| Zone 2 | 12.35 | .70 | 1.40 | .50 | .05 |
| Zone 3 | | | | | |
| Carpenters | 12.57 | 8% | 7% | | 1/2% |
| Zone 4 | | | | | |
| Carpenters & Insulators | 12.57 | 8% | 7% | | 1/2% |
| Millwrights | 12.82 | 8% | 7% | | 1/2% |
| Laborers, Building Construction: | | | | | |
| Zone 3 | | | | | |
| Laborers | 9.65 | .45 | .55 | | .07 |
| Carpenters Tenders, Bellmen, Mortar Mixers, Scaffold Men and Pneumatic Hammer Operators | 9.90 | .45 | .55 | | .07 |
| Zone 8 | | | | | |
| Laborers | 9.50 | .40 | .60 | | .07 |
| Zone 10 | | | | | |
| Laborers, Wrecking, Demolition, Concrete Mixers w/o Hoppers, Drill Runners, Jackhammers, Mason Tenders, Mortar Mixers, Excavations and Foundations, Scaffold Builders, Carpenters Tenders, and Grading for Concrete | 9.50 | .50 | .50 | | .07 |
| Zone 11 | | | | | |
| Laborers, Air Tool Operators (Jackhammer, vibrator), Mason Tenders, Mortar Mixers, Plasterers Tenders, Pipelayers, Wreckers, and Excavation | 9.35 | .65 | .50 | | .07 |

| Decision #NJ79-3029 (Cont'd) | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Laborers, Heavy and Highway Construction: | | | | | |
| Group 1 | 9.50 | 1.00 | 1.00 | | .10 |
| Group 2 | 9.70 | 1.00 | 1.00 | | .10 |
| Group 3 | 10.00 | 1.00 | 1.00 | | .10 |
| Group 4 | 10.20 | 1.00 | 1.00 | | .10 |
| Group 5 | 10.45 | 1.00 | 1.00 | | .10 |
| Group 6 | 11.00 | 1.00 | 1.00 | | .10 |

Classification Definition for Laborers on Heavy and Highway Construction

Group 1 - Common Laborers, Landscape Laborers, Railroad Track Laborers, Flagmen, Traffic Directors, Salamander Tenders, Pitmen, Dumpmen, Waterproofing Laborers, Rakers and Tampers on Cold Patch Work, and Wrapping and Coating of all Pipe
Group 2 - Powder Carrier, magazine Tender, Wagon Drill Operator Helper, Drill Master Helper, and Signalmen
Group 3 - Sewer Pipe, Lasermen, Conduit and Duct Line Layer, Power Tool Operator, Jack Hammer, Chipping Hammer, Pavement Breaker, Power Buggy, Concrete Cutter, Asphalt cutter, Sheet Hammer and Tree Cutter Operators, Sandblasting Cutting, Burning and such other power tools used to perform work usually done manually by laborers
Group 4 - Wagon Drill Operator, Timberman, and Drill Master
Group 5 - Finisher, Form Setter, Rammer, Paver, Gunite Nozzle Men, and Stonecutter
Group 6 - Blaster



| Decision #NJ79-3029 (Cont'd) | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Laborers, Free Air Tunnel Jobs: | | | | | |
| Group 1 | 10.95 | 1.00 | 1.00 | | .10 |
| Group 2 | 10.55 | 1.00 | 1.00 | | .10 |
| Group 3 | 10.40 | 1.00 | 1.00 | | .10 |
| Group 4 | 9.90 | 1.00 | 1.00 | | .10 |
| Laborers, Asphalt Construction: | | | | | |
| Zone 1 | | | | | |
| Street: | | | | | |
| Head Raker | 9.05 | 1.01 | .89 | d | .10 |
| Rakers and screed men | 8.90 | 1.01 | .89 | d | .10 |
| Tampers Smoothers, Kettlemen, Painters, Top Shovelers, and Roller Boys | 8.65 | 1.01 | .89 | d | .10 |
| Plant: | | | | | |
| Scale mixer and burner men | 8.90 | 1.01 | .89 | d | .10 |
| Feeders and Dust Men | 8.65 | 1.01 | .89 | d | .10 |
| Zone 2 | | | | | |
| Street: | | | | | |
| Head Rakers | 9.00 | 1.00 | 1.00 | | .10 |
| Rakers and screed men | 8.85 | 1.00 | 1.00 | | .10 |
| Tampers, smoothers, Kettlemen, Painters, Shovelers, and Roller Boys | 8.60 | 1.00 | 1.00 | | .10 |
| Plant: | | | | | |
| Scale mixer and burner men | 8.85 | 1.00 | 1.00 | | .10 |
| Feeders and Dust Men | 8.60 | 1.00 | 1.00 | | .10 |
| Line Construction (Excluding Railroad Construction): | | | | | |
| Zone 3 | | | | | |
| Linemen, Cable Splicers, Equipment Operators, and Groundmen | 13.69 | 11% | 9%+.58 | | 3/4% |
| Marble Setters, Terrazzo Workers, and Tile Setters: | | | | | |
| Zone 1 | 12.54 | .85 | .75 | | .11 |

| Decision #NJ79-3029 (Cont'd) | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Painters: | | | | | |
| Zone 1 | | | | | |
| Painters and Tapers | 11.65 | 1.25 | 2.40 | | .06 |
| Steel Outside | 12.65 | 1.25 | 2.40 | | .06 |
| Spray | 13.20 | 1.25 | 2.40 | | .06 |
| Glaziers: | | | | | |
| Zone 3 | 13.45 | 1.00 | 2.00 | | .05 |



DECISION NO. NY79-3028 - Mod. #1
(44 FR 52570 - September 7, 1979)
Orange County, New York

Changes:

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Carpenters: | | | | | |
| Remainder of County | 11.20 | .80 | 1.15 | | |
| Electricians: | | | | | |
| Twps. of Otisville, Middletown, Goshen, Florida, Warwick, Port Jervis, Sparrow, Bush, Monroe, Harman, Southfield, Tuxedo Lake and Tuxedo | 11.00 | 8% | 19% | 10% | 1% |
| Ironworkers: | | | | | |
| Reinforcing, Ornamental, and Structural | 10.00 | 1.86 | 3.30 | 1.60 | |
| Millwrights | 12.48 | 1.70 | 1.78 | 1.01 | .04 |
| Sheet Metal Workers | 13.32 | 2.093 | 1.903 | | .13 |
| Sprinkler Fitters | 13.54 | .75 | 1.05 | | .08 |
| Truck Drivers: | | | | | |
| Drivers on Letourneau Tractors, double barrel Euclids, Athey wagon and similar equipment (except when hooked to scrapers) Low beds, I-Team, pole trailers, road oil distributors, tire trucks, tractors and trailers with 5 axle and over | 11.00 | .95 | 1.05 | a | |
| Equipment 25 yards and over up to and including 30 yard bodies, cable dump trailers, powder and dynamite trucks | 10.90 | .95 | 1.05 | a | |
| Equipment up to and including 24 yards bodies, mixer trucks, dump crete trucks and similar types of equipment, fuel trucks and all other tractor trailers | 10.70 | .95 | 1.05 | a | |
| Ten wheelers, grease trucks and tiller men | 10.60 | .95 | 1.05 | a | |
| Straight trucks | 10.50 | .95 | 1.05 | a | |
| Pick-up trucks used for hauling material parts, escort man over the road | 10.50 | .95 | 1.05 | a | |

MODIFICATION PAGE 11

DECISION NO. NY80-3008 - Mod. #1
(45 FR 10583 - February 15, 1980)
Saint Lawrence County, New York

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CHANGE: | | | | | |
| Carpenters Heavy & Highway | 11.23 | .55 | .90 | | .025 |
| Cement Masons Heavy & Highway | 11.10 | .70 | .70 | | |
| Laborers, Heavy & Highway | | | | | |
| Class A | 9.14 | .60 | 1.20 | f | |
| Class B | 9.34 | .60 | 1.20 | f | |
| Class C | 9.54 | .60 | 1.20 | f | |
| Class D | 9.74 | .60 | 1.20 | f | |
| Power Equipment Operators, Heavy & Highway | | | | | |
| Group 1 | 12.25 | 1.25 | 1.25 | a | .15 |
| Group 2 | 11.84 | 1.25 | 1.25 | a | .15 |
| Group 3 | 10.68 | 1.25 | 1.25 | a | .15 |
| Group 4 | 9.65 | 1.25 | 1.25 | a | .15 |
| Truck Divers, Heavy and Highway | | | | | |
| Class 1 | 9.78 | 1.11 | .85 | j | |
| Class 2 | 9.83 | 1.11 | .85 | j | |
| Class 3 | 9.88 | 1.11 | .85 | j | |
| Class 4 | 10.03 | 1.11 | .85 | j | |
| Class 5 | 10.18 | 1.11 | .85 | j | |

MODIFICATION PAGE 12

DECISION NO. NY80-3023 - Mod. #1
(45 FR 25010 - April 11, 1980)
Westchester County, New York

CHANGE:

| TRUCK DRIVERS: HEAVY CONSTRUCTION | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| GROUP I | 10.36 | 1.10 | .85 | a+b | |
| GROUP II | 10.48 | 1.10 | .85 | a+b | |
| GROUP III | 10.61 | 1.10 | .85 | a+b | |
| GORUP IV | 10.73 | 1.10 | .85 | a+b | |
| GROUP V | 11.36 | 1.10 | .85 | a+b | |
| GROUP VI | 11.11 | 1.10 | .85 | a+b | |
| GROUP VII | 10.81 | 1.10 | .85 | a+b | |
| GROUP VIII | 10.31 | 1.10 | .85 | a+b | |
| GROUP IX | 10.56 | 1.10 | .85 | a+b | |
| GROUP X | 11.10 | 1.10 | .85 | a+b | |
| GROUP XI | 11.86 | 1.10 | .85 | a+b | |
| GROUP XII | 12.23 | 1.10 | .85 | a+b | |

TRUCK DRIVERS - HEAVY CONSTRUCTION

GROUP I
Straight jobs, A-Frame (inside cab), winch (inside cab), tow, dynamite, seeding, Mulching, agitator, water, post hole diggers, mortar mixing, suburbans, oil distributors, pick-up, hopper men & crusher op., concrete mixer, lift (in garage, yards and on job site)

GROUP II
Tractor trailers (all types), 3 axle trucks (physically load and unload), mixer men, high pressure boiler in asphalt and batch plants

GROUP III
Tractor trailers (carrying equipment), weighmasters

GROUP IV
Euclid

GROUP V
Euclids, athey wagons, trailer wagons, belly dumps (All over 40 tons)

GROUP VI
Athey wagons, trailer wagons, belly dumps (Under 40 tons)

GROUP VII
Dual purpose grease & fuel trucks, fuel trucks, tire trucks

GROUP VIII
Welding trucks on pipelines

DECISION NO. NY80-3023 - Mod. #1 (Cont'd):

TRUCK DRIVERS - HEAVY CONSTRUCTION

GROUP IX
Welders, Maintenance Men, Mechanics

GROUP X
Yardmen

GROUP XI
Darts (up to 100 tons)

GROUP XII
RXS

PAID HOLIDAYS:
A-New Year's day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; and F-Christmas Day.

FOOTNOTES:

a. Holidays: A through F, Lincoln's Birthday, Washington's Birthday, Good Friday, Columbus Day, Election Day, Veteran's Day (provided employee works one day of the work week in which the holiday occurs).

b. One week vacation after 90 days of employment in calendar year, plus one additional day for each additional 18 days of employment, not exceeding 10 days in any one calendar year; two weeks after 130 days of employment in any calendar year. However, an employee with 5 years of seniority service shall receive 2 weeks paid vacation provided he works 90 days in a calendar year; three weeks and one day after 16 years of seniority service - plus 1 additional day for each year up to 19 years of seniority service; four weeks after 20 years of seniority service.

SUPERSEDEAS DECISION

STATES: Arkansas, Louisiana, Mississippi and Tennessee
DECISION NO.: AR80-4029 DATE: Date of Publication
Supersedes Decision No. AR78-4074, dated July 28, 1978, in 43 FR 33014
DESCRIPTION OF WORK: For construction of all river, harbor and flood control work on the Mississippi River and tributaries (excluding the metropolitan areas of Vicksburg, Greenville and Natchez, Mississippi, Pine Bluff, Little Rock and Ft. Smith, Arkansas, Memphis, Tennessee and New Orleans, Baton Rouge, Alexandria, Monroe and Shreveport, Louisiana and any contracts for any phase of construction of a lock or dam.)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CARPENTERS | 5.50 | | | | |
| LABORERS: | | | | | |
| Unskilled | 3.50 | | | | |
| Revetment and dikes | 3.50 | | | | |
| Chain saw operator or filer | 4.00 | | | | |
| Air tool operator | 4.00 | | | | |
| Powderman | 5.00 | | | | |
| POWER EQUIPMENT OPERATORS: | | | | | |
| Pile driver operator, mechanic (heavy equipment), cranes derricks, draglines, welder, power shovels and backhoes, mixer (concrete, 21 cu. ft. & over), asphalt plant operator, trenching machine (over 18") | 7.25 | | | | .05 |
| Bulldozer (finisher push cat & on barges), motor patrol finisher, scraper and like equipment, front end loader, backhoe (tractor mounted), asphalt finisher or spreading machine, well point system operator, self-propelled loader (conveyor type) | 6.50 | | | | .05 |
| Fireman (heavy construction), pile driver, leadsman, winchman | 5.50 | | | | .05 |
| Asphalt plant dryer operator, asphalt distributor, asphalt roller, bulldozer (rough, including disc, plow or roller), motor patrol (haul roads), trenching machine (18" and under), selfpropelled roller (except asphalt), end dump equipment (off highway), mixer (concrete up to 21 cu. ft.), bottom dump euclids (and like | | | | | |

DECISION NO. AR80-4029

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| POWER EQUIPMENT OPERATORS CONT'D: | | | | | |
| equipment) | 5.00 | | | | .05 |
| Oiler, pump, mechanic helper, greaser, welder helper, tractor (farm type including disc plow or roller) | 4.50 | | | | .05 |
| TRUCK DRIVERS: | | | | | |
| 1½ tons or less | 4.00 | | | | |
| Over 1½ tons | 4.50 | | | | |



STATE: Washington D.C. COUNTY: Washington D.C
DECISION NO.: DC80-3039 DATE: Date of Publication
Supersedes Decision No. DC76-3171 dated May 21, 1976 in 41 FR 21027.
DESCRIPTION OF WORK: Residential Construction 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. |
| Air Condition & Refrigeration Mechanic | $ 7.50 | | | | |
| Bricklayers | 10.60 | | | | |
| Carpenters | 7.96 | | | | |
| Cement Masons | 10.00 | | | | |
| Dry Wall Finisher | 8.81 | | | | |
| Dry Wall Hanger | 8.00 | | | | |
| Dry Wall Taper | 6.95 | | | | |
| Electricians | 9.00 | .70 | 3% | | |
| Glaziers | 12.23 | .71 | .70 | | .05 |
| Ironworkers | 7.79 | | | | |
| Insulation Mechanic | 5.30 | | | | |
| Laborers: | | | | | |
| Unskilled | 4.52 | | | | |
| Asphalt | 6.75 | | | | |
| Landscape | 6.24 | | | | |
| Pipelayer | 5.90 | | | | |
| Painters | 7.58 | | | | |
| Plasterers | 11.81 | | | | |
| Plumbers | 7.00 | | | | |
| Roofers | 6.10 | | | | |
| Sheet Metal Workers | 6.88 | | | | |
| Soft Floor Layers | 8.08 | | | | |
| Tile Setters | 9.41 | | | | |
| Truck Drivers | 6.25 | | | | |
| Truck Drivers (10-wheel dump) | 9.20 | .74 | .425 | a+b | |
| Power Equipment Operators: | | | | | |
| Backhoe | 7.93 | | | | |
| Bulldozer | 9.62 | | | | |
| Crane | 7.04 | | | | |
| Driller | 5.21 | | | | |
| Loader | 8.71 | | | | |
| Piledriver | 12.93 | .70 | .65 | | .12 |
| Roller | 7.00 | | | | |

PAID HOLIDAYS:
A-New Years's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; f-Christmas Day

FOOTNOTES:
A. Holidays: A-D-E and F (provided the employee works the regularly scheduled work days immediatedly preceding and following the holiday)
b One week's paid vacation providing the employee has worked 3 years and a minimum of 1450 hours during any calendar year

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Part IV

# Department of Agriculture

Food Safety and Quality Service

# Department of Health, Education, and Welfare

Food and Drug Administration

# Environmental Protection Agency

Restrictions on Use of Polychlorinated Biphenyls (PCB's)

**DEPARTMENT OF AGRICULTURE**

**Food Safety and Quality Service**

**7 CFR Part 2859**

**9 CFR Parts 308, 381**

# Prohibition of PCB-Containing Equipment or Machinery and Liquid Polychlorinated Biphenyls (PCB's) in Federally Inspected Meat Establishments, Poultry Product Establishments and Egg Product Plants

**AGENCY:** Food Safety and Quality Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the Federal meat inspection regulations, the Federal poultry products inspection regulations, and the Federal regulations governing the inspection of eggs and egg products to establish a requirement that no equipment or machinery, other than capacitors containing less than 3 pounds of PCB liquid, and no separately maintained liquids in USDA inspected plants and establishments shall contain liquid PCBs in excess of 50 ppm. A 6-month disposal period would be allowed which would not start until disposal facilities become available. All equipment removal or flushing, and all handling or removal of PCB liquids, would be performed in accordance with the Environmental Protection Agency (EPA) regulations (40 CFR 761). PCBs are a class of chemical compounds which are highly toxic and are persistent in nature. These proposed regulations would supplement and extend the coverage of an earlier proposal (published in the Federal Register February 29, 1980 (45 FR 13471–13473) which would prohibit new or replacement equipment and machinery containing liquid PCBs in inspected plants and establishments.

**DATE:** Comments must be received on or before: July 7, 1980.

**ADDRESS:** Written comments should be sent 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. Oral comments on poultry products inspection regulations to Mr. Bartie Woods, (202) 447–5627. (See also comments under Supplementary Information.)

**FOR FURTHER INFORMATION CONTACT:** Mr. Bartie Woods, Acting Director, Facilities, Equipment, and Sanitation Division, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–5627. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above-named individual.

**SUPPLEMENTARY INFORMATION:** This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "significant."

## Comments

Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Office of the Executive Secretariat and 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 on the poultry products inspection regulations must make such request to Mr. Woods so that arrangements may be made for such views to be presented. A transcript will be made of all views orally presented. All comments submitted pursuant to this notice will be made available for public inspection in the Office of the Executive Secretariat during regular business hours.

## Background

Polychlorinated biphenyls (PCBs) constitute a class of toxic industrial chemicals used for their highly stable, fire resistant, and heat transfer characteristics. They also have high resistance to the flow of electrical current.

PCBs have been used in United States since 1929 in such applications as transformers and capacitor fluids, heat transfer fluids, and hydraulic fluids.[1]

### *Health Risks Due to PCB's*

The problem of PCBs as a potential food contaminant was first generally recognized after a poisoning incident in Japan in 1968 caused by the accidental introduction of PCBs into rice oil. In that incident, consumers of the contaminated rice oil developed adverse health effects.

Prior to that incident, PCBs had caused reproductive problems in commercial mink. Those problems were first reported in 1965, but it was not until several years later, after satisfactory analytical procedures had been developed, that PCBs were identified as the contaminant. The source of the PCBs was found to be contaminated coho salmon from Lake Michigan, which were fed to the mink.

Subsequent research into the effects of exposure to PCBs has shown that PCBs cause various kinds of health disorders in laboratory animals, including reproductive failures, gastric disorders, skin lesions, and tumors.

Studies of human exposure to PCBs in the Japanese incident have indicated a high incidence of skin disorders, digestive disturbances, jaundice, throat and respiratory irritations, and severe headaches.

### *PCB's in Today's Environment*

The most significant sources of PCBs in the environment include discarded consumer or industrial products containing PCBs, atmospheric fallout, and spills associated with the use or transport of PCBs. In today's environment, PCBs are already widespread, as thousands of environmental and ecological samples from all over the world have been analyzed and reported to contain PCBs. PCBs have been detected, frequently at high levels, in fish and bird species inhabiting widely separated geographic areas. Since 1971 there have been at least nine separate incidents of accidental PCB contamination of human food supplies, including chickens, turkeys, eggs and hogs. These accidents have resulted in PCB contamination of several million pounds of food with a loss of over $10 million. No adverse human health effects have been directly attributed to any of these incidents. However, it is known that some of these foods containing PCBs have been consumed.

A recent major industrial accident occurred in June 1979 in a meat slaughtering establishment when, without anyone's knowledge, approximately 200 gallons of PCB liquid leaked from a stored electrical transformer into the plant drainage system. A portion of the liquid, along with plant waste, including fat, meat scraps, blood and other similar material, was then separated in primary waste treatment, and sent with other inedible products for rendering into animal feeds. This, in turn, resulted in the contamination both of primary foods of

[1] PCBs are or have been manufactured and sold under a variety of trade names including: Pyranol (General Electric), Chlorextol (Allis-Chalmers), Inerteen (Westinghouse), Noflamol (Wagner Electric), Phenochlor (Pro Delec), Therminol (Monsanto Chemical Co.), Aroclor (Monsanto Chemical Co.), MCS (Monsanto Chemical Co.), Pydraul (Monsanto Chemical Co.), Turbinol (Monsanto Chemical Co.), Santorac (Monsanto Chemical Co.), and Kanechlor (Kanegafuchi), Chlophen (Bayer), Dykanol (Cornell Dubilier), and Decachloro Biphenyls (Caffaro).

animal origin intended for human consumption, including meat, poultry, milk and eggs, and of secondary food products such as soups and cakes. Millions of pounds of food were contaminated with PCBs as a result of this accident. Food and feed products implicated in the contamination incident were distributed to 19 States and two foreign countries. The costs associated with this accident alone will run into millions of dollars.

On December 20, 1979, there was a PCB leakage from a capacitor in a federally inspected hog slaughtering establishment in Iowa. Only the quick actions of plant officials and an FSQS inspector in recognizing and containing the problem prevented another potentially massive contamination incident.

*U.S. Regulatory Control of PCB's*

PCBs are currently regulated by the Environmental Protection Agency (EPA), the Food and Drug Administration (FDA), and the Food Safety and Quality Service (FSQS) of the United States Department of Agriculture (USDA).

a. *EPA.* The Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*) requires the Environmental Protection Agency (EPA) to control the manufacture, processing, and distribution in commerce, use, disoposal, and marketing of PCBs. Section 6(e)(3) of that Act (15 U.S.C. 2605(e)(3)) provides that no person may manufacture any PCB after January 1, 1979, or process or distribute in commerce any PCB after July 1, 1979, except to the extent that EPA specifically authorizes or exempts such activity. Implementation of the January 1, 1979, ban was subsequently postponed until 30 days after completion of EPA rulemaking on May 31, 1979 (44 FR 31514). Subsequently, the July 1, ban was also delayed slightly. However, the May 31 rule prohibits all manufacturing, processing, and distribution in commerce, and use of PCBs after July 2, 1979, that is not specifically authorized or exempted by EPA.

The May 31 rule did provide certain exemptions to bans. EPA generally exempted the use of PCBs in "totally enclosed" systems, such as those found in transformers and capacitors, and also authorized uses of PCBs in a few "non-totally enclosed" systems, such as in hydralic systems and heat transfer systems.

EPA has, under the May 31 rule, established a 50 parts per million (ppm) "cut-off point" for the applicability of its rule to PCB mixtures. Any mixture which is more dilute than this, unless otherwise specifically provided, is not regulated as a PCB. EPA concludes that this cut-off limit provides adequate protection for human health and the environment while establishing a rule that can be effectively implemented.

b. *FDA.* The Food and Drug Administration (FDA) similarly has taken steps to prevent the introduction of PCBs into the food supply. Specifically, current FDA regulations, which were promulgated in July 1973, restrict the industrial uses of PCBs in establishments that manufacture, handle, and store food intended for human consumption (21 CFR 110.40), and animal feed (21 CFR 500.45), and in establishments that manufacture food-packaging materials (21 CFR 109.15). These regulations provide that new equipment or machinery for handling or processing human food and animal feed and for manufacturing food packaging materials shall not contain PCBs. Establishments that manufacture, handle, and store food intended for human consumption and animal feed, and establishments that manufacture food-packaging materials which had such equipment in place were also required to replace by September 4, 1973, any PCB-containing fluids in such equipment, to the fullest extent possible with good manufacturing practices, with fluid that did not contain PCBs. The FDA regulations, however, specifically exempted electrical transformers and condensers which contain PCBs in sealed containers because at the time there were no known suitable replacement fluids for such equipment, and their use in FDA regulated establishments was not expected to result in direct contact with materials being processed.

c. *USDA.* USDA, in its enforcement of the meat and poultry inspection acts, has since July 1970, rejected new PCB-containing equipment or machinery which is proposed for food processing uses. Similarly, no proposed new chemical compound which contains PCBs has been approved since 1970 to be used in food processing machinery or equipment. These case-by-case determinations have been made under the equipment evaluation and chemical compound evaluation systems. In these systems, lists are maintained of approved chemicals and equipment, including the uses for which they are approved. However, no attempt has been made to reevaluate or eliminate equipment or machinery which was approved before 1970. In addition, approval has not been denied for equipment or machinery which is not likely to contact food.

On February 29, 1980, USDA published a proposal which would prohibit the entry of new or replacement equipment or machinery containing liquid PCBs in excess of 50 ppm onto the premises of any establishment or plant inspected under the Federal Meat Inspection Act, the Poultry Products Inspection Act, or the Egg Products Inspection Act. The Department has the responsibility under these Acts to inspect products and take other actions to prevent the distribution of adulterated products. The action was proposed because of a number of incidents of human food contamination from PCBs, indicating that the present coverage needed to be reevaluated. That proposal, therefore, was intended to reduce the likelihood of future PCB accidents and the resultant danger to human health and losses of food due to adulteration.

*This Proposal*

This proposal represents the second step in attempting to eliminate essentially all potential sources of PCB contamination from meat, poultry product, and egg product plants and establishments. The first step—the proposed ban on new or replacement equipment and machinery containing PCBs—will be made final sometime in the next several months, if the proposal appears to be efficacious after a review of the comments. The second step is more complicated because it involves the disposal of PCBs now present in equipment in meat, poultry product, and egg product plants and establishments.

Under this proposal, all equipment or machinery containing PCBs (except capacitors with less than 3 pounds of PCBs) would have to be either removed from the plant or establishment, or drained and flushed so that they no longer contain PCBs in the liquid medium at levels greater than 50 ppm by weight. In addition, any liquids with PCBs above 50 ppm that are on the premises for any reason would have to be removed.

After removal from the plant, both the equipment containing PCBs at a level of between 50 and 500 ppm of the liquid medium and the liquid containing PCBs between 50 and 500 ppm may be disposed of in an approved landfill pursuant to EPA regulations. If the PCB level is above 500 ppm, however, under EPA requirements, disposal must be generally accomplished by use of an approved incinerator. Although no such incinerators now exist, EPA has advised that there will be two of them in operation in the near future. The rule would, therefore, provide a 6-month disposal period which would not start until an incinerator for disposing of

PCBs has been approved by EPA and placed in operation.

The 50 ppm cut-off for removal of PCBs has been proposed because the health hazards of exposure to PCBs are significantly greater at higher levels and because EPA has determined that PCBs are too widespread in the environment, including human and animal tissues, to establish a zero tolerance, or one that approaches zero. A cut-off point of 500 ppm was also considered, but the level of 50 ppm was proposed because it would appear to reduce the risk of human exposure by controlling an additional 1 million pounds of PCBs. It should be noted that EPA believes that the 50 ppm limit provides adequate protection for human health and the environment.

Small capacitors containing less than 3 pounds of PCBs would be exempted under the proposed regulation because there appears to be little chance of contamination of the food supply from such equipment. Not only does this equipment contain relatively small amounts of PCBs, but the PCBs are usually absorbed by paper or other material within the equipment, which minimizes spillage if a leak occurs. Since these capacitors appear to pose little risk, the benefit of requiring their removal appears to be outweighed by the cost of removing and replacing them.

*Options Considered*

The toxicity of PCBs and their persistence in the food supply following contamination has been well established. The possibility of contamination from PCBs in equipment located at food plants is also clear, and has been demonstrated in several recent incidents. FSQS has, therefore examined the options available for controlling these compounds at plants and establishments under its jurisdiction.

In its decision to propose regulatory action on PCBs, USDA considered four options:

Option 1. Take no new regulatory action. As stated above, USDA currently does take some actions with respect to PCBs. However, because of several recent PCB spills, the Department believes that stricter regulation is required to protect the public health. Therefore, this option is rejected.

Option 2. Take no new mandatory regulatory action but conduct an educational campaign. FSQS has concluded that this option is unworkable for two reasons. Some operators, who know they have PCB-containing equipment in their plants may elect to do nothing and continue to use equipment which poses the risk of contamination to food products and their immediate environment. Other operators, finding as a result of the campaign that they have PCB-containing equipment in their plants may elect to remove their equipment or liquid improperly, thus greatly increasing the hazard to food products and their immediate environment. However, an educational campaign appears to be a useful adjunct to Options 3 and 4, and will be used in this fashion.

Option 3. Ban liquid PCBs in all new or replacement equipment. This option greatly extends present controls for PCBs and would be the first USDA regulation to address PCBs specifically. It appears to be a logical first step, and has already been published on February 29, 1980, as a proposal. Because this measure appears to be feasible immediately in that it creates no disposal problem, it may be made a final rule after the comments are considered, even though eventually it would be made unnecessary if the rule considered in Option 4 were adopted.

Option 4. Ban any liquid PCB-containing equipment and machinery, other than capacitors containing less than 3 pounds of PCB liquid, and any other liquid PCBs in meat processing, poultry processing, or egg processing plants and establishments. This measure is more complicated than Option 3 but is a logical extention of it. It is the option of choice because it appears to be the most effective means to achieve a PCB-free food environment ultimately. Food contaminating spills of PCBs would have a much greater cumulative effect than would the impact of implementing this option.

*IRLG Liaison*

PCBs are toxic substances which have been identified for regulatory coordination by the Toxic Substances Work Group of the Ineragency Regulatory Liaison Group (IRLG). During the development stage of this regulation, representatives of the EPA, the FDA, the Consumer Product Safety Commission (CPSC), and the Occupational Safety and Health Administration (OSHA) have been consulted. FDA and EPA have separately reviewed and concurred in this proposal. It has been agreed that any comments received as a result of this proposed rulemaking will also be shared with these agencies.

Accordingly, the Federal meat, poultry products, eggs, and egg products inspection regulations would be amended as follows:

1. The following are the proposed amendments to 9 CFR:

a. Section 308.5 of the Federal meat inspection regulations (9 CFR 308.5) would be amended by changing the heading and amending the Table of Contents accordingly, and by adding new paragraphs (g), (h) and (i) to read as follows:

**§ 308.5 Equipment and utensils to be easily cleaned, those for inedible products to be so marked; evaluation of equipment and utensils; PCB-containing equipment and liquids.**

* * * * *

(g) No equipment or machinery, except capacitors containing less than 3 pounds of PCB liquid, on the premises of any official establishment, shall contain liquid polychlorinated biphenyls (PCBs) in concentrations above 50 parts per million by weight of the liquid medium. This provision applies to both food processing and non-food processing equipment and machinery.

(h) No liquid containing more than 50 parts per million polychlorinated biphenyls (PCBs) by weight shall enter or be held for any purpose in any official establishment.

(i) Any equipment removal or disposal, flushing procedure, or handling, removal, or disposal of liquid required by paragraphs (g) or (h) of this section shall be performed in accordance with the requirements of 40 CFR Part 761.

b. Section 381.56 of the Federal poultry products inspection regulations (9 CFR 381.56) would be amended by changing the heading and amending the Table of Contents accordingly, by designating the present text as paragraph (a) and by adding new paragraphs (b), (c) and (d) to read as follows:

**§ 381.56 Maintenance of sanitary conditions and precautions against contamination of poultry products; PCB-containing equipment and liquids.**

* * * * *

(b) No equipment or machinery, except capacitors containing less than 3 pounds of PCB liquid, on the premises of any official establishment, shall contain liquid polychlorinated biphenyls (PCBs) in concentrations above 50 parts per million by weight of the liquid medium. This provision applies to both food processing and non-food processing equipment and machinery.

(c) No liquid containing more than 50 parts per million polychlorinated biphenyls (PCBs) by weight, shall enter or be held for any purpose in any official establishment.

(d) Any equipment removal or disposal, flushing procedure, or handling, removal, or disposal of liquid required by paragraphs (b) or (c) of this section, shall be performed in accordance with the requirements of 40 CFR Part 761.

2. The following is the proposed amendment to 7 CFR:

Section 2859.502 of the Federal regulations on the inspection of eggs and egg products (7 CFR 2859.502) would be amended by changing the headings, amending the Table of Contents accordingly, and by adding new paragraphs (c), (d) and (e) to read as follows:

**§ 2859.502 Equipment and utensils; PCB-containing equipment and liquids.**

* * * * *

(c) No equipment or machinery, except capacitors containing less than 3 pounds of PCB liquid, on the premises of any official plant shall contain liquid polychlorinated biphenyls (PCBs) in concentrations above 50 parts per million by weight of the liquid medium. This provision applies to both food processing and non-food processing equipment and machinery.

(d) No liquid containing more than 50 parts per million polychlorinated biphenyls (PCBs) by weight, shall enter or be held for any purpose in any official plant.

(e) Any equipment removal or disposal, flushing procedure, or handling removal or disposal of liquid, required by paragraphs (e) or (d) of this section shall be performed in accordance with the requirements of 40 CFR Part 761.

(Secs. 5, 8, and 21, 34 Stat. 1260, as amended, 21 U.S.C. 605, 608, and 621; Secs. 7, 14, and 16, 71 Stat. 441, as amended, 21 U.S.C. 456, 463, and 465; Secs. 2–29, 84 Stat. 1620 *et seq.*, 21 U.S.C. 1031–1056; 42 FR 35625, 35626)

Done at Washington, D.C., on April 29, 1980.

**Carol Tucker Foreman,**

*Assistant Secretary for Food and Consumer Services.*

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**DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE**

**Food and Drug Administration**

**21 CFR Parts 109, 110, 225, 226, 500, and 509**

**[Docket No. 80N-0128]**

## Current Good Manufacturing Practice Relating to Poisonous and Deleterious Substances in Food, Feed, and Food-Packaging Materials Plants

**AGENCY:** Food and Drug Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) proposes to amend several of its regulations to prohibit or limit the amount of polychlorinated biphenyls (PCB's) in sealed electrical transformers and capacitors used or stored in or around food, feed, and food-and feed-packaging materials plants or storage facilities. FDA also proposes that certain raw materials used in human foods which are susceptible to PCB contamination be examined and analyzed as necessary to ensure that they comply with FDA tolerances for PCB's and other poisonous or deleterious substances. The purpose of this proposed action is for the protection of the public health.

**DATES:** Comments by July 7, 1980. The agency proposes that any final regulations resulting from this proposal be effective 180 days after the date of publication of the final regulations in the Federal Register or after an incinerator approved by the Environmental Protection Agency (EPA) is available, whichever is later.

**ADDRESS:** Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** F. Leo Kauffman, Bureau of Foods (HFF-214), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-245-1164.

**SUPPLEMENTARY INFORMATION:** PCB's are a class of chemicals that have been widely used in electrical transformers, capacitors, electromagnets, and heat transfer and hydraulic systems. They are useful in industrial applications due to their chemical stability, low flammability, high boiling points, and low electrical conductivity. PCB's were also used as plasticizers in the manufacture of paints, adhesives, and caulking compounds, as fillers for investment casting waxes, and as dye carriers in carbonless copy paper.

Although PCB's were first manufactured and commercially marketed for industrial uses in 1929, it was not until 1967 that their presence in the food supply was first detected. At that time and during the following years, FDA encountered a number of isolated industrial accidents resulting in PCB contamination of animal feed and human food. These accidents involved either the spillage or leakage of the chemical directly onto animal feed from manufacturing equipment, or animal feed otherwise coming in physical contact with PCB-containing materials. The consumption of the contaminated feed by food-producing animals resulted in the transfer of PCB's to human food (e.g., milk, meat, eggs).

At that time FDA's knowledge of the hazards of PCB's to human health was limited to primarily one incident that occurred in Yusho, Japan, in 1968 when very high levels of PCB's leaked from processing equipment and contaminated rice oil. The PCB-contaminated rice oil was sold as salad oil and, after several weeks, consumers were stricken with the so-called "Yusho" disease which ultimately was traced to the PCB's Among the many symptoms exhibited by the victims of this disease were chloracne (skin rash), discoloration of the gums and nailbeds, swelling of joints, and waxy secretions from glands in the eyelids.

The levels of PCB that produced those effects substantially exceeded the levels of PCB found at any time in the United States food supply. However, because PCB's accumulate in the fatty tissue of humans and animals, there was ample evidence indicating that prolonged exposure to PCB's, even at low levels, posed a potential health risk. Therefore, FDA concluded thast there was a need to limit consumer exposure to PCB's in their diet and, to accomplish this end, eliminate the use of PCB-containing equipment in food and feed establishments.

The agency then proposed in the Federal Register of March 18, 1972 (37 FR 5705) regulations for curtailing the direct contamination of foods, feeds, and food-packaging materials with PCB's. The proposed regulations were promulgated as a final rule in the Federal Register of July 6, 1973 (38 FR 18096). The regulations set forth restrictions on the industrial uses of PCB's in establishments that manufacture, process, pack, handle, and store food intended for human consumption (21 CFR 110.40) and animal feed (21 CFR 500.45) and in establishments that manufacture food-packaging materials (21 CFR 109.15) and feed-packaging materials (21 CFR 509.15). These regulations provide that new equipment or machinery for handling or processing human food, animal feed, and for manufacturing food- or feed-packaging materials shall not contain PCB's. The establishments in these industries that had such equipment in place were required to replace any PCB-containing fluids in such equipment with fluid that did not contain PCB's by September 4, 1973. The regulations, however, specifically exempted electrical transformers and condensers (capacitors), which hold PCB's in sealed containers because at that time there were no known suitable replacement fluids for such equipment, and their use in FDA-regulated establishments was not expected to result in direct contact with materials being processed.

Toxicity data based upon laboratory animal studies received by FDA since 1973 have demonstrated a definite association between low-level PCB exposure and potentially more serious subchronic and chronic toxicities, including adverse reproductive effects, liver damage, and tumor production. One of these studies also has confirmed many of the adverse effects exhibited by the Yusho victims. FDA's current assessment of risk to human health from dietary exposures to PCB's is described in the preamble of FDA's final rule on the reduction of the tolerances for unavoidable PCB's in food which was published in the Federal Register of June 29, 1979 (44 FR 38330).

The industrial uses of PCB's are also subject to the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 et seq.), which requires EPA to regulate and control the manufacture, processing, distribution in commerce, use, disposal, and marketing of PCB's. Section 6(e)(3) of TSCA (15 U.S.C. 2605(e)(3)) provides that no person may manufacture in other than a totally enclosed manner any PCB after January 1, 1979, or process or distribute in commerce any PCB after July 1, 1979, except to the extent that EPA specifically authorizes or exempts any nontotally enclosed activity. EPA's implementing regulations of the statutory January 1, 1979, ban were delayed until 30 days after completion of its rulemaking (*see* the Federal Register of May 31, 1979; 44 FR 31514). In exercising its statutory exemption authority, the EPA May 31 rule provides certain exceptions to the ban, such as authorizing the uses of PCB's in some "nontotally enclosed" systems, as in hydraulic systems and heat transfer

systems. Section 6(e) of TSCA statutorily exempts the use of PCB's in "totally enclosed" systems, as in transformers and capacitors.

The EPA rule also establishes a 50 parts per million (ppm) cut-off point for its applicability to PCB mixtures. Any mixture more dilute than this, unless otherwise specifically provided, is not regulated under this rule. EPA has determined that this cut-off limit provides adequate protection for human health and the environment while establishing a regulatory scheme that can be effectively implemented.

There recently have been a number of incidents in which the use or disposal of PCB's has resulted in contamination of food in the United States. At least two of these incidents were the result of PCB's leaking from damaged spare transformers and contaminating feed for poultry and livestock. The contaminated feed caused PCB's being carried into human food. One of the incidents was caused by a fire in a warehouse in Ponce, Puerto Rico, in 1977 when PCB's were released from transformers being stored in the warehouse. The warehouse served as a storage area for tuna fishmeal which was dried, rebagged, and shipped to manufacturers for use in the manufacture of animal and fish feeds. This resulted in over 2,000,000 pounds of finished feed and fishmeal being contaminated, more than 400,000 chickens being destroyed, and millions of eggs being withheld from consumer markets.

The second transformer incident ocurred in a Federally inspected meat-slaughtering and processing establishment in Billings, Montana, in 1979. A spare transformer was stored in a shed at the packing plant and an estimated 200 gallons of PCB-containing transformer oil leaked from the transformer into the plant's waste water system. Solids that were recovered from the plant's waste water system were rendered, and the rendered residues were included in a meat meal. This contaminated meat meal was then fed to poultry and livestock and caused the contamination of approximately 800,000 chickens, 3,800,000 eggs, 4,000 hogs, 800,000 pounds of assorted animal feeds and feed ingredients, and many bakery items in which contaminated eggs were used. Another incident of a potentially massive contamination was prevented when PCB leakage from a capacitor in a Federally inspected hog-slaughtering establishment in Iowa was recognized. Quick action by plant officials and a United States Department of Agriculture (USDA) inspector contained the problem.

As a result of the multi-agency involvment in PCB containment and the recent incidents of PCB leakage from electrical transformers and capacitors, FDA, as a member of the Interagency Regulatory Liaison Group (IRLG), joined in a cooperative effort with EPA and the Food Safety and Quality Service of USDA, to determine if any additional controls were necessary to further protect the public health from the use of PCB-containing equipment in or around food and feed facilities.

This interagency cooperation has resulted in a technical booklet entitled "Polychlorinated Biphenyls: An Alert for Food and Feed Facilities" (December 1979), which was prepared under the sponsorship of EPA and distributed by EPA, FDA, and USDA. This booklet was prepared to aid the food, feed, pesticide, and fertilizer industries in identifying potential problems with PCB's and to recommend that these industries institute a program for preventative action without delay. This cooperation has also resulted in the agencies' concluding that further mandatory controls are needed.

EPA intends to publish a proposal restricting the use of PCB's at agricultural chemical facilities.

USDA has published a proposal in the Federal Register of February 29, 1980 (45 FR 13471) to amend the Federal meat, poultry and egg products inspection regulations by prohibiting the entry of new or replacement equipment and machinery containing PCB's onto the premises of plants under their jurisdiction. USDA also intends to publish another proposal to prohibit PCB-containing equipment or machinery and liquid PCB's in Federally inspected meat, poultry, and egg product plants. Comments received as a result of the USDA proposals, the EPA proposal, and this FDA proposal will be shared among the members of IRLG.

Similarly, FDA believes that the use of PCB's should be prohibited in electrical transformers and capacitors used in or around FDA-regulated food, feed, and food-packaging materials plants and storage facilities even though such transformers and capacitors are sealed. This determination is supported by the recent potential health hazards caused by the leakage of PCB's from sealed transformers and capacitors. FDA is therefore proposing to revise the current regulations (21 CFR 109.15 (a)–(c), 110.40(b), 225.1(c), 226.1, 500.45 (a)–(c) and 509.15) to prohibit, with one exception, transformers and capacitors used or stored in or around such plants from containing PCB's. Under this proposal the plant has the option of either replacing the transformers and capacitors or replacing the PCB-containing fluid in such transformers with another fluid. The agency believes it is not feasible to replace PCB-containing fluids in capacitors. Therefore, the sole means of complying with these proposed regulations with respect to capacitors is to replace them with capacitors that do not contain PCB's.

FDA is also proposing the §§ 109.15 and 500.45 be amended to include the 50 ppm EPA cut-off point for regulating PCB's for the purpose of defining acceptable residual amounts of PCB's in retrofilled equipment, machinery, and other materials subject to the provisions of §§ 109.15 and 500.45. Use of this proposed 50 ppm cut-off point, for purposes of defining acceptable residual amounts of PCB's in retrofilled equipment, would replace the phrase "to the fullest extent possible commensurate with current good manufacturing practices" that now appears in §§ 109.15(b)(2) (i) and (ii) and 500.45(b)(3) (i) and (ii). This phrase was included in the existing regulations to guide establishments in retrofilling PCB-containing equipment or machinery. At that time the agency believed that if the exchange of fluids was perfomed in a careful and reasonable manner, there would be no significant concentrations of residual PCB's remaining in the retrofilled transformers. The proposed 50 ppm cut-off point would define "significant concentrations" and sets the maximum limits of PCB's remaining in the fluid after retrofilling such equipment. Under the proposal the retrofilling of such equipment shall be completed within the time limits established in the final regulations.

In addition, FDA is proposing to amend the current umbrella CGMP regulation (21 CFR 110.80) by adding a new paragraph (k) to require that raw materials that are susceptible to contamination with PCB's be examined and analyzed as necessary to ensure that the finished foods comply with current FDA tolerances, as required by § 109.30 (21 CFR 109.30), before these materials are manufactured into finished foods. The proposed amendments also include deletion of much of the detailed background information on the problem of PCB's presently set forth in §§ 109.15(a), 110.40(b), 500.45(a), and 509.15(a). Also, the phrase "in or around" would be used in a reasonable expectation * * *." that appears in current §§ 109.15(b)(2)(ii) and 500.45(b)(3)(iii). The phrase "in or around" is a more precise indicator for determining the location of the equipment that would be affected by the

proposed regulations. Finally, the introductory phrase of § 500.45(b)(3) has been expanded to also include establishments that handle and store animal feed. This expansion would make the regulation consistent with the existing title of § 500.45.

Currently, there are approximately 285,000,000 pounds of fluids containing PCB's in use in transformers in the United States and 400,000,000 pounds in capacitors. FDA has made available a draft regulatory analysis pursuant to Executive Order 12044. However, the agency does not now possess sufficient data concerning the numbers, types, and locations of all transformers and capacitors in or around FDA-regulated food, feed, and food-packaging materials plants. FDA requests that comments submitted to the agency in response to this proposal incude information conerning the presence of PCB-containing fluids in transformers and capacitors used in or around FDA-regulated food, feed, and food-packaging materials plants and storage facilities; the numbers, types, and locations of PCB-containing transformers and capacitors used or stored in or around such facilities; a reasonable time estimate for replacing all transformers and capacitors containing PCB's or to eliminate the PCB-containing fluids from transformers in or around such plants and storage facilities; and an estimate of the cost involved. FDA also solicits comments as to alternatives to the replacement of the transformers and capacitors or the PCB-containing fluids to assure that such food, feed, and food-packaging materials will not become contaminated from PCB's because of transformer or capacitor failure or other accident. Such alternatives may include: (1) Protection of the transformer or capacitor by installing an adequate catch basin and guard around the equipment; (2) removal of the equipment from inside to outside the plant buildings to a site where there could be no reasonable expectation of contamination from a leak or spill; and (3) daily inspection of each piece of PCB equipment for leaks or other imminent hazards. The relative economic impact of these alternatives will be incorporated in the final regulatory analysis. FDA proposes to exempt capacitors containing less than 3 pounds of fluid from the regulations. These small capacitors are not included because most of the PCB's they contain are in a nonliquid, nonmobile state.

As stated in 21 CFR 109.15(b)(2)(iii) and 21 CFR 500.45(b)(3)(iv), "The toxicity and other characteristics of fluids selected as PCB replacements must be adequately determined so that the least potentially hazardous replacement is used. In making this determination with respect to a given fluid, consideration should be given to (*a*) its toxicity; (*b*) the maximum quantity that could be spilled onto a given quantity of food before it would be noticed, taking into account its color and odor; (*c*) possible signaling devices in the equipment to indicate a loss of fluid, etc.; and (*d*) its environmental stability and tendency to survive and be concentrated through the food chain. The judgment as to whether a replacement fluid is sufficiently nonhazardous is to be made on an individual installation and operation basis."

The handling, storage, and disposal of PCB-containing liquid must be carried out in accordance with the EPA regulations (40 CFR Part 761). Although the amended regulations as proposed specify that establishments must remove or replace PCB-containing transformers and capacitors on or before 180 days after the date of publication of a final regulation, this effective date is contingent upon the availability of an incinerator approved by EPA for disposal of PCB fluids.

All supporting data and information (inculding EPA's current regulations on PCB's) and a copy of FDA testimony to Congress regarding this proposal are on file with the Hearing Clerk, FDA, and may be seen from 9 a.m. to 4 p.m., Monday through Friday.

FDA has determined pursuant to 21 CFR 25.24(d)(12) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required. This concludion is based in part on knowledge that the handling, storage, and disposal of PCB-containing liquid must be carried out in accordance with EPA regulations (40 CFR Part 761).

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 402(a), 406, 409, 701(a)), 52 Stat 1046 as amended, 1049 as amended, 1055, 72 Stat. 1785–1788 as amended (21 U.S.C. 342(a), 346, 348, 371(a)), and the Public Health Service Act (sec. 361, 58 Stat. 703 (42 U.S.C. 264)), and the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

## PART 109—UNADVOIDABLE CONTAMINANTS IN FOOD FOR HUMAN CONSUMPTION AND FOOD-PACKAGING MATERIAL

1. In Part 109, § 109.15 is amended by revising paragraphs (a) and (b)(2)(i); by revising (b)(2)(ii), redesignating it as (b)(2)(iii), and adding new (b)(2)(ii); by redesignating (b)(2)(iii) as (b)(2)(iv); and be revising paragraph (c) to read as follows:

### § 109.15 Use of polychlorinated biphenyls (PCB's) in establishments manufacturing food-packaging materials.

(a) Polychlorinated biphenyls (PCB's) are a class of toxic chemicals whose uses include, or did include in the past, their use as electrical transformer and capacitor fluids, heat transfer fluids, hydraulic fluids, and plasticizers, and in formulations of lubricants, coatings, and inks. Incidents have occurred in which PCB's have directly contaminated the food supply as a result of industrial accidents (leakage or spillage of PCB fluids from plant equipment). Because PCB's are toxic chemicals, the PCB contamination of food-packaging materials as a result of industrial accident, which can in turn cause the PCB contamination of food, represents a hazard to public health. It is therefore necessary to place certain restrictions on the industrial uses of PCB's in establishments manufacturing food-packaging materials.

(b) * * *

(2) The management of establishments manufacturing food-packaging materials shall:

(i) Have the heat exchange fluid used in existing equipment for manufacturing food-packaging materials sampled and tested to determine whether it contains PCB's or verfiy the absence of PCB's in such formulations by other appropriate means. Any such fluid formulated with PCB's must be replaced with a heat exchange fluid that does not contain PCB's.

(ii) Replace or remove PCB-containing transformers and capacitors (except capacitors containing less than 3 pounds of fluid) used or stored in or around such establishments or replace the PCB-containing fluid in the transformers with another fluid.

(iii) Eliminate any other PCB-containing equipment, machinery, and materials in or around the establishment.

* * * * *

(c) PCB's as used in this section, as they relate to transformer, capacitors, and other manufacturing equipment, means substances and combination of substances that contain 50 parts per

million (on a dry weight basis) or greater of PCB's.

## PART 110—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PROCESSING, PACKAGING, OR HOLDING HUMAN FOOD

2. Part 110 is amended:

a. In § 110.40 by revising paragraph (b) to read as follows:

**§ 110.40 Equipment and procedures.**

* * * * *

(b) *Use of polychlorinated biphenyls in food plants.* Restrictions on the industrial uses of polychlorinated biphenyls (PCB's) provided in § 109.15 of this chapter shall also be applicable to the industrial uses of PCB's in the production, processing, handling, and storage of human food. Equipment, utensils, machinery, and electrical transformers and capacitiors that are used or stored in or around a food or food-packaging material plant or storage facility shall not contain PCB's except for capacitors containing less than 3 pounds of fluid.

b. In § 110.80 by adding new paragraph (k) to read as follows:

**§ 110.80 Processes and controls.**

* * * * *

(k) Raw materials susceptible to contamination with polychlorinated biphenyls (PCB') shall be analyzed as necessary to ensure that the finished foods comply with current Food and Drug Administration tolerances for unavoidable or deleterious substances as required by § 109.30 of this chapter before these materials are manufactured into finished foods. Compliance with this requirement may be accomplished by purchasing these materials under a supplier's guarantee or certification, or may be verified by analyzing these materials for PCB's

## PART 225—CURRENT GOOD MANUFACTURING PRACTICE FOR MEDICATED FEEDS

3. In Part 225, § 225.1 is amended by adding new paragraph (c) to read as follows:

**§ 225.1 Current good manufacturing practice.**

* * * * *

(c) The provisions in § 500.45 of this chapter concerning restrictions on the use of PCB's are also applicable to this part.

## PART 226—CURRENT GOOD MANUFACTURING PRACTICE FOR MEDICATED PREMIXES

4. In Part 226, § 226.1 is revised to read as follows:

**§ 226.1 Current good manufacturing practice.**

The criteria in §§ 226.10 through 226.115, inclusive, shall apply in determining whether the methods used in, or the facilities and controls used for, the manufacture, processing, packing, or holding of a medicated premix conform to or are operated or administered in conformity with current good manufacturing practice to ensure that a medicated premix meets the requirements of the act as to safety, and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess, as required by section 501(a)(2)(B) of the act. The regulations in this part permit the use of precision, automatic, mechanical, or electronic equipment in the production of a medicated premix when adequate inspection and checking procedures or other quality control procedures are used to ensure proper performance. The provisions in § 500.45 of this chapter concerning restrictions on the use of PCB's are also applicable to this part.

## PART 500—GENERAL

5. In Part 500, § 500.45 is amended by revising paragraphs (a), (b)(1) and (2), introductory text of (b)(3), and (b)(3)(i); by revising and combining (b)(3)(ii) and (iii) and redesignating them as (b)(3)(iii); by adding new (b)(3)(ii); and by revising paragraph (c) to read as follows:

**§ 500.45 Use of polychlorinated biphenyls (PCB's) in the production, handling, and storage of animal feed.**

(a) Polychlorinated biphenyls (PCB's) are a class of toxic chemicals whose uses include, or did include in the past, their use as electrical transformer and capacitor fluids, heat transfer fluids, hydraulic fluids, plasticizers, and in formulations of lubricants, coatings, and inks. Incidents have occurred in which PCB's have directly contaminated animal feeds as a result of industrial accidents (leakage or spillage of PCB fluids from plant equipment). These accidents in turn caused the contamination of food intended for human consumption (e.g., meat, milk, and eggs). Because PCB's are toxic chemicals, the PCB contamination of food as a result of these and other incidents represent a hazard to public health. It is therefore necessary to place certain restrictions on the industrial uses of PCB's in the production, handling, and storage of animal feed.

(b) * * *

(1) Coatings or paints for use on the contact surfaces of animal feed storage areas may not contain PCB's or any other harmful or deleterious substances likely to contaminate feed.

(2) New equipment or machinery for handling or processing animal feed in or around an establishment producing animal feed shall not contain PCB's.

(3) The management of establishments producing, handling, or storing animal feed shall:

(i) Have the heat exchange fluid used in existing equipment or machinery for handling and processing animal feed sampled and tested to determine whether it contains PCB's, or verify the absence of PCB's in such formulations by other appropriate means. Any such fluid formulated with PCB's must be replaced with a heat exchange fluid that does not contain PCB's .

(ii) Replace or remove PCB-containing transformers and capacitors (except capacitors containing less than 3 pounds of fluid) used or stored in or around such establishments or replace the PCB-containing fluid in the transformers with another fluid.

(iii) Eliminate from the animal feed producing establishment any other PCB-containing equipment, machinery, and materials in or around the establishment.

(c) PCB's as used in this section, as they relate to transformers, capacitors, and other manufacturing equipment, means substances and combination of substances that contain 50 parts per million (on a dry weight basis ) or greater of PCB's.

* * * * *

## PART 509—UNAVOIDABLE CONTAMINANTS IN ANIMAL FOOD AND FOOD PACKAGING MATERIALS

6. In Part 509, § 509.15 is revised to read as follows:

**§ 509.15 Use of polychlorinated biphenyls (PCB's) in establishments manufacturing food-packaging materials.**

Restrictions on the industrial uses of polychlorinated biphenyls (PCB's) provided in § 500.45 of this chapter shall also be applicable to the industrial uses of PCB's in the production, handling, and storage of feed-packaging material intended for animal food. Equipment, utensils, machinery, and electrical transformers and capacitors that are used or stored in or around a feed- or food-packaging material plant or storage facility shall not contain PCB's except for capacitors containing less than 3 pounds of fluid.

Interested persons may, on or before July 7, 1980, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

It is hereby certified that the economic effects of this proposal have been considered in accordance with Executive Order 12044 and that a Draft Regulatory Analysis is on file with the Hearing Clerk, Food and Drug Administration.

Dated: April 30, 1980.

**Joseph P. Hile,**

*Associate Commissioner for Regulatory Affairs.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 761**

**[FRL 1490-3; OPTS-62003]**

# Polychlorinated Biphenyls (PCB's) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Proposed Restrictions on Use at Agricultural Pesticide and Fertilizer Facilities

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency is proposing to amend its Final PCB Regulation (40 CFR Part 761) to prohibit the use of PCB Items (including PCB Large High and Low Voltage Capacitors, PCB Transformers, PCB-Contaminated Transformers, PCB Heat Transfer Systems, and PCB Hydraulic Systems) as defined in 40 CFR § 761.2(x), in facilities manufacturing, processing, or storing fertilizers or agricultural pesticides.

EPA issues this rule under the authority of § 6(a)(5) of the Toxic Substances Control Act.

**DATES:** This rule amendment will become effective one year after the final rule is published in the Federal Register, or (for liquids with concentrations greater than 500 ppm) one year after announcement in the Federal Register of EPA's approval of the first incinerator meeting the requirements of 40 CFR § 761.40, whichever is later. Written comments must be received prior to the close of business on July 8, 1980. The agency will hold an informal hearing, if one is requested, on July 29, 1980. Requests to hold a hearing and to participate in the hearing must be received by the Environmental Protection Agency prior to the close of business on June 5, 1980.

**ADDRESSES:** Send coments to: Joni T. Repasch, Technical Information Specialist, Rm. 447 (TS-793), Office of Toxic Substances, EPA, 401 M Street, S.W., Washington, D.C. 20460, Attn.: Docket Number OTS-62003 (PCB/RR-3).

The informal hearing (if requested) will be held in Washington, D.C. Additional information on the hearing procedures is presented in Section V of this preamble, captioned "Public Comments; Public Hearing". The exact location and time of the hearing may be obtained by persons calling the toll free number 800-424-9065. Address requests to participate to: Ms. Linda Thomson, Toxic Substances Control Act (TSCA) Hearing Clerk, Office of Toxic Substances (TS-794), EPA, 401 M Street, S.W., Washington, D.C. 20460, Attn: Docket Number OTS-62003 (PCB/RR-3). Telephone: (202) 755-1188.

**FOR FURTHER INFORMATION CONTACT:** John B. Ritch, Jr., Director, Industry Assistance Office, Office of Toxic Substances (TS-799), EPA, 401 M Street, S.W., Washington, D.C. 20460. Telephone: toll free (800) 424-9065 (in Washington, D.C. 554-1404).

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

EPA is responsible for the regulation of polychlorinated biphenyls (PCBs) and other toxic substances under the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 *et seq.* Section 6(e) of TSCA directed EPA to regulate PCBs and established a specific timetable and procedure for their regulation. Congress singled out PCBs for regulation because PCBs were known to have hazardous health and environmental effects. *See, e.g.,* Leg. Hist. 235-239.[1] PCBs also were known to be persistent in the environment and to bioaccumulate. *See, e.g.,* Leg. Hist. 235, 581-582.

EPA does not have exclusive authority for Federal regulation of PCBs. Authority for regulating industrial plants whose products enter or contact the food chain is shared by EPA, the Food and Drug Administration (FDA), and the U.S. Department of Agriculture (USDA). Concern over PCBs has led to a number of regulatory actions by EPA, FDA, and USDA.[2] However, present regulations do not prohibit the use of intact, non-leaking transformers and capacitors containing PCBs in food and feed related facilities.[3] Each of the three Agencies has concluded, after reviewing recent food contamination incidents in the context of the standards for regulatory action under the statutes administered by each Agency, that the use of PCB Items (40 CFR Part 761.2(x)), including PCB Large High and Low Voltage Capacitors, PCB Transformers, and PCB-Contaminated Transformers, should be regulated in food and feed-related industries. PCB Small Capacitors (containing less than 3 pounds of fluid) are not to be regulated by the rules proposed here because most of the PCBs are in a nonliquid, nonmobile state, lessening the potential for an accident involving a leaking capacitor.

The three Agencies have worked together closely in formulating regulations with each Agency's proposal covering its area of legal responsibility in order to cover the entire food, feed, and agricultural chemical industry. FDA's and USDA's companion rules were published in the Federal Register on May 6, 1980.

## II. Legal Authority

Section 6(a)(5) of TSCA authorizes the Administrator of the Environmental Protection Agency (the "Administrator"), by rule, to prohibit or otherwise regulate any manner or method of commercial use of a chemical substance or mixture if the Administrator finds that there is a reasonable basis to conclude that such use "presents or will present an unreasonable risk of injury to health or the environment."

Determining whether the use of a chemical substance or mixture is likely to present an unreasonable risk involves an administrative judgment which is reached by balancing the probability that harm will occur and the magnitude and severity of that harm against the adverse effect on society of any proposed regulatory action. Section 6(c)(1) of TSCA describes the factors that EPA must balance in determining whether the use of a chemical substance or mixture presents an unreasonable risk. Section 6(c)(1) states:

In promulgating any rule under subsection (a) with respect to a chemical substance or mixture, the Administrator shall consider and publish a statement with respect to

(A) the effects of such substance or mixture on health and the magnitude of the exposure of human beings to such substance or mixture,

(B) the effects of such substance or mixture on the environment and the magnitude of the exposure of the environment to such substance or mixture,

(C) the benefits of such substance or mixture for various uses and the

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[1] "Legislative History" references are to House Committee on Interstate and Foreign Commerce, Legislative History of the Toxic Substances Control Act (Comm. Print 1976).

[2] See: EPA 40 CFR Part 761, FDA 21 CFR 109.30(b), 110.40 and 500.45. FDA regulates chemical substances in food, feed, and food packaging and their use in food, feed, and food packaging establishments.

USDA has responsibility for assuring that red meat, poultry, and egg products are protected from PCB contamination.

[3] EPA's regulations do not prohibit the use of intact, nonleaking transformers and capacitors in agriculture chemical facilities because they are defined as "totally enclosed" and therefore excluded from the § 6(e) rules under TSCA.

FDA exempted transformers and capacitors containing PCBs in sealed containers from their July 6, 1973, regulations because FDA concluded, then, that PCBs used in sealed transformers and capacitors in food and feed facilities did not pose a source of direct contamination of food and animal feed. Moreover, there were then no known substitutes for PCBs available offering the proper balance of characteristics.

availability of substitutes for such uses, and

(D) the reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

For the reasons described in the "Findings" Section of this preamble, EPA has determined that the use of PCB Items in agricultural chemical facilities presents an unreasonable risk to human health and should be regulated pursuant to Section 6(a). Section 6(a) supplements EPA's authority to regulate PCBs pursuant to Section 6(e).[4]

## III. Findings

A. Section 6(c) Findings. 1. *Risks to Health and the Environment Associated with the Use of PCBs in Large High and Low Voltage Capacitors, PCB-Contaminated Transformers, and PCB Transformers in Agricultural Chemical Facilities.* Congress was aware of the toxic effects of PCBs when TSCA was enacted in 1976. PCBs were known to cause birth defects, miscarriages, and stillbirths, as well and skin eruptions, pigmentation of skin and nails, and eye malfunctions. *See, e.g.,* Leg. Hist. 235–239. Well documented tests on laboratory animals show that PCBs can cause reproductive failures, gastric disorders, skin lesions and tumors.[5] PCBs are known to be persistent in the environment and to bioaccumulate, posing long-term risks to health and the environment. *See, e.g.,* Leg. Hist. 235, 581–82. The overwhelming evidence with respect to the toxicity of PCBs prompted the enactment of Section 6(e) of TSCA.

In recent years, there have been a number of incidents demonstrating that PCB-contaminated human food and animal feed can lead to serious human health risks. These incidents were the result of accidental spills, improper disposal techniques, and unintentional misuse of PCB-contaminated materials and equipment. They include:

- In 1968, the contamination in Yusho, Japan of rice oil, caused by a leak in a heat-exchanger. Epidemic proportions of chloracne prompted an investigation, and the common exposure factor was found to be the consumption of rice oil. Over 1,000 people were affected with the average cumulative dose estimated to be 1 g/person.[6] In addition to symptoms associated with chloracne, other adverse health effects experienced included respiratory symptoms and chronic bronchitis-like problems, nervous system problems, diminished growth in young males, and pigmented skin on newborns.[7]
- In 1971, the contamination of fish meal in North Carolina when PCBs leaked from a heat-exchanger being used during pasteurization of fish meal. Over 16,000 tons of fishmeal were contaminated. The fish meal was used as an ingredient in finished feed for meat, poultry, and fish.
- In 1977, fish meal prepared and stored at a warehouse in Puerto Rico was contaminated. A poultry firm that began to notice high chemical levels in tissue samples taken from their chickens conducted an investigation. The PCB source was traced to fish meal, used in formulating the chicken feed. A fire in a warehouse had damaged transformers stored there, allowing PCBs to leak out. The contamination had not been detected before the fish meal was sold. As a consequence of this incident, 400,000 chickens and 15,000 dozen eggs were destroyed.[8]
- In 1979, the contamination of animal feed ingredients at a plant in Buildings, Montana occurred when PCBs leaked from a damaged, stored transformer into the plant's wastewater treatment system and were recycled with animal fats into feed ingredients. The meat meal was then fed to poultry and livestock, contaminating meat, poultry, milk, eggs, soups, and bakery items. Implicated products were distributed to nineteen states and two foreign countries. A total of approximately 800,000 chickens, 3,800,000 eggs, 4,000 hogs, 74,000 bakery goods and 800,000 pounds of assorted animal feeds and feed ingredients were destroyed.

The potential exists for a PCB contamination incident that would affect our food supply in industries which manufacture, process, or store agricultural chemicals (those facilities within Standard Industrial Classification Industry Numbers 2873, 2874, 2875, and 2879, except for those facilities whose products are not used in agriculture). The agricultural chemical product could become contaminated by a mechanism identical to or similar to one of the mechanisms which cause the food contamination incidents discussed above.

After becoming contaminated, the agricultural chemical would be: (1) applied directly to crops which are eaten by humans or animals which are part of the food chain or (2) applied to land which is used to grow crops eaten by humans or animals which are part of the food chain, or (3) applied directly to the bodies of animals which are part of the food chain. If the chemical were applied directly to the food chain, the PCBs would bioaccumulate and biomagnify, resulting in exposure to humans who consumed the contaminated food at a concentration higher than the PCB concentration in the contaminated chemical. Similarly, if the contaminated products were applied to land used to grow crops which are part of the food chain, the mechansims of bioaccumulation and biomagnification would result in an exposure to the affected humans at a PCB concentration higher than the concentration in the contaminated chemical.

Of the incidents that have occurred, the following most parallel the route of exposure to agricultural chemicals.

- In 1969, PCBs were identified in milk from several dairy farms in West Virginia. The source of contamination was traced to spent PCB transformer fluid used as a herbicide carrier. The herbicide-PCB mixture was sprayed along a powerline right of way contaminating grass and eventually the cattle.[9]
- In 1976 high concentrations of PCBs were reported in sewage sludge used by residents of Bloomington, Indiana in fertilizing their gardens. Investigations revealed that a local electric firm was discharging wastes containing PCBs into the muncipal sewage system. In 1976 samples of sludge had mean PCB levels of 479 ppm and soil samples had mean PCB leveles of 17 ppm.[10]
- In 1979 a farmer, inadvertently using PCBs as a carrier for pesticides in a solution applied directly to the bodies of his cattle, contaminated the cattle to overall levels of greater than 50 ppm. Samples of tail fat contained up to 2,000 ppm PCBs. Seven years earlier, the farmer had purchased waste oil including nine barrels of transformer oil. Samples taken from the barrels of transformer oil were used by EPA in estimating that the pesticide solution is likely to have contained about 50% PCB (500,000 ppm).[11] Had the concentration been only 500 ppm in the oil, highest concentrations in tail fat would likely

[4] TSCA, § 6(e)(5) states, "This subsection does not limit the authority of the Administrator, under any other provision of this Act or any other Federal law, to take action respecting any polychlorinated biphenyl."

[5] USEPA, OTS, *Support Document/Voluntary Environmental Impact Statement,* April 1979, pp. 8–10.

[6] National Academy of Sciences, *Polychlorinated Biphenyls,* Washington, D.C., 1979, p. 98.

[7] National Academy of Sciences, *PCBs,* p. 120.

[8] National Academy of Sciences, *PCBs,* p. 121.

[9] Wessel, John, "FDA Regulation of PCBs in Food", *National Conference on PCBs, Chicago,* March 1976, p. 428.

[10] National Academy of Sciences, *PCBs* p. 120.

[11] USEPA, Region VII, *Kansas PCB Contaminated Cattle and Swine,* Fall 1979.

have been about 2.2 ppm, very close to FDA's 3 ppm action level for red meat as measured on a fat basis. Had the oil contained only 50 ppm. PCB, a 0.2 ppm level in the fat might have resulted, providing a margin of safety of a factor of ten. Considering the unknowns in the incident EPA feels this margin of safety represents the minimum acceptable.

These incidents demonstrate that the use of PCBs in facilities whose products contact or are a part of the food chain carries the potential for PCB contamination of enormous quantities of human food and therefore presents a substantial risk to human health and the environment. Large segments of the population could easily have been exposed to PCBs in any one of the above incidents. Fortunately, in only one case was there widespread human exposure. Although we know of no PCB incidents occurring in agricultural chemical facilities, the potential for such incidents to occur and to cause widespread human exposure to PCBs is present in agricultural chemical facilities as well as in the facilities where incidents have occurred.

EPA is aware of two situations in which the potential for PCB contamination of agricultural chemical products is greatly reduced. The first of these involves the manufacture of anyhdrous liquid ammonia. The manufacturing process occurs in the gaseous phase and under pressure. Under these conditions, a leak in the manufacturing system would result in reactants or products being released from the system rather than external contaminants entering the process. The probability that a piece of electrical equipment would leak PCBs which would then contaminate the anhydrous liquid ammonia is virtually zero.

The second situation involves the storage of packaged products. Agricultural chemicals are usually packaged in liquid resistant materials (e.g. metal drums or bags lined with plastic). It seems likely that such packaging would provide protection against PCB contamination, and the risk of PCB contamination would therefore be essentially eliminated.

2. *Availability of Substitutes for the PCB-Contaminated Equipment Which this Proposed Rule Would Prohibit.* The primary uses of PCBs impacted by this rule are their use in transformers and capacitors. In both cases substitutes are available. A consultant who evaluated the availability of PCB substitutes for EPA concluded:

"The materials used as substitutes for PCBs are less stable chemically, which results in increased fire risk but which also ensures that they are less persistent in the environment. Because the use of PCBs sensitized the users to problems of acute and chronic toxicity, the materials that have been selected as substitutes for PCBs have notably low toxicity and well defined environmental fates. The switch from PCBs to substitute materials has required a certain degree of redesign of equipment in order to maintain adequate fire safety while using more flammable liquids. However, the electrical equipment manufacturers have developed non-PCB equipment that performs adequately in almost every application where PCBs were previously used.[12]

The substitutes available for use in capacitors include: alkylated chlorodiphenyl oxide, aromatic halo ethers, isopropyl biphenyl, and 1,1-phenyl xylylethane.[13] Substitutes for PCBs used in transformers include: fluorocarbons, mineral oils (especially refined paraffinic oils), silicones, synthetic hydrocarbons, and synthetic esters.[14]

The Agency is confident that available substitutes for PCBs in transformers and capacitors will perform adequately and will reduce the risk to human health presented by transformers and capacitors containing PCBs in agricultural chemical facilities.[15]

3. *Economic Consequences of the Proposed Rule.* EPA has estimated[16] the amount of PCB equipment involved and costs that would be associated with the removal and replacement of PCB-contaminated equipment subject to this rule. EPA has estimated that there were 1,200 PCB Transformers, and 31,000 PCB Large High and Low Voltage Capacitors (greater than 3 pounds) in agricultural chemical facilities in the United States as of 1979. The estimated total after tax impact of removing these PCB Transformers and PCB Large High and Low Voltage Capacitors from agricultural chemical facilities and replacing them with non-PCB Transformers and Large Capacitors is 44 million dollars, measured in 1979 end of year dollars. The estimated cost per unit is $44,000 per transformer and $1,000 per capacitor. These total costs take into account such things as the average age of the equipment in use now, the costs the company would have incurred without the regulation, and income tax benefits.

This estimate includes the cost of removing PCB electrical equipment from all plants manufacturing chemicals in S.I.C. 2873, 2874, 2875, and 2879. Because anhydrous liquid ammonia plants are not covered by this rule, and because facilities in S.I.C. 2879 which manufacture pesticides not used in agriculture are not covered, the estimate is conservatively high. Furthermore, this estimate assumes that compliance with this regulation would necessitate replacement of PCB Items. It is possible that draining, flushing, and refilling PCB transformers could be an alternative mechanism for reducing the PCB concentration in these transformers. If so, the economic impact could be reduced.

The total first year cost impact was estimated at $73 million for removing PCB Transformers and PCB Large Capacitors subject to this rule and replacing them with transformers and capacitors which contain no more than 50 ppm PCBs. The first year cost impact is likely to be under four percent of the internally-generated cash flow of agricultural chemical facilities. The estimated first year's cost is larger than the total cost because of income tax benefits derived from the depreciation of the new transformers and capacitors. These tax benefits provide positive cash flow in subsequent years throughout the lifespan of the equipment.

Although this regulation would impose significant costs on the agricultural chemical industry, the economic costs to society of not regulating also would be substantial. The incidents mentioned earlier resulted in the destruction of large quantities of

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[12] *Assessment of the Use of Selected Replacement Fluid,* prepared for the Office of Pesticides and Toxic Substances, Environmental Protection Agency, by VERSAR.

[13] Alkyl phthalates may also be substituted for PCBs in capacitors. However, there is evidence that certain alkyl phthalates cause adverse health and environmental effects. The Interagency Testing Committee has recommended that the Agency promulgate test rules under § 4 of TSCA with respect to alkyl phthalates.

[14] Chlorinated benzenes also may be substituted for PCBs in transformers. However, some chlorinated benzenes cause adverse health effects. The Agency soon will propose test rules under § 4 with respect to the chlorinated benzenes.

[15] While substitutes are available for transformers and capacitors containing PCBs used in industries other than the agricultural chemical industry, the Agency is not proposing to prohibit the use of PCB-contaminated transformers and capacitors in other industries. The Agency does not believe the risks presented by such PCB-contaminated equipment in other industries are comparable to the risks presented by the use of such equipment in the agricultural chemical industry. Moreover, a broad-based prohibition of the use of PCB-contaminated transformers and capacitors would create a disposal problem which might result in greater potential for human exposure to PCBs than would permitting the continued use of transformers and capacitors containing PCBs.

[16] "Additional regulation of polychlorinated biphenyls (PCBs) in food-related industries", prepared for the Office of Pesticides and Toxic Substances, Environmental Protection Agency, by Putnam, Hayes and Bartlett, Inc. A copy of the "discussion draft" of this report is in the record of this rulemaking. When it becomes available, a copy of the final report on this study will be placed in the record of this rulemaking.

food, feed, and farm animals, and major financial disruptions of the companies involved. The cost of clean-up from the 1979 Billings, Montana incident alone ran into the millions of dollars. The incidents illustrate that food and feed-related industires are particularly vulnerable to severe consequences from PCB contamination. This vulnerability is enhanced by the fact that, since the development of PCBs in 1929, PCB-containing equipment such as capacitors, transormers, electromagnets, heat transfer systems, and hydraulic systems have been used in food, feed, and agricultural chemical facilities.

The estimates presented above of the number of pieces of PCB Equipment among food and feed facilities were derived from U.S. Census Bureau data and were based on the assumption that the growth in electricity use during these years is representative of the growth in the use of PCB power distribution equipment. No information was available on the costs of replacing PCB-Contaminated Transformers, and the impact estimate does not include this figure. In order to collect information on replacing PCB equipment an EPA consultant obtained information from contract servicers, transformer fluid manufacturers, disposal facilities, equipment manufacturers, electrical contractors, and plant engineers. EPA is in the process of refining these estimates using a survey of agricultural chemical facilities. A report on this survey will be prepared on or about September 1, 1980, will be made a part of this rulemaking record, and will be available for public comment. Comments on this report will be accepted and made a part of the record of this rulemaking until October 2, 1980 or until thirty days after the report is available, whichever is later.

*B. Section 6(a) Findings*

1. *Unreasonable Risk Finding.* The Agency has concluded that the use of equipment contaminated with PCBs in concentrations of fifty parts per million or greater in agricultural chemical facilities, except for those facilities manufacturing anhydrous liquid ammonia and those facilities storing packaged agricultural chemical products, presents an unreasonable risk of injury to human health. Contamination of fertilizers or pesticides with PCBs can have serious and widespread adverse impact on human health. It is not possible to measure the potential harm, but it is clear that a single incident in an agricultural chemical plant, unless it is discovered and remedied immediately, can expose large numbers of people to the health risks associated with PCBs.

The human health risks that this rule would prevent are unreasonable in comparison with the economic impact of the rule. First, acceptable substitutes for PCB-containing equipment are available at reasonable cost. Second, the costs of taking necessary remedial measures after accidents occur are substantial; over a period of twenty years, these costs probably would equal the cost of removing and replacing PCB Items.

Consistent with PCB rules promulgated pursuant to Section 6(e), TSCA, 40 CFR Part 761, this proposed rule incorporates the Agency's conclusion that equipment used in food and feed-related facilities which is contaminated with PCB's at concentrations below 50 ppm does not present an unreasonable risk of injury to health or the environment. If, in the Billings, Montana incident the 40% PCB level actually found in the leaking transformer had been only fifty ppm, the PCB levels in the ontaminated animal feed would have been about a factor of ten below that allowed by FDA.

2. *Least Burdensome Regulatory Requirement.* In accordance with § 6(a) of TSCA, the Agency has concluded that this proposed rule imposes the least burdensome requirements necessary to reduce the unreasonable risk of human exposure to PCBs likely to originate in the use of PCB-contaminated equipment at agricultural chemical facilities.

In choosing the regulatory measure most appropriate to reducing risks presented by the use of PCB-contaminated equipment in agricultural chemical facilities, the Agency considered the measure incorporated in the rule proposal as well as the following variations of the selected option:

(1) Include a Prohibition of Small Capacitors in the Regulation.

The increased cost in complying with this option did not appear reasonable in view of the fact that most of the PCB dielectric fluid in Small Capacitors (less than 3 pounds) is in a nonliquid, nonmobile state, and should therefore present little risk.

(2) Include a Requirement that Transformers and Large Capacitors be "PCB-Free".

In addition to requiring removal and disposal of all PCB Items it would require purchasers of new equipment to obtain written certification from the manufacturers of the replacement PCB Items that they are "PCB-free". The term "PCB-free" would be defined in the final regulation; however we now have information that one transformer manufacturer can guarantee PCB concentrations in their fluid of less than two parts per million. The total cost of this option would be slightly more than the option we have chosen, since analysis would have to be performed to ensure new equipment is "PCB-free". If it turns out that the option of retrofilling to 50 ppm is unfeasible, then this option provides greater protection with very little increased cost and is therefore a likely candidate.

(3) Permit the Continued Use of PCB-Contaminated Transformers.

This option would also require removal of PCB Items from agricultural chemical facilities; however, an exception would be made to allow the continued use of PCB-Contaminated Transformers. This would also allow reclassifying PCB Transformers as PCB-Contaminated Transformers after servicing them to reduce the PCB concentration to less than 500 ppm. The costs associated with this option would be considerably less than the one the Agency has proposed, since many transformers could be retrofilled rather than removed. EPA's contractor estimated the total cost of this option to be about $26 million for agricultural chemical facilities. The health benefits of this option, however, would be lower than those of the selected option: the Agency, has calculated that if a spill of 500 ppm had occurred in the Billings, Montana incident instead of 40% PCB fluid FDA's limit on PCBs in animal feed could have been exceeded.

(4) Do not Prohibit the Use of PCB Items, but Institute a Required Inspection Program for Agricultural Chemical Facilities to Follow.

This option would require owners of PCB Items to inspect equipment, both PCB Transformers and Capacitors, daily for leaks and other hazards and to keep records of such inspections for EPA review. The equipment would have to be replaced with equipment containing less than 50 ppm PCBs if any leaks or other sources of exposure were found. The total cost of this option would be higher than that of the selected option: the Agency estimates that the total cost of this option would be $160 million for agricultural chemical facilities. The health benefits of this option, however, would be lower than those associated with the selected option because the probability of food contamination would not be reduced to as great an extent.

## IV. Discussion

EPA proposes to prohibit the use of all "PCB Items" with concentrations greater than fifty parts per million (50 ppm) in facilities manufacturing, processing, handling, or storing fertilizers or agricultural pesticides. Prohibiting the use of these items in agricultural chemical facilities should yield the

greatest possible reduction in risk of further injury to health and the environment.

EPA intends to make this rule effective one year after promulgation of the final rule. This is the amount of time estimated to be required for transformer and capacitor manufacturers to meet the demand for replacement equipment. PCB Large High and Low Voltage Capacitors and PCB Small Capacitors may be disposed of in an EPA approved chemical waste landfill until March 1, 1981. Liquids with PCB concentrations between 50 and 500 ppm may be disposed of in an EPA approved chemical waste landfill or in a high efficiency boiler meeting EPA's technical criteria contained in 40 CFR 761.10(a)(2)(iii). Liquids with PCB concentrations exceeding 500 ppm must be disposed of in an EPA approved PCB incinerator meeting the technical criteria contained in 40 CFR 761.40(a). Unfortunately, at present there are no approved PCB incinerators available for commercial use in the United States. Past incidents indicate that removing and temporarily storing "PCB Items" or drained fluid may result in an increased risk of food and feed contamination. It is, therefore, not advisable to remove liquids with PCB concentrations greater than 500 ppm from agricultural chemical facilities until incinerators are available. One incinerator in Arkansas and one in Texas underwent PCB trial burns in the fall of 1979. Data from these burns is being reviewed by EPA, and these two incinerators could be approved and begin PCB operations during the summer of 1980. EPA will not make this requirement effective for liquids with PCB concentrations greater than 500 ppm until disposal facilities are available. Disposal facilities for liquids with PCB concentrations between 50 and 500 ppm and for PCB capacitors are already available.

## V. Public Comments; Public Hearing

EPA invites comments on any aspect of this proposed rule. In particular, the Agency invites comments on (1) the likelihood of human exposure to PCBs via the mechanisms hypothesized here or any other mechanism involving agricultural chemicals, (2) whether excluding facilities manufacturing anhydrous liquid ammonia and facilities storing packaged products is proper, (3) whether any other exclusions should be made based on an identical or similar rationale of reduced risk, and (4) whether additional steps beyond those here proposed should be taken to prevent human health risks that would result from future food contamination incidents.

The Agency is allowing a sixty-day public comment period. After the expiration of the public comment period, the Agency will conduct an informal hearing, pursuant to Section 6(c)(2) and (3) 40 CFR Part 750, if any person requests a hearing.

## VI. Rulemaking Record

The record of this proposed rulemaking includes the rulemaking record for the 1979 PCB regulation, (44 FR 31514, May 31, 1979) and includes all subsequent information pertinent to this regulation.

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. On May 29, 1979, EPA published in the Federal Register a report on how the Agency implements Executive Order 12044 (44 FR 30988). In accordance with the Agency's implementation plan, this proposal has been classified as "significant", and further as "routine" rather than "major".

Authority: Sec. 6(a) and 6(e) of the Toxic Substances Control Act, 15 U.S.C. 2605.

Dated: May 2, 1980.

Douglas M. Costle,

*Administrator.*

It is proposed that Part 761, Subpart D, be amended by adding a new § 761.34 and by adding the new subparagraphs (d)(6) and (e)(7) to § 761.31, as follows.

### § 761.34 PCB prohibitions at agricultural chemical facilities.

Notwithstanding any other provisions of this regulation, except for Small PCB Capacitors and except for facilities manufacturing anhydrous liquid ammonia, the use or storage of PCB Items, as defined in § 761.2(x), at facilities manufacturing, processing, or storing bulk, unpackaged fertilizer or agricultural pesticides is prohibited.

### § 761.31 Authorizations.

* * * * *

(d) * * *

(6) Except for facilities manufacturing anhydrous liquid ammonia, no heat transfer system that is used at facilities manufacturing, processing, or storing bulk, unpackaged fertilizer or agricultural pesticides may contain heat transfer fluid with 50 ppm or greater PCB (0.005% on a dry weight basis).

(e) * * *

(7) Except for facilities manufacturing anhydrous liquid ammonia, no hydraulic system that is used at facilities manufacturing, processing, or storing bulk, unpackaged fertilizer or agricultural pesticides may contain hydraulic fluid with 50 ppm or greater PCB (0.005% on a dry weight basis).

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Federal Register

Friday
May 9, 1980

Part V

# Department of the Interior

## Fish and Wildlife Service

## California Condor Endangered Species Permit Application; Notice of Notice of Receipt and Outline

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Endangered Species Permit; Receipt of Application

*Applicant:* USFWS, Patuxent Wildlife Research Center, Laurel, Md.

*Species:* California Condor (*Gymnogyps californianus).*

*File No.:* PRT 2-6563.

*Key Personnel:* See Appendix.

*Long range objective:* To establish a secure and self-sustaining wild population.

*Purposes:* Enhancement of survival and propagation and scientific research.

*Duration of proposed study:* 35 years.

*Summary of proposed project:* To take nine condors from the wild to establish a captive breeding population and to radio-tag as many of those left in the wild as possible to determine movements and salient factors relating to their needs and survival in the wild.

### Outline of California Condor Endangered Species Permit Application

#### I. Trapping and Handling

A. *Methods:* Condors will be captured by one of the following methods: (1) bow net or clap trap, (2) cannon net, or (3) walk-in trap. All three methods have proven effective in capturing large cathartid species but the cannon net seems most promising.

B. *Handling:* Trapping operations will involve at least four handlers, including one cathartid/raptor-experienced veterinarian well supplied with all appropriate medical equipment. Initial trappings will be aimed at capturing single birds to ensure safe handling and to document the effectiveness of the trapping through normal recordkeeping and film documentation. All precautions will be taken to handle birds carefully and to minimize stress.

C. *Sexing:* All birds will be sexed by one or more methods including (1) assaying levels of sex hormones in fecal material, (2) chromosomal analysis of feather pulp, and (3) laparoscopy examination, i.e. direct inspection of sex organs of the bird with a small optical telescope through a tiny incision in the adbominal wall, Laparoscopy seems most promising at this time.

D. *Tissue samples:* Twenty cc. of blood will be taken from a wing vein of each condor trapped and used for the following analyses; (1) organochlorine and heavy metal contaminants, (2) pathogen and blood parasite composition, and (3) genetic makeup including DNA hybridization studies of genetic relationships of cathartid vultures and enzyme polymorphism studies to index the degree of inbreeding in the condor population.

In addition, up to two grams of contour feathers will be plucked for heavy metal contamination analysis.

E. *Other examinations:* Other examinations of captured birds will include: (1) tracheal and cloacal swab cultures, (2) fecal analysis, (3) external parasite examination, and (4) molt and plumage examination.

#### II. Radio Telemetry Program

A. *Objective:* To radio-tag as many condors as possible during the telemetry study scheduled for a minimum period of three years.

B. *Schedule:* Trapping of California condors will begin in September 1980 after USFWS and State personnel are satisfied that methods tested on Andean condors (*Vultur gryphus*) in Peru during summer 1980 are adaptable for California condors. Initially, only two California condors will be captured and fitted with radio transmitters (three if one pre-flight juvenile is available) for assessing the feasibility of continuing with the tried method of capture. If after one month of evaluation no unresolvable problems have arisen, trapping of additional birds will resume until a total of eight birds have been fitted with transmitters. However, to prevent harassment during the breeding season, no birds will be captured from February 1, 1981, to the latter part of the summer. Trapping in succeeding years will follow the basis plan outlined above.

C. *Materials:* Wing-mounted solar powered transmitters, weighing about 60 grams and passing through the patagium of each wing, known to last up to three years or more, promise to be the best design for the birds and for this long term study. The overall radio telemetry equipment placed on each bird weighs about 120-150 grams which represents approximately 1.5% of body weight, well below the 5% body weight limit usually recommended in avian telemetry. Similar wing-mounted transmitters used on Andean condors at the Patuxent Wildlife Research Center and on free flying turkey vulturs (*Cathartes aura*) in Wisconsin show no negative effects on the tested birds. Also, California condors will not be fitted with the described transmitters unless encouraging results are received on like transmitters to be used on Andean condors this summer in Peru.

An array of fixed antenna towers, with adequate resolution capability to track overall movements of radioed birds, will be established to continuously monitor the entire condor range. "Pin-point" tracking of radioed birds will be accomplished with the assistance of portable receivers on the ground and in airplanes.

#### III. Formation of a Captive Population

*A. Overall objectives and plans*

1. The long term objective is to take five unpaired females and four unpaired males from the wild, whch, when added to the one male now in captivity, will provide a captive breeding stock of five pairs.

2. The captive birds will be distributed among three raptor propagation facilities including the San Diego Wild Animal Park, the University of California at Santa Cruz, and the Los Angeles Zoo.

3. The initial short term objective is to capture one subadult female between September 1980 and February 1, 1981, to be paired with the male held at the Los Angeles Zoo.

4. Plans to capture additional birds are scheduled for the later half of 1981 and will include the taking of subadult or non-breeding adults only.

5. The pros and cons of taking immature birds are discussed and is concluded with a statement that unpaired adults are genrally preferred. Second priority goes with immatures and lowest priority will be with taking paired adults that are unproductive in the wild.

6. The selection of birds to be taken will be made only after careful deliberation and with intensive review of telemetry data received.

*B. Breeding facilities*

1. Complete descriptions of the three breeding facilities are included and will be headed by the following personnel:

(a) San Diego Wild Animal Park—Dr. Art Risser.

(b) Santa Cruz Predatory Research Group—Dr. Kenneth Norris, Mr. Brian Walter and Mr. Clark Hall.

(c) Los Angeles Zoo—Dr. Warren B. Thomas.

2. All three facilities will be patterned after the Andean condor facility at Patuxent. Generally speaking, husbandry procedures will also be patterned after those developed at Patuxent. The facilities will not be opened to the public.

3. Captive condors will be manipulated in efforts to establish viable pairs.

4. Transport of birds to the breeding facilities will be done by USFWS personnel with commercial type shipping pens. All precautions will be

taken to assure safe and comfortable travel for the birds.

**IV. Justification**

The main application text consists of 20 pages and includes a detailed justification for the proposed project under the following subheadings:

(1) Magnitude of the Recent Decline.

(2) Cause of Decline.

(3) Inadequacy of Traditional Research Methods.

(4) General Goals of Future Efforts.

**V. Other Pertinent Information**

A. The application is submitted as part of a cooperative agreement entitled "National Audubon Society—U.S. Fish and Wildlife Service, California Fish and Game Department, U.S. Forest Service, and U.S. Bureau of Land Management Cooperative California Condor Conservation Program." The objectives of this agreement are (1) to implement the California Condor Recovery Plan (2) to cooperate on field research on behalf of the California Condor Conservation Program, (3) to cooperate on public information and education, and (4) to provide for ongoing review of the recovery program with the assistance of the American Ornithologist Union.

B. California Recovery Plan: This permit request is the initial step to satisfy the objective of the California Condor Recovery Plan which is "to stop the decline of the species and increase the population to a secure level."

C. Initiation of the proposed research is subject to prior approval by the USFWS Associate Director, Federal Assistance, after his review of all data received in the Andean condor study this summer.

Documents and other information submitted with this application are available to the public during normal business hours at the following locations 1) Wildlife Permit Office, USFWS, Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing the Director, USFWS, WPO, Washington, D.C. 20240, 2) Area Office, USFWS, Room E-2740, Federal Bldg., 7800 Cottage Way, Sacramento, CA 95825; 3) Condor Research Center, 2284 S. Victoria Ave., Suite 2G, Ventura, CA 93003; 4) Region 1, USFWS, Suite 1692, Lloyd 500 Bldg., 500 N.E Multnomah St., Portland, OR 97232; 5) Region 2, USFWS, P.O. Box 1306, Albuquerque, NM 87103; 6) Region 3, USFWS, Federal Bldg., Fort Snelling, Twin Cities, MN 55111; 7) Region 4, USFWS, P.O. Box 95067. Atlanta, GA 30347; 8) Region 5, USFWS, Suite 700, One Gateway Center, Newton Corner, MA 02158; 9) Region 6, USFWS, Box 25486, Denver Federal Center, Denver, CO 80225.

Interested persons may comment on this application by submitting written data, views, or arguments to the Director, USFWS, WPO, Washington, D.C. 20240 on or before June 23, 1980. Please refer to the file number (PRT 2-6563) when submitting comments.

Dated: May 6, 1980.

**Donald G. Donahoo,**

*Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.*

**Appendix—Names and Addresses of Key Personnel**

U.S. Fish and Wildlife Service:

Dr. Lucille Stickel, Director, Patuxent Wildlife Research Center, Laurel, Maryland 20811.
Dr. Milton Friend, Director, National Wildlife Health Laboratory, University of Wisconsin, c/o Dept. of Veterinary Sciences, 1655 Linden Drive, Madison, Wisconsin 53706.
Dr. Noel F. R. Snyder, Research Biologist, California Field Station, Endangered Wildlife Research Program, Condor Research Center, 2284 S. Victoria Avenue, Suite 2G, Ventura, California 93003.

National Audubon Society, Condor Research Center, 2284 S. Victoria Avenue, Suite 2G, Ventura, California 93003:

Mr. John C. Ogden, Senior Staff Scientist.
Mr. John C. Borneman, Condor Research Representative.
Mr. Bruce Barbour, Staff Scientist.
Mr. Gary Falxa, Staff Scientist.
Mr. Jesse Grantham, Staff Scientist.
Mr. William Lehman, Staff Scientist.
Mr. Lawrence A. Riopelle, Staff Scientist.

San Diego Wild Animal Park, P.O. Box 551, San Diego, California 92112:

Dr. Arthur C. Risser, Jr., Curator of Birds.
Dr. Kerry A. Muller, Assistant Curator of Birds.
Dr. Philip Terry Robinson, DVM.

Los Angeles Zoo, 5333 Zoo Drive, Los Angeles, California 90027:

Dr. Warren D. Thomas, DVM, Director.
Dr. Gary R. Kuehn, DVM.
Dr. Gerald N. Esra, DVM.
Mr. Michael Cunningham, Curator of Birds.

Santa Cruz Predatory Bird Research Group, University of California, Santa Cruz, Clark Kerr Hall, Santa Cruz, California 95064:

Dr. Kenneth S. Norris, Director of the Environmental Field Program.
Mr. Brian K. Walton, PBRG Coordinator.

Dr. Charles G. Sibley, Peabody Museum of Natural History, Yale University, New Haven, Connecticut 06520.

Dr. Kendall Corbin, Bell Museum of Natural History, University of Minnesota, Minneapolis, Minnesota 55455.
Dr. Stanley A. Temple, Department of Wildlife Ecology, University of Wisconsin, Madison, Wisconsin 53706.

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Friday
May 9, 1980

Part VI

# Department of the Interior

## Fish and Wildlife Service

**Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Third Regular Meeting**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Third Regular Meeting

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

**ACTION:** Notice.

**SUMMARY:** The Service publishes the time, place, and provisional agenda for the third regular meeting of the Conference of the Parties to the Convention on International Trade in Endangered Special of Wild Fauna and Flora and invites the public to provide information and comments on agenda items. The third regular meeting has been scheduled for February 2–13, 1981 in New Delhi, India.

The Service also announces its first public meeting to receive information and comments on the provisional agenda, and on species for the purpose of determining if the United States will propose amendments to the lists of species controlled by the Convention.

**ADDRESSES:** Information and comments should be sent to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, Washington, D.C. 20240. Information and comments are open to public inspection during normal business hours at the Federal Wildlife Permit Office, Room 616, 1000 North Glebe Road, Arlington, Virginia.

**DATE:** The Service will consider information and comments concerning the provisional agenda for the New Delhi meeting received by June 20, 1980.

**FOR FURTHER INFORMATION CONTACT:** Richard M. Parsons, Chief, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone 703/235–2418.

**SUPPLEMENTARY INFORMATION:**

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international agreement designed to control international trade in certain animal and plant species which are or may be threatened with extinction. Currently 59 nations, including the United States, are CITES Parties. The Convention provides for biennial (regular) meetings of the Conference of the Parties to review its implementation, to make provisions enabling the Secretariat of CITES to carry out its duties, to consider adopting amendments to Appendices I and II to CITES (two of the three lists which contain the names of species controlled by CITES; the third list, Appendix III, may be amended unilaterally), to consider any reports presented by the Secretariat or any Party, and to make recommendations for improving the effectiveness of CITES.

The Service will publish in the Federal Register proposed rules of procedure which provide for public participation in the development of negotiating positions for meetings of the Conference of the Parties. Until the rules are finalized, the Service will use them as guidelines in its preparations for the third regular meeting. This notice is the first of a sequence of notices contemplated by the proposed rules.

### Notice of Third Regular Meeting of the Conference of the Parties and the Meeting's Provisional Agenda

The United States by virtue of its membership on the Standing Committee has received a copy of the provisional agenda for the third regular meeting of the Conference of the Parties which will be held in New Delhi, India on February 2–13, 1981 and which is here printed in full:

Doc. 3.1

### Convention on International Trade in Endangered Species of Wild Fauna and Flora

*Third Meeting of the Conference of the Parties* New Delhi (India), 2 to 13 February 1981

Agenda

(Provisional)

I Opening by the Indian Authorities
II Welcoming addresses
III Appointment of the Credentials Committee
IV Adoption of Agenda and Working Programme
V Report of the Credentials Committee
VI Adoption of the Rules of Procedure
VII Admission of Observers
VIII Standing Committee
  1. Report
  2. Election of new members
IX Review of the implementation of the Convention
  1. Report of the Secretariat
  2. Reports of Parties (other than reports required by Article VIII of the Convention)
X Financing of the Secretariat and of meetings of the Conference of the Parties
  1. Budget
  2. Headquarters matters
XI Determination of the time and venue of the next regular meeting of the Conference of the Parties
XII Relationship with other international agreements and organizations
XIII Committee reports and recommendations
  1. Technical Expert Committee on Harmonization of Permit Forms and Procedures
  2. Identification Manual Committee
  3. Nomenclature Committee
  4. Ranching Committee
XIV Study and project reports
  1. Guidelines for transportation of live specimens
  2. Status of subspecies included in the appendices
  3. Species thought to be extinct included in the appendices
  4. Exemptions under Article VII
  5. Index of species mentioned in legislation
  6. Report of IUCN/SSC Threatened Plants Committee
  7. Technical cooperation, training, and implementing legislation
XV Interpretation and implementation of the Convention
  1. Analysis of national reports under Article VIII, paragraph 8, of the Convention
  2. Effects of reservations
  3. Disposal of Appendix I specimens
  4. Parts and derivatives of animal species listed on Appendix III and of plant species listed on Appendix II or III
XVI Consideration of proposals for amendment of Appendices I and II
XVII Conclusion of the meeting

### Explanation of Provisional Agenda Items I–IX

Provisional agenda items I–X and XVII are procedural in nature and will not be explained here. With regard to item VII, 2, it should be noted that the term of the United States' membership on the Standing Committee will expire at the third regular meeting. The terms of the United Kingdom and Australia will also expire. The Standing Committee was created at the second regular meeting. The Parties decided to establish a nine member committee having the following functions:

1. To provide guidance and advice to the Secretariat on the implementation of the Convention, on preparation of meetings and on relations with the host government of the Secretariat headquarters;

2. To act as bureau at meetings of the Conference of the Parties in accordance with the rules of procedure;

3. To perform any other functions as may be entrusted to it by the Conference of the Parties.

There are six regional members, plus members representing the host country of the last and the next regular meeting and the depositary country, Switzerland. In addition to the countries already named, Zaire, Nepal and Brazil are the other regional members, and Costa Rica and India are past and next host country members. The Standing Committee will be mentioned in the context of other agenda items.

Item XVI is the subject of a separate Federal Register notice published on April 4, 1980 (45 FR 23370) and will not be explained here.

**X Financing of the Secretariat and of Meetings of the Conference of the Parties**

*1. Budget*

The Secretariat of CITES is provided by the United Nations Environment Program and carried out under contract with the International Union for the Conservation of Nature and Natural Resources. The Secretariat operations are currently funded by the United Nations Environment Program and voluntary contributions of the Parties to a trust fund administered by the United Nations Environment Program. Funds may also be obtained from governments and organizations for special projects. Voluntary contributions are based on a United Nations scale of contributions. The Parties will review this arrangement and may consider the adoption of rules governing the Secretariat's budget process.

*2. Headquarters Matters*

The Secretariat and the Standing Committee have been exploring the possibility of obtaining more favorable tax treatment and other privileges for the Secretariat. Discussions have been held with representatives of the present host country, Switzerland, the United Kingdom and the Federal Republic of Germany.

**XI Determination of the Time and Venue of the Next Regular Meeting of the Conference of the Parties**

The Parties at the New Delhi meeting will consider the time and location of the next regular meeting which will probably be held in 1983. Previous regular meetings were held in Berne, Switzerland (1976) and San Jose, Costa Rica (1979).

**XII Relationships with Other International Agreements and Organizations**

The implementation of CITES relates to the work of other international agreements and organizations. The Secretariat has established relationships with such organizations as the International Air Transport Association with regard to the shipment of live specimens, the International Whaling Commission with regard to their mutual concerns for the survival of cetaceans, the United Nations Food and Agricultural Organization with regard to the International Plant Protection Convention and with INTERPOL with regard to illegal trade in wildlife and wildlife products.

**XIII Committee Reports and Recommendations**

*1. Technical Expert Committee on Harmonization of Permit Forms and Procedures*

The 1979 regular meeting in San Jose called for the creation of a committee of technical experts to guide the progressive harmonization of permit forms and procedures and to deal with control of trade in Appendix II and III species. The committee met in Bonn, Federal Republic of Germany last January and produced five proposed resolutions which will be considered at the third regular meeting. These resolutions are here reprinted in full:

**Draft Resolution of the Conference of the Parties**

*TEC/1. Standardization of Permits and Certificates Issued by Parties*

RECALLING the mandatory requirements for the granting of permits and certificates specified in Article VI of the Convention;

RECOGNIZING that in practice many Parties have not to this point insisted on strict compliance with the requirements of the Convention;

CONSCIOUS of the need to meet the requirements of the Convention in regard to the contents of permits and certificates; and

CONSIDERING the need for improved standardization of export permits and re-export certificates;

**The Conference of the Parties**

RECOMMENDS:

a) That permits or certificates issued by a Party contain the title of the Convention, the name and any identifying stamp of the Management Authority granting them and a control number assigned by the Management Authority; and that after nine months from the final date of the third meeting of the Conference of the Parties, they not be accepted by any other Party unless they comply with these requirements;

b) That export permits issued by a Party contain the information specified in the model set forth in Appendix IV of the Convention; and that after nine months from the final date of the third meeting of the Conference of the Parties, they not be accepted by any other Party unless they comply with these requirements;

c) That import permits for Appendix I specimens re-export certificates and other certificates issued by a Party under the provisions of the Convention contain, as appropriate, similar information to that required for the export permit;

d) That certificates issued by a Party to the effect that a specimen was bred in captivity or artifically propagated comply with the requirements set forth in Resolution Conf. 2.12 adopted by the second meeting of the Conference of the Parties (San Jose, 1979);

e) That Parties provide in their permits and certificates complete information, in accordance with Appendix IV, on units of measurement used; i.e., avoid general description such as "one case" or "one shipment" and instead use, in the case of skins, hides or trophies representing one whole animal, the specific number of animals concerned, or include weight (in kg) and other measurements of parts and derivatives, as appropriate;

f) That Parties adapt, to the extent practicable, the format of their export permits and re-export certificates to the standard model attached to the present Resolution;

g) That Parties communicate to the Secretariat information relating to stricter domestic measures which may affect the legality of exports or re-exports; and

REQUESTS the Secretariat to disseminate the information mentioned in subparagraph g) above to other Parties with a view of ensuring effective implementation in the context of Article XIII of the Convention.

Note.—For the purpose of preparing the standard model envisaged in paragraph f) of this Draft Resolution, the Technical Expert Committee, on the basis of proposals by a special working group convened for this purpose, adopted the following recommendations:

1. Each form should contain all the information found in Appendix IV and:
   a) The country of origin
   b) The type of permit (export, re-export, *etc.*)
   c) An expiry date, preferably expressed as: valid until ———— (date).
2. Each form should be printed in one or more of the working languages of the Convention (English, French, Spanish) and the national language, if different from one of the working languages.
3. The size of the form should conform to the International Organization for Standardization (ISO) A4 dimensions.
4. All essential information (see 1. above) and the box for special conditions (see 7. below) should be on the face of a single sheet.
5. The original copy should be printed on a security paper. The Secretariat is requested to make preparations for a presentation of security paper and color coding of the copies at the third meeting of the Parties.
6. Each copy of the permit should be permanently marked (pre-printed) with the intended use (permittee, destination, or other

uses). Further, either the original or a certified copy marked is to accompany the shipment.

7. Each form and all copies should have a standard location and standard numbering of boxes, preferably in the accepted U.N. layout key; one box included for special conditions.

8. Each form should have a location where reference is made to national authorizing legislation.

The Technical Expert Committee requested the Secretariat.

—To take the necessary steps to ensure compatibility of the information contained in the present recommendations with the applicable UN/ECE layout key; and

—To return the permit layout so obtained to the participants in the special working group for comments, so that further modifications can be made in the draft prior to its circulation and submission for the New Delhi Conference.

**Draft Resolution of the Conference of the Parties**

*TEC/2. Acceptance of Comparable Documentation Issued by States not Party to the Convention*

RECALLING the provisions of Article X of the Convention and the recommendation 6 a) of the first meeting of the Conference of the Parties, which make the acceptance of comparable documentation issued by a State not Party to the Convention conditional upon issuance by the competent authorities in that State and upon substantial conformity with the requirements of the Convention for permits and certificates;

CONSCIOUIS of the risk of exports or re-exports from States not a Party to the Convention, which might jeopardize the effectiveness of the Convention unless the above-mentioned conditions are observed by all Parties;

CONSIDERING the need to provide guidance to Parties for the uniform implementation of Article X of the Convention; and

CONSIDERING further the need to keep States not a Party to the Convention informed of its progressive implementation, to enable them to express their views regarding trade with the Parties, and to promote wider participation in the Convention,

**The Conference of the Parties**

RECOMMENDS that documents issued by a State not Party to the Convention be not accepted by Parties unless they contain;

a) The name, stamp and signature of a competent issuing authority; nature conservation authorities shall be considered competent unless the State concerned has designated another authority for that purpose;

b) Sufficient identification of the species concerned for the purposes of the Convention;

c) Certification of the origin of the specimen concerned;

d) In the case of export licences, certification to the effect that export will not be detrimental to the survival of the species; that the specimen was not obtained in contravention of the laws of the State of export for the conservation of fauna and flora;

e) In the case of re-export, certification to the effect that the competent authority of the country of origin has issued an export licence which substantially meets the requirements of Article VI of the Convention;

f) In the case of export or re-export of live specimens, certification to the effect that transport will be in a manner which will minimize the risk of injury, damage to health or cruel treatment;

g) In the case of import of live specimens under Article III of the Convention, certification to the effect that the proposed recipient is suitably equipped to house and care for them, and that the specimens are not to be used for primarily commercial purposes; and

REQUESTS that the Secretariat compile, and communicate to the Parties, on the basis of the information available, updated lists of competent authorities issuing comparable documentation in States not Party to the Convention, and other information relevant to the uniform implementation of Article X; and, to the extent practicable, communicate for this purpose with States not Party to the Convention.

**Draft Resolution of the Conference of the Parties**

*TEC/3. Annual Reports by Parties*

CONSIDERING the importance of the annual reports provided by Parties under the provisions of Article VIII, paragraph 7, of the Convention for purposes of trade monitoring;

RECALLING Resolution Conf. 2.16 adopted at its second meeting (San Jose, 1979);

**The Conference of the Parties**

RECOMMENDS:

a) That Parties comply as fully as possible with the reporting requirements of the Convention, as well as with the deadline laid down in Resolution Conf. 2.16, and submit their reports in accordance with the uniform format provided in Notification to the Parties No. 78;

b) That specimens be listed in reports under the appendices on which the species is listed, with a special annotation where required; e.g., in the case of Appendix I specimens covered by exemptions pursuant to Article VII of the Convention;

c) That the Technical Expert Committee on Harmonization of Permit Forms and Procedures undertake a periodic review of annual reports; be reconvened for this purpose at the beginning of each meeting of the Conference of the Parties; and report to the Parties during each meeting on its observations and conclusions.

**Draft Resolution of the Conference of the Parties**

*TEC/4. Trade in African Elephant Ivory*

CONSIDERING that the status of the African elephant *(Loxodonta africana)* and the volume of international trade in its ivory justified the inclusion of this species in Appendix II of the Convention at the first meeting of the Conference of the Parties (Berne, 1976);

CONSCIOUS of the fact that, due to the increasing monetary value of ivory, illegal trade activities have reached a significant level, that ivory is frequently traded with inadequate documentation, and that States which are not Parties of the Convention play a special role in this trade;

RECALLING Resolution Conf. 2.6 adopted by the Conference of the Parties at its second meeting (San Jose, 1979) which recommends the use of the options provided by Article XIV of the Convention to apply stricter domestic measures and direct contacts between Management Authorities when it is suspected that an Appendix II species is traded in a manner detrimental to the survival of the species or in contravention of the laws of any country involved in the transaction; and

NOTING the positive results experienced by a number of Parties having applied stricter domestic measures for ivory trade, in accordance with the provisions of Article XIV;

**The Conference of the Parties**

RECOMMENDS:

a) That any imports of African elephant ivory by a Party be authorized only if the Party is satisfied that the ivory was legally acquired in, and exported from, the country of origin;

b) That permits or certificates for unworked or simply worked ivory be accepted only if they mention the actual country of origin;

c) That relevant information be exchanged among Parties, and between Parties and the Secretariat and, if there

is any doubt concerning the validity of an ivory export permit or re-export certificate, copy of the document be submitted to the Management Authority concerned for clarification;

d) That the Technical Expert Committee on Harmonization of Permit Forms and Procedures study and promote the development of methods for the permanent marking and numbering of unworked elephant tusks, such numbers to be entered on the export permit and re-export certificate; and

e) That Parties make every effort to encourage wider participation in the Convention by States trading in ivory which are not yet Party to the Convention.

**Draft Resolution of the Conference of the Parties**

*TEC/5. Trade in Whale Products*

MINDFUL of the need for special attention to the conservation of whales and other cetaceans;

RECALLING Resolutions Conf. 2.7, 2.8 and 2.9 adopted at its second meeting (San Jose, 1979);

(a) That Parties pay particular attention to the documentation requirements for specimens of cetaceans under Articles IV and XIV;

(b) That Parties give urgent consideration to Resolution Conf. 2.7 calling on those Parties which do not currently adhere to the International Convention for the Regulation of Whaling to do so.

*2. Identification Manual Committee*

A species identification manual for use of border and port officials is being developed by the Secretariat and an international committee. The Secretariat has submitted a request for partial funding of the project which may not be currently available. Country contribution will make up the balance of the manual's cost. The United States has already provided a set of regional base maps for use in describing species population distribution. Other countries have promised to produce chapters on certain species but more contributions are needed.

*3. Nomenclature Committee*

A committee of experts chaired by the United States has produced a provisional listing of standardized scientific names of vertebrate species and plant genera. The Conference of the Parties at its second regular meeting directed the committee to continue its work. Project funding is being sought from UNEP for the production of lists of mammals, amphibians, and reptiles. The lists will provide a uniform reference list upon which to base species listings in Appendices I, II and III of CITES.

*4. Ranching Committee*

The Conference of the Parties at its second regular meeting rendered a detailed definition of the terms "bred in captivity" and "artificially propagated." The terms are important to the operation of the certificated exemption from the strict controls of CITES provided for specimens so defined. The Conference of the Parties also requested the Secretariat to establish a committee to determine whether those ranched Appendix I specimens which could not qualify for this exemption should be exempted in some other fashion.

**XIV Study and Project Reports**

*1. Guidelines for transportation of live specimens*

Shipping guidelines to assist management authorities in determining whether living specimens will be so prepared and shipped as to minimize the risk of injury, damage to health, or cruel treatment were approved at the second regular meeting. A suggestion has been made informally by the United States that a form be adopted for use by the country of import where inspection discloses undue stress during shipment.

*2. Status of Subspecies Included in the Appendices*

The second regular meeting of the Conference of the Parties recommended that only subspecies generally recognized as valid taxes should be proposed for listing on the CITES appendices, and that where identification is difficult the entire species be included in the proposal distinguishing the reasons for the proposed listing of each subspecies. IUCN's Survival Service Commission has been asked to review proposals of subspecies prior to review by the Standing Committee before consideration at the third regular meeting. A review of current listings of subspecies was also recommended by the second regular meeting.

*3. Species Thought to be Extinct Included in the Appendices.*

The second regular meeting recommended that no action be taken to remove from the appendices species thought to be extinct. Species not observed for at least 50 years despite repeated survey should be annotated in the appendices as P.E. (probably extinct). The Parties at the third regular meeting will consider species eligible for such designation.

*4. Exemptions Under Article VII*

Article VII of CITES provides for certain certificated and non-certificated exemptions to the strict rules governing international trade in listed species. The Parties, having experienced significant problems in administering or enforcing the exemptions, asked the Secretariat to study these problems and report its findings and recommendations to the third regular meeting of the Conference of the Parties. The Secretariat will soon be circulating a survey on this issue to the Parties.

*5. Index of Species Mentioned in Legislation*

CITES allows individual parties to adopt stricter domestic measures regarding the conditions for trade, taking possession or transport of CITES controlled specimens. Many countries have adopted such measures. A list of such countries and the species subject to stricter domestic measures is being developed by IUCN's Environmental Law Center. The United States Endangered Species Act of 1973 and Marine Mammal Protection Act of 1972 are examples of stricter domestic measures.

*6. Report of IUCN/SSC Threatened Plants Committee*

The first regular meeting recommended that a review of plant species listed in Appendices I and II be undertaken by the Threatened Plants Committee of IUCN. The second regular meeting endorsed continuation of the review and recommended consultations with the Parties and the IUCN TRAFFIC Group.

*7. Technical Cooperation, Training, and Implementing Legislation*

The Secretariat has been involved in projects for assisting countries in the development of rules and administrative procedures implementing CITES. The Secretariat has been seeking external funding for such projects. Two of the requests involve the Commonwealth nations and a Middle East area. The Parties will review guidelines for legislation to implement CITES developed by IUCN's Environmental Law Center.

**XV. Interpretation and implementation of the Convention**

*1. Analysis of national reports under Article VIII, paragraph 8 of the Convention*

Article VIII of CITES requires each Party to submit an annual report to the Secretariat containing a summary of the number and types of CITES documents

issued, the countries with which trade occurred, the numbers and types of specimens, names of species and where applicable, the size and sex of specimens so traded. The third regular meeting will consider a proposal of the Technical Expert Committee on Harmonization of Permit Forms and Procedures to review these reports to eliminate discrepancies which may be the result of non-uniform practices in permit issuance, (See Item XIII, 1 above.)

*2. Effects of reservations*

Article X of CITES enables trade with non-parties under non-party documents issued by competent authorities equivalent to those issued by Parties. Parties which take reservations on amendments to the CITES species appendices are to be treated as non-parties with respect to the species subject of the reservations. Some probably unintended difficulties may arise where a reservation is taken on an amendment which removes the species from the lists completely or changes it from one list to another.

*3. Disposal of Appendix I Specimens*

Confiscated specimens of Appendix II species may be readily transferred in international trade. Some Parties have raised the issue of whether and under what circumstances confiscated specimens of Appendix I species can be transferred in international trade.

*4. Parts and Derivatives of animal species listed on Appendix II and of plant species listed on Appendix II or III*

The second regular meeting recommended that when proposing amendments to Appendix III for animal species and when proposing amendments to Appendix II or III for plant species, it be accepted that all readily recognizable parts and derivatives are to be regulated unless particular parts or derivatives are specified as being exempt. The third regular meeting will deal with this approach in the context of its applicability to species listed on Appendices II and III as of the second regular meeting.

**Request for Information and Comments**

At the second regular meeting of the Standing Committee held in Bonn, Federal Republic of Germany, January 29, 1980, it was agreed that only a limited number of agenda items not relating to the listing of species should be considered at the third regular meeting. These items are to be submitted to the Secretariat by the Parties no later than 150 days in advance of the third meeting (on or about September 5, 1980). It should be noted that this rule does not require negotiating positions to be finalized at that time.

The Service invites information and comments on the provisional agenda items and invites suggestions for additional items. Such suggestions should contain sufficient detail to enable the Service to evaluate their relevance to CITES matters and appropriateness for inclusion in the agenda of the third regular meeting.

**Observers**

Article XI, paragraph 7 of the Convention provides:

> Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following catagories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object:
>
> (a) International agencies or bodies, either governmental non-governmental, and national governmental agencies and bodies; and
>
> (b) National non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located. Once admitted, these observers shall have the right to participate but not to vote.

Those bodies or agencies wishing to send observers to the third regular meeting of the Conference of the Parties are responsible for so informing the Secretariat. In the past, the Secretariat has required such information to be received at least one month prior to the meeting. The Secretariat may be contacted at the following addresses:

Postal address: CITES Secretariat, Avenue du Mont-Blanc, CH-1196 *GLAND,* Switzerland.
Telex: 22618 iucn ch.
Cable: IUCNATURE.

Persons wishing to be observers representing U.S. national non-governmental agencies must receive the approval of the Fish and Wildlife Service for such purposes. Such requests should include evidence of technical qualification in protection, conservation or management of wild fauna and flora and should be addressed in the same manner as information and comments (see "Addresses" above).

**Announcement of Public Meeting Concerning Proposed Agenda and Species Proposals**

The Service announces that it will hold a public meeting on Monday, June 2, 1980 from 9:30 a.m. to 12:30 p.m. in room 5160 of the main building of the Department of the Interior, 18th and C Streets, N.W., Washington, D.C. for the following purposes:

1. To receive information and comments or the proposed agenda items for the third regular meeting of the Conference of the Parties.

2. To receive suggestions for additional agenda items for the third regular meeting of the Conference of the Parties.

3. To receive information on animal and plant species for the purpose of determining if the United States should propose any amendments to the list of species in CITES Appendices I and II (see 45 FR 23370, April 4, 1980, a Service notice requesting comments regarding such proposals).

4. To receive suggestions on the membership of the U.S. delegation to the third meeting.

Written statements may be submitted to the Service before or at the meeting. Appointments to speak may be made with the Federal Wildlife Permit Office, Washington, D.C. 20240 [703/235-2418]. Participants without prior appointments will be given an opportunity to speak to the extent time allows following speakers with appointments.

This notice was prepared by Arthur Lazarowitz, Federal Wildlife Permit Office.

Dated: May 5, 1980.

Joan Caton Anthony,

*Chief, Management Operations Branch, Federal Wildlife Permit Office.*

[FR Doc. 80-14285 Filed 5-8-80; 8:45 am]

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federal register

Friday
May 9, 1980

Part VII

# Department of Health, Education, and Welfare

## Office of Human Development Services

## Developmental Disabilities Program

**DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE**

**Office of Human Development Services**

**45 CFR Parts 1385, 1386, and 1387**

## Developmental Disabilities Program

**AGENCY:** Department of Health, Education, and Welfare, Office of Human Development Services (HDS), Rehabilitation Services Administration (RSA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Rehabilitation Services Administration (RSA) in HDS proposes new and revised regulations. The basis for these regulations is the Developmental Disabilities legislation. In these proposed rules, RSA is also revising and clarifying the current policies and regulations that will have continued applicability. The proposed rules do not include regulations for the university affiliated facilities program, which have been issued separately under 45 CFR Part 1388 (August 6, 1979, Vol. 44, No. 152), except for a new requirement for an assurance regarding the rights of persons with developmental disabilities.

**DATE:** Comments on the proposed rulemaking must be received on or before August 7, 1980.

**ADDRESS:** Comments should be addressed to Commissioner, Rehabilitation Services Administration, U.S. Department of Health, Education, and Welfare, Washington, D.C. 20201. Comments are available for public inspection in the Bureau of Developmental Disabilities, RSA, Room 3070, Mary E. Switzer Building, 330 C Street S.W., Washington, D.C. 20201, Monday through Friday, 8:30 a.m. to 5:00 p.m., telephone (202) 245–0335.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marjorie Kirkland, Bureau of Developmental Disabilities, Washington, D.C. 20201, Telephone: (202) 245–0335.

**SUPPLEMENTARY INFORMATION:**

### General

We are proposing new regulations to implement Title V of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, as well as to meet additional needs of the program which have become apparent. The title of the new Act is the Developmental Disabilities Assistance and Bill of Rights Act. It provides for a three-year extension of the authorizations of appropriations for: (1) The basic State program; (2) systems for protection and advocacy of individual rights; (3) the university affiliated facilities programs for administration and operation of training and service programs; and (4) special project grants including projects of national significance. The following seven sections present the major changes made to the developmental disabilities programs by the 1978 amendments. The policies and purposes of the changes are discussed in the section-by-section analysis of the proposed regulations.

Parts of the Rehabilitation Services Administration will soon be transferred to the new Department of Education; the Developmental Disabilities Office will remain in the Department which will become the Department of Health and Human Services. Changes resulting from the reorganization will be made in the final regulations.

### Definition of Developmental Disability

A major change brought about by the 1978 amendments is in the definition of developmental disability. The new definition is based on a study mandated by Pub. L. 94–103. It states that a developmental disability: (1) is severe and chronic; (2) is attributable to a mental or physical impairment; (3) is manifested before age 22; (4) is expected to continue indefinitely; (5) results in substantial functional limitation in three of seven specified areas of major life activities; and (6) reflects the need for lifelong and individually planned services.

The House Conference Report No. 95–1789, accompanying H.R. 12467, p. 104, 95th Congress, Second Session, noted that "the definition is intended to cover everyone currently covered under the definition and it is also intended to add other individuals with similar characteristics. . . . It is not the intent to exclude anyone who legitimately should have been included under the definition in current law."

### Rights of the Developmentally Disabled

Section 111 of Pub. L. 94–103 contained a series of "findings" respecting the rights of developmentally disabled persons, including the following:

(1) Persons with developmental disabilities have a right to appropriate treatment for their disabilities;

(2) Treatment should be designed to maximize the developmental potential of the person;

(3) The Federal government and the States both have an obligation to assure that public funds are not provided to any institutional or other residential program for persons with developmental disabilities that does not meet certain stated standards;

(4) Nonresidential programs must be appropriate to the persons served.

No authority was included in that Act to allow the Department to withhold funds from States on the basis of failure to meet the findings.

The 1978 amendments, however, added a requirement to the basic State grant program that the State assure the Secretary that the rights of developmentally disabled people are to be protected consistent with Sec. 111. The Department has decided to require that all programs authorized under the Act, except for the protection and advocacy systems, comply with Sec. 111 of the Act. The protection and advocacy systems are exempted because they are an extension of the "Rights" provisions and the systems do not provide services, treatment or habilitation. The Department believes that applying this policy to the other programs is within the intent of Congress. Recipients of funds under the Act are to assure the State and the Commissioner that they will provide services which comply with the requirements of Sec. 111 (Rights). Failure to comply with the assurance may result in the loss of Federal funds.

### Protection and Advocacy Systems

The 1978 amendments made several changes in the protection and advocacy provisions. They are a prohibition against the State planning council's administration of the State's system; a requirement that a report describing the State's activities be submitted to the Secretary at least once every three years; and a requirement that a program performance report be submitted annually. Failure to have an approvable system in place will result in the loss of Federal funds for the basic State grant program as well as for the protection and advocacy system. Minimum allotments of $50,000 are established for the States.

### State Planning Councils

Several changes in the Act affect State planning councils. One-half, instead of one-third, of the members are to be consumers and their representatives. The principal State agencies represented on the council remain the same as in the prior Act, but, in addition, higher education training facilities and local agencies must now be represented. The Governor is to appoint all members and provide for appropriate rotation of the members.

The State council is so constituted that it provides a forum for consumer

involvement in policy and priority determinations.

The council also provides a means for exploring all avenues for the provision of services through State and local, private, and public agencies. Unlike the prior system the council must now develop the State plan jointly with the administering agency.

### State Plan

The major part of the Developmental Disabilities Program is the basic State plan. In 1970, the program was seen as a planning and coordinating mechanism, with some funds for augmenting services provided by other agencies. The amendments of 1978 have to a considerable degree, changed the programs to provide services. The priority service areas are: (a) case management; (b) child development; (c) alternative community living arrangements; and (d) non-vocational social-development.

The Act provides that until the appropriation exceeds $60 million a year, a State is required to fund at least one, but not more than two, priority service areas. The State may fund three priority service areas when the Federal appropriation is more than $60 million. Regardless of the Federal appropriation, however, the State must spend at least 65 percent or $100,000 (whichever is greater) of its allotment for services.

For those States which would have to reduce the amount of Federal funds spent on planning activities in order to meet these requirements, however, the Act provides a transitional period. Those States need not reduce the amount spent for planning in the fiscal years ending September 30, 1979 and September 30, 1980. By October 1, 1980, however, all States must allocate at least 65 percent for services. These transitional provisions are not included in the regulations because the Department believes they are self-implementing, and because they will soon expire.

The State plan now must be revised at least every three years, instead of annually, as before. It must, however, be reviewed annually by the State council for needed changes in priority service areas. There are now eight major sections of the State plan instead of the 30 previously required.

### Allotments

The 1978 amendments increase from $100,000 to $250,000 the minimum allotment each State and Puerto Rico may receive for the basic State program. Minimums for the other Territories are increased to $100,000. The Northern Mariana Islands may participate in the program if it chooses.

### Special Project Grants

New grant authority is available to support the development and demonstration of methods to attract and retain professional personnel to serve developmentally disabled people, and the demonstration of methods to expand or improve protection and advocacy services. The Commissioner is to establish procedures to ensure the involvement of developmentally disabled persons and their parents in the determination of priorities for these grants.

### Overview of Regulations

The regulations in these parts are reorganized and rewritten for clarity and simplicity in accordance with HEW's Operation Common Sense.

The following regulations were previously promulgated in 45 CFR parts 1385, 1386, and 1387 and are not changed, but are included in these regulations for the sake of clarity and completeness.

**New Location of Regulations Promulgated in 1977, Not Substantively Changed**

| Present section and title | Proposed section |
|---|---|
| 1385.7—Recovery | 1385.6 |
| 1385.9—Cooperative or joint effort between States and agencies. | 1386.5 |
| 1385.10—Awards | 1386.5 |
| 1386.1(b)—Purpose and assurances | 1386.46 |
| 1386.2(a), (b), (d), (e)—Plan submission and approval. | 1386.42 |
| 1386.3—Designation of State agency(ies) for administration. | 1386.41 |
| 1386.4—Identification of administrative program unit. | 1386.41(c) |
| 1386.10(a), (b)—Allotments to States | 1386.1 |
| 1386.11—Reallotment of funds | 1386.2 |
| 1386.12(d)—Conditions on uses of alltoment | 1386.9(b) |
| 1386.13—Federal share | 1386.6 |
| 1386.14—Nonduplication | 1386.8 |
| 1386.15(a)—Payments for planning, administration, services, and construction. | 1386.9 |
| 1386.16(a)—Witholding of payments | 1386.11 |
| 1386.20—Methods of administration | 1386.43 |
| 1386.21—Personnel administration | 1386.12 |
| 1386.22—Fiscal administration | 1386.41(e) |
| 1386.23—Special financial and technical assistance to poverty areas. | 1386.47(f) |
| 1386.24—Reports | 1386.41(d) |
| 1386.25(a)—Methods of evaluation | 1386.49 |
| 1386.26—Use of volunteers | 1386.50 |
| 1386.47—Habilitation plans | 1386.52 |
| 1386.61—Establishment of State planning council. | 1386.41 |
| 1386.80-.112—Subpart D: Practice and Procedure for Hearings to States on Conformity of Developmental Disabilities Plans to Federal requirements. | 1386.80-.112 |
| 1387.2—Application content | 1387.4 |
| 1387.3—Eligible applicants | 1387.3 |
| 1387.20-.23—Special project grants | |

In proposing the new regulations, we maintain the underlying purpose of the regulations as stated in the Preamble to the Proposed Rules published in the Federal Register on August 30, 1976 (Part II, Vol. 41, No. 169). That purpose is to ensure the continued targeting of funds and resources to services to developmentally disabled individuals through a national, State, and local partnership. To this end, the goal of the program is to enable States to increase the provision of quality services to persons with developmental disabilities. The goal is to be reached through the design and implementation of a comprehensive and continuing State plan which makes optimal use of Federal, State, local, and private resources, and assures the rights and dignity of all those being served.

The following is a section-by-section analysis of the proposed regulations. (The references in parentheses in the headings are to the applicable sections of the Act.)

### Part 1385—General

This part sets out the provisions applicable to two or more of the developmental disabilities programs. We believe that this organization will make it easier for members of the public to locate common policies and procedures, and that it will avoid unnecessary duplication.

*Section 1385.1 Purpose of the regulations. (Sec. 109)*

This section sets forth the purpose of these regulations which is to implement the Act, and to provide operational and administrative information needed by users to understand the requirements and to act appropriately.

*Section 1385.2 Definitions. (Sec. 102)*

This section includes definitions used in Parts 1386, 1387, and 1388 of this chapter. Terms relating only to construction have been omitted because the Act no longer provides authority for construction activities.

We have quoted the definition of developmental disabilities from the Act without elaboration. Some people have expressed concern that we need to clarify several terms in the definition. For example, "severe disability" and "substantial functional limitation" are subject to varied interpretations, so that one State might find an individual eligible for services under the Act, but another might not. The Department believes that all of the specifications taken together constitute an adequate definition without further definition of the component terms.

We welcome comments regarding problems encountered in using this definition. We are particulary interested to know whether the term "substantial functional limitations" needs to be defined; also, whether the seven areas of life activity need further definition. We hope to learn whether the

unelaborated definition will bring about greater ease of planning, administration and programming; and, most of all, if it results in providing services to the developmentally disabled population.

*Section 1385.3 Rights of persons with developmental disabilities (Rights). (Sec. 111)*

The "Rights of the Developmentally Disabled," which was included in but not implemented by Pub. L. 94–103, is being applied by the Rehabilitation Services Administration in relation to all programs authorized under the Act (except the protection and advocacy program for the reasons stated above in "Rights of the Developmentally Disabled"). However, the 1978 amendments require implementation of the provision. The regulations elaborate on the "Rights" in the following ways: (1) we have added to the list of "rights" standards for compliance with Medicare fire protection requirements. The Medicare standards have been proposed in order to avoid confusion for providers of services and States; (2) we have added standards for nonresidential programs; and (3) we have prohibited the award of State and Federal funds to programs or activities which do not meet the standards. Paragraph (b) provides that each grantee, except for the protection and advocacy program, must give an assurance that no Federal or State funds will be used by any project, program, activity, or facility that does not comply with this section. Failure to comply with this assurance may result in the loss of Federal funding.

*Section 1385.4 Grants administration requirements.*

This section incorporated 45 CFR Part 74, and other Departmental grants requirements that are applicable to devlopmental disabilities programs. A new provision has been added providing for a notification and hearing if a specific claim is to be disallowed.

The proposed regulation, in paragraph (c), provides for the first time that States may appeal disallowances to the Departmental Grant Appeals Board. The decision of the Board shall constitute the final agency decision on the disallowances.

Paragraph (d) pertains to the examination of all records of grantees and sub-grantees receiving funds under the Act by authorized representatives of the Secretary or the Comptroller General of the United States. The proposed regulation, although included in 45 CFR Part 74, is added to emphasize the need for access to records, including all records of the protection and advocacy system relating to Federally funded activities, in order for the Department to carry out its responsibilities and to assure proper use of Federal funds. Some States and agencies have objected to this activity in the past.

*Section 1385.5 Awards*

*Section 1385.6 Recovery of Federal funds used for construction of facilities. (Sec. 107)*

No substantive changes are proposed from the present regulations.

*Section 1385.7 Assurances regarding evaluation system. (Sec. 110(a))*

As a condition to the receipt of Federal funds under the Act beginning October 1, 1980, each State must assure the Commissioner that it will submit a time-phased plan for implementation of a comprehensive system for the evaluation of services to persons with developmental disabilities provided under the Act. By October 1, 1982, the State must also assure the Commissioner that it is using the evaluation system. Failure to do so may result in the loss of Federal funding. Except for a revision of the time schedule for planning and implementation, these provisions are the same as those in present regulations. The Commissioner will issue instructions to the States on planning and implementing the evaluation system.

**Part 1386—Formula Grant Programs**

The purpose of this part of the proposed regulations is to specify policies and procedures for the conduct of the formula grant programs, including the implementation of the changes in the 1978 amendments. Part 1386 is divided into four subparts. Subpart A contains the general provisions pertaining to one or both of the formula grant programs, except where noted. Subpart B provides details of the requirements of the protection and advocacy system. Subpart C deals with the basic grant program including provisions regarding the State planning councils. Subpart D explains the practices and procedures for hearings when a question of conformity or compliance has been raised.

**Subpart A—General**

*Section 1386.1 Formula for detemining allotments. (Sec. 132(a))*

No substantive changes are proposed from the present regulations.

*Section 1386.2 Allotment for basic grant program. (Sec. 132(a)(2) (A) & (B))*

This section informs the States and Territories of the new minimum allotments, increased from $150,000 to $250,000 for States, the District of Columbia, and Puerto Rico. The other Territories are to be alloted $135,000 as a result of this reasoning:

(1) Sec. 132(a)(2)(A) states that the allotment to the Territories may *not be less* than $100,000;

(2) Sec. 133(b)(4)(B) states that "not less than $100,000 or 65 percent * * *, *whichever is greater,* will be expended (on services * * *" (Emphasis added.)

(3) In order for the Territories to spend $100,000 (the greater amount) and still have funds for planning and administration, it is evident that their allotment must be more than $100,000.

(4) We are allotting 35 percent of $100,000 to the Territories for planning and administration, or a total of $135,000 to each.

*Section 1386.3 Allotment for protection and advocacy system. (Sec. 113(b)(1)(A))*

This section incorporates into the regulations provisions contained in the 1978 amendments for allotments for protection and advocacy systems. This section also establishes a minimum allotment of $30,000 per year (instead of the previous $20,000 per year) for Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Trust Territories of the Pacific Islands since minimum allotments were not included in the Act. The Department believes these minimums are essential for those Territories to operate a protection and advocacy system in their areas.

The regulations also provide that in the event the appropriation is less than the amount necessary to make allotments to the States and Territories under the previous paragraph, the State's allotment shall be equal to the ratio which the State's allotment bears to the total amount appropriated.

*Section 1386.4 Reallotment. (Sec. 132(d))*

*Section 1386.5 Cooperative or joint effort between States and between agencies. (Sec. 132(c))*

*Section 1386.6 Federal and non-Federal shares for the basic State grant program. (Sec. 103)*

No substantive changes from the present regulations are proposed.

*Section 1386.7 Obligation by grantees and subgrantees.*

This new section specifies the period of time during which grantees and subgrantees may obligate funds under the Act.

*Section 1386.8 Nonduplication. (Sec. 136)*

*Section 1386.9 Payments. (Sec. 134)*

No substantive changes from the present regulations are proposed.

*Section 1386.10 Liquidation of obligations. (Sec. 134)*

This new section has been added because the Act (Sec. 134) requires that expenditures be made under the State's current, approved State plan. In the past, funds have sometimes been held for long periods without being used for program purposes. We believe good management practice allows not more than one additional year for liquidating of costs resulting from obligations.

*Section 1386.11 Withholding of payments. (Sec. 135)*

This section restates the existing regulations. The proposed regulation also extends this provision to the protection and advocacy program. In the previous regulations, this provision inadvertently failed to refer to the protection and advocacy system. We are correcting that omission in this section of the regulations.

*Section 1386.12 Standards for a merit system of personnel administration.*

This section incorporates the standards for a Merit System of Personnel Administration as promulgated by the Office of Personnel Management (OPM). The standards apply to persons employed by State and local governments under the protection and advocacy system and the basic State program funded under Subparts B and C of Part 1386, including the staff of the State planning council. The Department has adopted these standards which were published in the Federal Register, Vol. 44, No. 34, February 16, 1979. They are available from the OPM, and HEW Regional Offices.

*Section 1386.13 Fair hearings.*

This section sets out a new requirement which is added because of the 1978 amendments' emphasis on the provision of services. The Department believes that all reasonable means must be used to assure: (1) that persons applying for services are not arbitrarily denied them, and (2) that no one receiving services has them terminated or reduced without a hearing. To accomplish these purposes we have adopted the language used in the regulations for Title XX of the Social Security Act (Social Services). (See 45 CFR 228.14.)

**Subpart B—State System for Protection and Advocacy of Individual Rights**

As a condition for a State to receive Federal funds for the basic State program, the act requires that the State must have in operation a system to protect and advocate the rights of the developmentally disabled. Failure to meet this requirement may result in the loss of Federal funds under Subparts B and C of this Part and also under Part 1387 (because the State in which a special project is to be carried out must have a State plan approved under Part C).

The Department has had over two years' experience in administering the protection and advocacy program. Based on this experience, it is proposing several new and more detailed regulations.

*Section 1386.20 Requirements for participation in the developmental disabilities program. (Sec. 113(a))*

The legislative requirements for the system are restated from the Act in order to emphasize their importance. In addition, the regulations clarify the population that is to be served. We do not believe Congress intended to exclude the group most urgently in need of advocacy: those persons with developmental disabilities who are not receiving services. We have, therefore, made "all individuals with developmental disabilities in the State" eligible for assistance by the system.

Section 1386.20(c)(2) requires that protection and advocacy systems have the authority to institute legal and administrative proceedings to redress the rights of institutionalized developmentally disabled persons without the necessity of representing a named client. Exercise of this authority is contingent upon the protection and advocacy system certifying to the court or administrative body that certain steps have been taken in an attempt at non-judicial resolution.

The Department is particularly interested in knowing if there are any state constitutional, statutory or judicial barriers to this provision. If there are, is the state willing to eliminate these barriers? What would such changes entail and how long would they take?

Sections 1386.20(3) and (4) require that protection and advocacy system have access to the medical and personal records of institutionalized developmentally disabled persons. In the case of judicially declared mentally incompetent individuals, their guardians must be given reasonable notice of the protection and advocacy system's intent to examine the records. If the institutionalized person is not mentally impaired, the protection and advocacy system must obtain that person's consent before being allowed access to the records. However, the protection and advocacy system must establish procedures to protect the confidentiality of the records examined.

The Departmental believes that these provisions are essential and will provide the protection and advocacy systems with the necessary mechanisms to adequately protect the rights of institutionalized developmentally disabled persons.

On the basis of our experience, we have required that the protection and advocacy system have physical access to persons with developmental disabilities who are in any institution or program.

*Section 1386.21 Designated State protection and advocacy office. (Sec. 113(a))*

This section specifies what the State must do in designating the State's protection and advocacy office and the limitations on its choices. The present policy of allowing States to select public or private nonprofit agencies to carry out the protection and advocacy program is maintained.

Some States have proposed to place the protection and advocacy office in an agency which provides guardianship. The Department considers guardianship a service. Since Sec. 113(a)(2) requires that the protection and advocacy system be independent of any agency which provides services to persons with developmental disabilities, we believe guardianship and protection and advocacy may not be combined. There is a potential conflict in guardianship cases because guardianship arrangements, especially involving adults, impose limitations on the ward's rights. Our policy will be to assume that a conflict exists any time a reasonable question is raised. This policy is necessary in order to best protect the interests of the individuals because of assuring the independence of the system from service providers.

*Section 1386.22 Report on the State system. (Sec. 113(a)(3)(A))*

This proposed regulation establishes for the first time the kinds of information which the State must include in the statutorily required report to the Commissioner on the protection and

advocacy system. The report must describe the activities to be carried out, including activities to coordinate and cooperate with other protection and advocacy systems in the State, for example, rehabilitation and aging programs.

*Section 1386.23 Submittal of the report on the State system.*

*Section 1386.24 Amendments to the report on the system.*

These sections indicate the manner in which the triennial reports on the system and revisions to the system are to be submitted to and approved by the Governor prior to their being forwarded to the Commissioner for final approval. The basis for these regulations is found in Section 113(a) of the Act.

*Section 1386.25 Annual reports. (Sec. 113(a)(3)(B))*

The new statute requires an annual report describing the activities carried out, and any changes made in the system, during the previous year. The regulation establishes what the annual report must contain. In addition, States must submit annually a proposed budget. The purpose of the regulation is to ensure that the Department has the information necessary to determine if the protection and advocacy program in each State is properly carried out.

*Section 1386.26 Federal financial participation.*

This section sets forth the conditions under which Federal financial participation is available in the cost of services. Subsection (a) states that Federal financial participation is allowable for activities included in the approved reports of the system. Information and referral services are allowable even when provided to persons who are not developmentally disabled. This exemption is made because a large portion of the requests are made by telephone and mail, and under those circumstances it is infeasible to ascertain eligibility.

Subsection (b) lists expenditures in which Federal financial participation is not allowable: those made to liquidate obligations beyond the allowable time; those made on behalf of ineligible persons; those not included in the approved reports; and those made to solve problems which are not related to the person's disability.

The purpose of protection and advocacy systems is to meet the special needs of persons with developmental disabilities which arise because of their disabilities. The Act emphasizes that the system is to protect and advocate the rights of the system's clients. The system is not intended to meet all the legal and advocacy needs of persons with developmental disabilities. For example, developmentally disabled persons share with the general populace occasional need for assistance in drafting a will, or instituting or defending against a divorce action. These needs do not fall within the role of the protection and advocacy system and thus are not eligible for Federal financial participation.

*Section 1386.27 Prohibition of use of protection and advocacy system funds for lobbying. (Sec. 113(b)(2))*

The statute requires that Section 1913 of Title 18, U.S.C. be applied to the protection and advocacy program. This section of the regulations restates the statutory requirement, and adds that unsolicited communication with members of Congress for the purpose of influencing their actions is prohibited.

**Subpart C—State Plan for Provision of Services for Persons With Developmental Disabilities**

*State Planning Council*

The first four sections of this Subpart, § 1386.30 through § 1386.33, deal with the establishment, composition, duties and staff of the State planning council. The purpose of the regulations is to implement the 1978 amendments relating to the council. The new requirements are that: (1) the State planning council must now consist of at least 50 percent consumer representation; and (2) the council must now develop the State plan jointly with the designated State agency. There is no change, however, in the primary role of the State planning council: planning, monitoring, evaluating, and advocating on behalf of all developmentally disabled people. The council chairperson continues to submit the State plan to the Commissioner.

*Section 1386.30 Establishment of the State planning council. (Sec. 137(a)(1))*

This section makes it mandatory for a State to establish a State planning council in order to receive Federal funds.

*Section 1386.31 Makeup of the council. (Sec. 137(a))*

Subsection (a) provides that the Governor appoints all members of the council and makes appropriate provisions for rotation of all members except the representatives of State/Federal programs. The State plan is to include a statement of the State's policies on rotation of the council members. The policies must provide for continuity among the consumer members and consumer representatives. Representatives of the State/Federal programs must not rotate since they are members of the Governor's cabinet or staff, generally serve at his or her pleasure, and continuously represent their programs.

We decided not to specify which or how many handicapping conditions must be represented on the council because the number is so large that a listing could lead to a council of unmanageable size.

We have specified in subsection (b) the State/Federal program representation on State planning councils because the State planning councils need to have the benefit of information from the various Federally assisted programs. The principal programs are identified in Section 133(b)(2)(B) of the Act. The regulation proposes that each program be represented by an individual who has knowledge of and authority to speak for and act for that program. We believe it is not possible for one or a few individuals to have sufficient knowledge concerning all these programs, and, at the same time, possess the authority to speak for them and to provide the State council with the guidance that Congress intended they provide in making policy decisions. The Department will consider a waiver under § 1386.31(b) upon a showing by the Governor of the State that the State officials appointed do have the experience and authority to speak and act for the programs represented.

Subsections (c) and (d) reflect major changes enacted by the 1978 amendments. Formerly, consumer representatives comprised one-third of the total membership of the council. The new requirement is that at least one-half of the membership of the council consist of a combination of persons who are developmentally disabled and relatives or guardians of such persons. Of this half, at least one-third must be parents, other immediate relatives, or guardians of persons with mentally impairing developmental disabilities; and at least one-third must be consumers—that is, persons who are themselves developmentally disabled.

The Department believes that minorities must be included in the membership of the council.

Subsection (e) restates a part of Sec. 137(a)(2) of the Act. Based on sections 1124(a)(3) and 1126(b) of the Social Security Act (cited in the 1978 amendments), this subsection describes persons who cannot be placed on the council as consumer representatives.

The purpose of this requirement is to avoid all possible conflict of interest, and to assure that consumers' concerns are adequately addressed in the council's activities.

*Section 1386.32 Duties of the council. (Sec. 137(b) and 145(d))*

The purpose of this regulation is to explain the required duties of the council. Subsection (a)(1) states that the council and State agency(ies) shall jointly develop the State plan; subsection (b) requires the council chairperson to submit the State plan and annual review of the priority service areas to the Commissioner. The legislation is silent as to who shall submit the State plan. However, both the Senate and House reports are quite clear that the councils and State agencies are to "work together as equal partners" (Senate Report No. 95–890, page 37, 95th Cong. 2d Session), and "the council is not to replace the State agency as the responsible party for administration of the program" (House Report No. 95–1188, page 13, 95th Cong. 2d Session).

The existing regulation requires that the State plan and other reports be transmitted by the State planning council. The Department is proposing to continue this requirement.

The Department has considered, but rejected, the suggestion that the State plan be submitted to the Department by official representatives of both the State planning council and the State agency as co-signers. The Department is, instead, proposing that both parties sign the State plan indicating that the result is a joint endeavor.

Since enactment of the 1978 amendments requiring "joint development" of the plan by the State planning council and the State agency the Department has become aware of confusion at the State level about the roles of each. The proposed regulation makes clear that "joint development" does not mean that the council and the agency(ies) must agree on all parts of the final plan. When there is disagreement, the Governor will make the decision. Thus, Section 1386.21(a), first paragraph, represents a departure in the role of the councils from past practice. The proposed regulations provide that the State planning councils will set broad policy, determine priority service areas and set goals. This is essentially the same as in the past. However, the proposed regulations require that State plans be developed by the councils jointly with the State agencies which administer the plans. This is consistent with Section 137(b)(1) of the Act, as amended in 1978, which requires that the plans be jointly developed with the administering agencies, including specification of areas of service.

The Department has interpreted the requirement for joint development to mean that each party has a voice in the adoption of policies, including the selection of priority service areas. This requirement for joint development creates the potential for a deadlock, or an inability to act, if the councils and the agencies cannot resolve differences which may arise between them. To deal with the possibility of a deadlock, the Department believes it necessary to provide a means for resolving any impasses which may arise. The proposed regulations meet this problem of potential impasses by specifying that the Governor of the State will be the one to resolve them.

Paragraphs (2) through (5) set forth other duties and responsibilities of State planning councils. A new requirement is that the council submit an annual report of its activities to the Secretary, through the Governor. This report was previously incorporated in the program performance report.

Subsections (b) and (c) continue existing requirements to assure that plans are submitted in a timely manner, and through proper channels. Subsection (d) repeats the legislative mandate that the State planning council not administer the protection and advocacy system.

*Section 1386.33 Council staff. (Sec. 133(b)(1)(A))*

Subsection (a) of the proposed regulations implements Section 133(b)(1)(A) of the Act, which requires that the State council have staff responsible to it and adequate to carry out its responsibilities and duties. The Commissioner has determined that a full-time director and a secretary are required in each State. This staff is the minimum for any State, and subsection (b) provides for the many States that will need additional staff, depending on the States' unique needs and resources since government agencies and the public must be able to communicate with the council on a daily basis. The basis for the Commissioner's decision is a report, "Administrative Environment Project," December 1977, developed with a grant from the Department.

**State Plan Requirements**

The general provisions pertaining to State plans are in § 1386.40 through § 1386.54. These regulations are designed to implement the requirements of Section 133 of the Act in regard to State plans, and to define further what is required.

*Section 1386.40 General. (Sec. 133(a) and (b))*

In order to participate in this program a State must have a State plan which meets the requirements of these regulations and has been approved by the Commissioner. This section implements Sec. 133(a) and (b) of the Act.

*Secion 1386.41 Designation of the State Planning council and the State agency. (Sec. 133(b)(1)(A)*

No substantive changes are proposed from the present regulation.

*Section 1386.42 Plan submittal and approval. (Sec. 133(c))*

Subsection (a) contains major change brought about by the 1978 amendments which provides that the State plan must set forth the activities to be supported by funds allotted to the State under the Act. These activities may be carried out over a three year period. In the intervening years, the State is to submit an annual report of its review and description of the extent and scope of services to be provided, as required by Section 133(b)(2)(C) of the Act. This regulation (in subsection (a)) is designed to produce better planning and services, and to reduce paperwork.

Subsection (b) requires that the State plan contain a statement that it was developed jointly by the State Council and the designated State agency, and that it be signed by the chairperson of the council and the official representative of the State agency.

The remaining paragraphs contain no substantive changes from the present regulation.

*Section 1386.43 Methods of administration.*

No substantive changes are proposed from the present regulation.

*Section 1386.44 Description of objectives and services. (Sec. 133(b)(2)(A) and (B))*

The purpose of subsection (a) is to ensure that the plan contains clear goals and objectives; that resources are directed toward the achievement of these goals; and that there will be greater congruence among the States than when each State was free to select its own goals entirely.

The next subsection, (b), requires that Federal developmental disabilities funds be used to augment rather than duplicate or replace, existing services provided by other Federal/State programs. We believe that this provision

is essential to assure that States develop a comprehensive plan to bring together all available resources so that the developmentally disabled may be served in the most effective, efficient way. In continues policy now in existing regulations.

Subsection (c) requires that the State plan describe the extent and scope of priority services which will be provided each year under the plan. We expect that the annual review will lead to a shift from one area to another if the State determines that the change will result in more or better services.

Subsection (d) requires the establishment of a method and criteria for evaluating the effectiveness of the State plan in meeting its objectives. No substantive change from the present regulation is proposed.

*Section 1386.45 Priority services. (Sec. 133(b)(4))*

Since 1970, the Developmental Disabilities Act and its amendments including the 1978 amendments, have contained a list of 16 specialized services needed by persons with developmental disabilities at various periods throughout their lifetimes. This list was intended to be illustrative rather than restrictive. The purpose has been to suggest the variety of services needed.

Instead of leaving States free to choose one of these 16 services for support by funds under this Subpart, the Act now establishes four priority service areas for the use of Federal funds. The House Report states several advantages to focusing on the four priority service areas instead of leaving the selection entirely to the discretion of the States. (H. Rept. 95–1188, *supra.* p. 10)

The four priority services are: (1) case management services, (2) child development services, (3) alternative community living arrangement services, and (4) nonvocational social-developmental services. They are further described in this section.

States may not provide activities in their State plan that are necessary but subordinate parts of one priority service as a separate priority service area. For example, alternative community living arrangement services obviously are focused on one's residence and the services directly related to residence. Case management services are focused on the need for people in residential and non-residential settings. If a place to live is to be provided under the plan, the alternative community living arrangement services would be the priority area selected. Case management services provided to people in the community living setting may not be identified as a separate priority service area.

*Section 1386.46 Use of funds. (Sec. 133(b)(3))*

No substantive changes are proposed from the present regulation.

*Section 1386.47 Provision of priority services. (Sec. 133(b)(4))*

Subsection (a) requires the State council to select one or more priority service areas for which Federal funds will be expended. The priority service areas selected must be identified in the State plan. Paragraph (2) states the statutory criteria for determining the number of service areas that may be funded in any year. Until the appropriation exceeds $60 million per year, a State is required to fund one, but not more than two, of the priority service areas. No more than three priority service areas may be funded if the appropriation exceeds $60 million but is less than $90 million per year.

Paragraph (3) authorizes a State, once it has selected a Federal priority service area, to select a service area of its own choice as a substitute for one or more additional Federal priority service areas.

Paragraph (4) allows a State to request that the Commissioner grant a waiver of the limitations set forth in the two previous paragraphs. The waiver allows the State to fund additional service areas. This paragraph states the conditions on the granting of the waiver. The purpose of providing for a waiver is to allow States, under limited circumstances, to use Federal funds for a service other than those specified in the Act. The basis for the waiver is Section 133(b)(4)(C) of the Act.

Subsection (b) requires the State council and State agency to review annually the priority service areas and the need for continuing them. Changes may be made if needed.

Subsection (c) allows the State to put into effect its plan for comprehensive services immediately, or not later than October 1, 1980. The basis for this is Section 133(b)(4)(A)(ii). The Department has interpreted this section to mean that a State must meet the priority service requirements not later than the start of the 1981 fiscal year.

Subsection (d) requires that the State plan indicate what portion of its allotment is being expended in the priority service areas. The amount specified must be not less than $100,000 or 65 percent of the State's allotment, whichever is the greater.

Subsection (e) lists the activities costs of which may be assigned to "service activities." The purpose is to allow States to support activities necessary to the provision of high quality services.

Subsection (f) continues the previous provision of the Act and regulations for special financial and technical assistance to urban and rural poverty areas. States shall use the areas designated by the State Health Planning and Development Agencies (HPDA) and approved by the Secretary. The list of those areas was published in the Federal Register, Vol. 43, No. 19, January 27, 1978, and is available from the State HPDA and HEW Regional Offices.

*Section 1386.48 Standards for services and protection of rights. (Sec. 133(b)(5))*

This section of the proposed regulations lists other assurances that must be in the State plan. The plan must assure the Commissioner that: (a) The facilities in which services are furnished comply with the Architectural Barriers Act, (b) individual habilitation plans will be developed for each individual served, (c) the human rights of each person (especially those persons without familial protection) will be protected, and (d) affirmative steps will be taken to ensure an opportunity for participation of the developmentally disabled population in programs with special attention given to minority groups.

The required assurances described in (a), (b), and (c) above are consistent with policies issued previously by the Department. The assurance required by subsection (d) is a statutory requirement.

*Section 1386.49 Professional assessment and evaluation programs. (Sec. 133(b)(6))*

The State plan must provide for assessing the adequacy of the training of personnel providing service to developmentally disabled people, and of the State programs supporting training of professional and paraprofessional personnel. The State plan must further indicate how these training activities will bring about high quality services. Among other resources, university affiliated facilities must be utilized in States where they are available and appropriate.

Subsection (c) requires planning and implementation of a comprehensive system for the evaluation of services provided to developmentally disabled persons assisted under the Act, as mandated by Section 110 of the Act. As a condition for the receipt of Federal funds, the States must submit a plan for implementing the system by October 1980 and must implement it by October 1982.

*Section 1386.50 Utilization of community resources and volunteers. (Sec. 133(b)(7)(A))*

No substantive changes are proposed from present regulation.

*Section 1386.51 Protection of employees' interests. (Sec. 133(b)(7)(B))*

The Act requires that a State which selects alternative community living arrangement services for priority funding must provide for the protection of the interests of employees whose jobs in institutions are placed in jeopardy. The proposed regulation has been expanded considerably from the present one. We have found that there is confusion as to what is required for employees' protection and that the present regulations are being misinterpreted or ignored. The proposed regulation states specifically the statutory requirements. We have added performance standards States and institutions must follow in providing for fair and equitable arrangements to protect the interests of employees affected by alternative community living arrangement services assisted under the Act. These arrangements were developed in consultation with the Secretary of Labor.

*Section 1386.52 Individual habilitation plans. (Sec. 112)*

No substantive changes are proposed from present regulation.

*Section 1386.53 Federal financial participation.*

The purpose of this regulation is to state the conditions under which Federal financial participation in expenditures is allowable. Allowable and nonallowable costs specified are in addition to those listed in 45 CFR Part 74.

*Section 1386.54 Additional information and assurances. (Sec. 133(b)(8))*

This section permits the Commissioner to request additional information and assurances in the State plan when he finds them necessary to carry out the provisions and purposes of the Act and these regulations.

*Section 1386.55 Final disapproval of the State plan.*

This section outlines steps that must be taken before any State plan is finally disapproved. The purpose is to ensure that the State's interests are protected while ensuring adherence by the State to the Act and regulations.

**Subpart D—Practice and Procedure for Hearings Pertaining to States Conformity and Compliance With Developmental Disabilities Plans and Federal Requirements**

Subpart D continues the practice and procedure for hearings to States when questions of conformity of State plans for the developmentally disabled with Federal requirements, as well as questions of compliance of States with their plans and Federal requirements, have been raised. It also adds provisions relating to the protection and advocacy system, and makes technical changes, including cross-references to appropriate sections of the regulations.

The changes in Part 1386, Subpart D, were made to ensure that an appeal of a ruling unfavorable to a State would be to an official that was not involved in the decision at a lower level.

No substantive changes are proposed from present regulation, except in § 1386.92. We are proposing that hearings be held in locations which will minimize travel costs for all concerned.

**Part 1387—Special Projects**

*Section 1387.1 Purposes of projects. (Sec. 145 (a) and (c))*

The program of special projects provides a means of increasing the effectiveness and efficiency of services provided under the formula grant programs by supporting activities which benefit a number of States. The purpose of § 1387.1 is to incorporate into the regulations the statutory purposes for which grants may be made.

*Section 1387.2 Projects of national significance. (Sec. 145(g))*

This section sets forth criteria for projects of national significance. These criteria are presently stated in the definitions section of the regulations. Otherwise there are no substantive changes from the present regulations. The availability of these grants will be announced periodically in program announcements issued by the Commissioner.

*Section 1387.3 Eligible applicants. (Sec. 145(a))*

*Section 1387.4 Application content and procedure. (Sec. 145(d))*

No substantive changes are proposed from present regulation.

*Section 1387.5 Amount of grant. (Sec. 145(e))*

This section states conditions for determining amount of a grant.

Authority: These regulations are issued under the authority of Sec. 109 of Title I of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Assistance and Bill of Rights Act.

45 CFR, Chapter XIII Parts 1385, 1386 and 1387 are superseded and new parts 1385, 1386 and 1387 are added.

(Catalog of Federal Domestic Assistance Program, Nos. 13.630 Developmental Disabilities—Basic Support; and 13.631 Developmental Disabilities—Special Projects)

Dated: April 29, 1980.

**Cesar A. Perales,**

*Acting Assistant Secretary for Human Development Services.*

Approved: May 2, 1980.

**Patricia Roberts Harris,**

*Secretary.*

Chapter XIII of Title 45 of the Code of Federal Regulations is amended as follows:

## PART 1385—GENERAL

1. Part 1385 is revised to read as follows:

Sec.

1385.1 Purpose of the regulations.
1385.2 Definitions.
1385.3 Rights of persons with developmental disabilities (rights).
1385.4 Grants administration requirements.
1385.5 Awards.
1385.6 Recovery of Federal funds used for construction of facilities.
1385.7 Assurances regarding evaluation system.

Authority: Section 109, Pub. L. 88–164, as amended by Pub. L. 95–602.

### § 1385.1 Purpose of the regulations.

These regulations implment the provisons of the 1978 amendments to the Developmental Disabilities Assistance and Bill of Rights Act (Pub. L. 95–602) and meet additional program needs which have become apparent. The goal of the regulations is to help States and localities to provide care, treatment and other services necessary to enable persons with developmental disabilities to achieve their highest possible level of functioning and greatest possible enjoyment of life.

### § 1385.2 Definitions.

For purposes of this Part and Parts 1386 and 1387—

"Act" means the statutory authority for the developmental disabilities programs as originally enacted in Pub. L. 88–164 as amended by Pub. L. 90–170, Pub. L. 91–517, Pub. L. 94–103, and Pub. L. 95–602.

"Commissioner" means the Commissioner of the Rehabilitation Services Administration, Office of Human Development Services, Department of Health, Education, and Welfare.

"Consumer" means a person who meets the requirements of the definition of developmental disabilities.

"Consumer representatives" means a parent, other immediate relative, or guardian of a consumer.

"Department" means the Department of Health, Education, and Welfare.

"Director" means the Director, Bureau of Developmental Disabilities, Rehabilitation Services Administration.

"Developmental disability" means a severe, chronic disability of a person which—

(a) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(b) Is manifested before the person attains age twenty-two;

(c) Is likely to continue indefinitely;

(d) Results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic sufficiency; and

(e) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

"Facility for persons with developmental disabilities" means a facility, or a specified portion of a facility, designed primarily for the delivery of one or more services to persons with developmental disabilities.

"Governor" means the chief executive officer of the State or Territory, or his or her designee who has been formally deputized to act for the Governor in carrying out the requirements of the Act and these regulations.

"Institution" means any residential facility in which a person with a developmental disability is housed with non-related persons.

"Poverty area" means an urban or rural area that meets the criteria contained in § 1386.47(f) of these regulations.

"Protection and advocacy office" means the instrumentality designated by the Governor or legislature to administer the State's protection and advocacy system.

"Protection and advocacy system" means all protection and advocacy services and the means used to provide them described in the approved report required by § 1386.22.

"Public agency" means any State, unit of local government, combination of States or units, or any department, agency, or instrumentality of them, including State institutions of higher education, hospitals and any Indian tribal government.

"Recipient" means a developmentally disabled person or his or her parent, guardian or close relative receiving services assisted under the Act.

"Secretary" means the Secretary of Health, Education, and Welfare, and references to the Secretary include any individual authorized to carry out the Act by delegation or redelegation.

"Services for persons with developmental disabilities" means priority services (as defined in § 1386.45), and any other specialized services or special adaptations of generic services for persons with developmental disabilities. "Special adaptations of generic services" are services that are generally available to the public and require modification to meet the special needs of the developmentally disabled person. Generic services include diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, sheltered employment, recreation, counseling of the individual with a developmental disability and of his family, protective and other social and socio-legal services, information and referral services, follow-along services, and transportation services necessary to assure delivery of services to persons with developmental disabilities.

"State" means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands, except as otherwise provided in the Act or regulations.

"State agency" means the State agency or agencies designated in the State plan to administer or supervise the administration of all or designated portions of the State plan.

"State plan" means the approvable document or documents submitted by the State to comply with the requirements for participation under Parts 1385 and 1386.

"State planning council" (also referred to as "State council" or "council") means a body which meets the standards of § 1386.30.

"University affiliated facility" means a public or non-profit facility that is associated with, or is an integral part of, a college or university. These facilities must provide for at least the following activities: interdisciplinary training for personnel concerned with developmental disabilities; demonstration of the provision of exemplary services; dissemination of findings of those and other demonstrations; and furnishing researchers and government agencies sponsoring service-related research with information on the needs for further service-related research.

"Volunteer" means a person who provides a service without compensation, except for reimbursement of actual expenses.

### § 1385.3 Rights of persons with developmental disabilities (rights).

(a) Section 111 of the Act, "Rights of Persons with Developmental Disabilities", is applicable to the programs authorized under the Act, except for the protection and advocacy system. The basic State plan and all applications for university affiliated facilities or special projects grants must contain an assurance to the Commissioner that the grantee will not provide Federal, State or other public funds to any activity which serves persons with developmental disabilities that is not in compliance with these Rights.

(b) Failure to comply with this assurance may result in the loss of Federal funds under the Act.

(c) The Rights include:

(1) Persons with developmental disabilities have a right to appropriate treatment, services, and habilitation for such disabilities.

(2) The treatment, services, and habilitation for persons with developmental disabilities shall be designed to maximize the developmental potential of the person and shall be provided in the setting that is least restrictive of the person's personal liberty.

(3) Federal and State funds shall not be expended or provided to any institutional or other residential program for persons with developmental disabilities that—

(i) does not provide treatment, services, and habilitation which are appropriate to their needs; or

(ii) does not meet the following minimum standards:

(A) Provides a nourishing, well-balanced daily diet to the persons with developmental disabilities being served by the program;

(B) Provides appropriate and sufficient medical and dental services;

(C) Prohibits the use of physical restraint unless absolutely necessary and prohibit the use of physical restraint as a punishment or as a substitute for a habilitation program;

(D) Prohibits the excessive use of chemical restraints, and the use of chemical restraints as punishment or as a substitute for a habilitation program;

(E) Provides for close relatives to visit them a reasonable hours without prior notice;

(F) Complies with fire protection standards set forth in 42 CFR, §§ 442.507, 442.508, and 442.509.

(4) All programs for persons with developmental disabilities shall meet standards designed to assure the most favorable possible result for those served, and—

(i) In the case of residential programs serving persons who need comprehensive health-related, habilitative, or rehabilitative service, standards which are at least equivalent to those applicable to intermediate care facilities for the mentally retarded (42 CFR Part 442, (1978)) where appropriate, taking into account the size of the institutions and their service delivery arrangements;

(ii) In the case of other residential programs, standards which assure that: (A) care is appropriate to the needs of the persons being served by such programs; (B) program facilities admit only persons whose needs can be met through services provided by the facilities; and (C) these facilities are sanitary, provide for humane care of their residents, and protect the residents' rights;

(iii) In the case of non-residential programs, standards which assure that the services meet the standards of (1) and (2) of this section, and also meet at least the health and safety codes of the local and State governments and applicable Federal standards of any program which provides Federal funds for developmentally disabled people.

**§ 1385.4 Grants administration requirements.**

(a) The following parts of Title 45 CFR apply to grants funded under Parts 1386, 1387, and 1388 of this chapter.

45 CFR Part 16—Department Grant Appeals Process.
45 CFR Part 46—Protection of Human Subjects.
45 CFR Part 74—Administration of Grants.
45 CFR Part 75—Informal Grant Appeals Procedures (Indirect Cost Rates and Other Cost Allocations).
45 CFR Part 80—Nondiscrimination under Programs Receiving Federal Assistance Through the Department of Health, Education, and Welfare—Effectuation of Title VI of the Civil Rights Act of 1964.
45 CFR Part 81—Practice and Procedure for Hearings Act of 1964.
45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Federally Assisted Programs.

(b) The Departmental Grant Appeals Board has jurisdiction over appeals by grantees who have received grants under sections 121, 122 and 145 of the Act. The scope of the Board's jurisdiction concerning these appeals is described in 45 CFR 16.5.

(c) The Departmental Grant Appeals Board shall also have jurisdiction to decide appeals brought by the States concerning any disallowances taken by the Commissioner with respect to specific expenditures incurred by States, or by contractors or subgrantees of States. This jurisdiction relates to funds provided under the two formula grant programs establishing by sections 113 and 132 of the Act. Appeals filed by States shall be decided in accordance with 45 CFR Part 16 as modified by 45 CFR 16.91.

(d) In making audits, examinations, excerpts and transcripts of records of grantees and subgrantees, including the protection and advocacy system, as provided for in 45 CFR Part 74, the Secretary will keep information about individual clients confidential to the extent permitted by law and regulations.

**§ 1385.5 Awards.**

All grants awarded under Parts 1386, 1387, and 1388 must be in writing, and must set forth the duration and amount of the grant awarded.

**§ 1385.6 Recovery of Federal funds used for construction of facilities.**

(a) The United States Government retains a right-of-recovery from either the transferee or the transferor of an amount bearing the same ratio to the then value of Federal funds used for constructing and equipping facilities under title I, Parts B or C of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963.This right-of-recovery is for a period of 20 years after completion of construction of the facility and is appliable only if (1) the facility is sold or transferred to any person who is ineligible to apply for a grant, or (2) the facility is no longer used as a public or nonprofit facility for developmentally disabled people. This provision applies instead of 45 CFR 74.134.

(b) The State council or the appropriate university affiliated facility official is to notify the Commissioner immediately, in writing, if any of the conditions in subsection (a) occurs. The Commissioner may waive the recovery provisions if he determines there is good cause to do so. The value of the facility is to be determined by agreement between the parties or, if they cannot agree on a value, by action of the United States District Court for the district in which the facility is located. The Federal share to be recovered is to be in the proportion that Federal funds bore to the cost of the project.

(c) This right-of-recovery is not to constitute a lien on the property prior to judgment.

**§ 1385.7 Assurances regarding evaluation system.**

(a) In order for a State to receive Federal financial assistance under the Act, it must submit to the Commissioner by October 1, 1980, a plan to provide for a system to evaluate services rendered to developmentally disabled people assisted under the Act. This plan is to contain a schedule for implementation of the system and is to be in effect no later than October 1, 1982.

(b) By October 1, 1982, each State must provide assurances satisfactory to the Commissioner that it is using the evaluation system.

## PART 1386—FORMULA GRANT PROGRAMS

2. Part 1386 is revised to read as follows:

### Subpart A—General

**Allotments, Federal Share, and Payments**

Sec.
1386.1 Formula for determining allotments.
1386.2 Allotment for basic grant program.
1386.3 Allotment for protection and advocacy system.
1386.4 Reallotment.
1386.5 Cooperative or joint effort between States and between agencies.
1386.6 Federal and non-Federal shares for the basic State grant program.
1386.7 Obligation by grantees and subgrantees.
1386.8 Nonduplication.
1386.9 Payments.
1386.10 Liquidation of obligations.
1386.11 Withholding of payments.
1386.12 Standards for a merit system of personnel administration.
1386.13 Fair hearings.

### Subpart B—State System for Protection and Advocacy of Individual Rights

1386.20 Requirements for participation in the developmental disabilities program.
1386.21 Designated State protection and advocacy office.
1386.22 Report on the State system.
1386.23 Submittal of the report on the State system.
1386.24 Amendments to the report.
1386.25 Annual reports.
1386.26 Federal financial participation.
1386.27 Prohibition of use of protection and advocacy system funds for lobbying.

### Subpart C—State Plan for Provision of Services for Persons with Developmental Disabilities

**State Planning Council**

1386.30 Establishment of the State planning council.
1386.31 Makeup of the council.
1386.32 Duties of the council.
1386.33 Council staff.

State Plan Requirements for Planning, Administration and Services

1386.40 General.
1386.41 Designation of the State planning council and the State agency.
1386.42 Plan submittal and approval.
1386.43 Methods of administration.
1386.44 Description of objectives and services.
1386.45 Priority services.
1386.46 Use of funds.
1386.47 Provision of priority services.
1386.48 Standards for services and protection of rights.
1386.49 Professional assessment and evaluation programs.
1386.50 Utilization of community resources and volunteers.
1386.51 Protection of employees' interests.
1386.52 Individual habilitation plans.
1386.53 Federal financial participation.
1386.54 Additional information and assurances.
1386.55 Final disapproval of the State plan.

**Subpart D—Practice and Procedure for Hearings Pertaining to States' Conformity and Compliance With Developmental Disabilities Plans and Federal Requirements**

General

1386.80 Definitions.
1386.81 Scope of rules.
1386.82 Records to be public.
1386.83 Use of gender and number.
1386.84 Suspension of rules.
1386.85 Filing and service of papers.

Preliminary Matters—Notice and Parties

1386.90 Notice of hearing or opportunity for hearing.
1386.91 Time of hearing.
1386.92 Place.
1386.93 Issues at hearing.
1386.94 Request to participate in hearing.

Hearing Procedures

1386.100 Who presides.
1386.101 Authority of presiding officer.
1386.102 Rights of parties.
1386.103 Discovery.
1386.104 Evidentiary purpose.
1386.105 Evidence.
1386.106 Exclusion from hearing for misconduct.
1386.107 Unsponsored written material.
1386.108 Official transcript.
1386.109 Record for decision.

Posthearing Procedures, Decisions

1386.110 Posthearing briefs.
1386.111 Decisions following hearing.
1386.112 Effective date of decision by the Assistant Secretary.

Authority: Section 109, Pub. L. 88-164, as amended by Pub. L. 95-602.

## Subpart A—General

## Allotments, Federal Share, and Payments

### § 1386.1 Formula for determining allotments.

The Commissioner will allocate funds appropriated under the Act for the purpose of the basic State program (see Subpart C—State Plan for Provision of Services for Persons with Developmental Disabilities) and the protection and advocacy system (see Subpart B—State System for Protection and Advocacy of Individual Rights) on the following basis:

(a) Two-thirds of the amount appropriated shall be allotted to each State according to the ratio the population of each State bears to the population of the United States. This ratio is weighted by the relative per capita income for each State. The data used to compute allotments are supplied by the U.S. Department of Commerce, for the three most recent consecutive years for which satisfactory data are available.

(b) One-third of the amount appropriated shall be allotted to each State on the basis of the relative need for services of persons with developmental disabilities. The relative need is determined by the number of persons receiving benefits under the Childhood Disabilities Beneficiary Program (Section 202(d)(1)(B)(ii) of the Social Security Act).

### § 1386.2 Allotment for basic grant program.

The minimum allotment for the basic formula grant program to each State, the District of Columbia, and Puerto Rico, in any fiscal year is $250,000 or the amount of the allotment received by the State for the fiscal year ending September 30, 1978, whichever is greater. For the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Trust Territory of the Pacific Islands, the allotment in any fiscal year shall not be less than $135,000.

### § 1386.3 Allotment for protection and advocacy system.

(a) The minimum allotment for the protection and advocacy system to each State, the District of Columbia, and Puerto Rico, in any fiscal year is $50,000, or the amount of the allotment received by the State for the fiscal year ending September 30, 1978, whichever is greater. For the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Trust Territory of the Pacific Islands, the allotment in any fiscal year shall not be less than $30,000.

(b) If the total of the allotments to the States under Subsection (a) for any fiscal year exceeds the amount appropriated, the allotment will be equal to the ratio which the State's allotment bore to the total amount appropriated in fiscal year 1978. In all cases, each State and Territory will receive its minimum allotment.

### § 1386.4 Reallotment.

If the Commissioner determines that any portion of the allotment to a State will not be required for allowable costs during the period for which it is available, the Commissioner may reallot it. If funds are to be reallotted, the Commissioner will publish a notice in the Federal Register 30 days prior to reallotting the funds. Reallotments are to be made in the same proportion as the original allotments.

### § 1386.5 Cooperative or joint effort between States and between agencies.

If the State plan provides for joint effort between public or private agencies in more than one State, portions of funds allotted to one or more of the cooperative States may be combined according to agreements between the agencies involved.

### § 1386.6 Federal and non-Federal shares for the basic State grant program.

(a) *Federal share.* (1) The Federal share for a State may not exceed 75 percent of the allowable costs under the approved State plan.

(2) If any activity funded under this program is located in and serves primarily people who live in a poverty area, the Federal share may not exceed 90 percent of the total cost of the project or activity.

(b) *Non-Federal share.* Rules for satisfying the requirements for the non-Federal share of any project, program, or activity assisted by a grant under this Subpart are in 45 CFR, Part 74, Subpart G.

### § 1386.7 Obligation by grantees and subgrantees.

(a) Funds which the Federal government obligates under this Part during a Federal fiscal year are available for obligation by grantees and subgrantees through the end of that same Federal fiscal year.

(b)(1) Grantees and subgrantees incur an obligation for acquisition of personal property or for the performance of work on the date it makes a binding, legally enforceable, written commitment.

(2) Grantees and subgrantees incur an obligation for personal services, for services performed by public utilities, for travel or for rental of real or personal property on the date it receives the services, its personnel takes the travel, or it uses the rented property.

### § 1386.8 Nonduplication.

The Commissioner is to determine the Federal share of allowable costs incurred by the State under its approved

State plan. In making this determination, he is to disregard the amount of any other Federal funds expended and the amount of any non-Federal funds required for matching. Any exception must be expressly provided for by Federal statute.

**§ 1386.9 Payments.**

(a) The Commissioner will pay the Federal share of expenditures incurred in the fiscal year under the approved State plan, and under the approved report on the protection and advocacy system. For purposes of this Part the term "expenditures incurred" is interpreted to mean allowable costs pertaining to that year. A cost resulting from an obligation incurred during a year is deemed to pertain to that year.

(b) An authorized State official may request the Commissioner to pay from the State's allotment under Subpart C of this Part not more than 50 percent of the costs of administering the State plan. The payment is not to exceed 5 percent of the allotment or $50,000, whichever is less. In order to receive this payment, the State must expend from its own sources, for the current fiscal year, an amount equal to or greater than that expended in the previous fiscal year for administration of the State plan. Costs of administering the State plan do not include costs for planning activities or provision of services.

**§ 1386.10 Liquidation of obligations.**

All obligations made by the State agency or subgrantees under the State plan and the report on the description of the State's protection and advocacy system must be liquidated within one year of the close of the Federal fiscal year in which obligations were incurred. This requirement may be waived only where the validity of the obligation or the amount of the obligation is being actively disputed by the State agency or subgrantee.

**§ 1386.11 Withholding of payments.**

After notice to the State and an opportunity for a hearing, the Secretary may withhold payments to the State with respect to costs resulting from obligations incurred after opportunity for the hearing or after a final decision following a hearing if he finds that there is a failure to comply substantially with the State plan, or with the report on the description of the protection and advocacy system, or the Act, or applicable regulations. Hearing procedures will be conducted in accordance with Subpart D of this part.

**§ 1386.12 Standards for a merit system of personnel administration.**

The State plan and the report on the protection and advocacy system must provide that methods of personnel administration and affirmative action plans for equal employment opportunity in the State and local agencies administering the programs will conform to the Standards for a Merit System of Personnel Administration, Subpart F, Part 900, and other standards prescribed by the Office of Personnel Management. The standards for a Merit System were published in the **Federal Register**, Vol. 44, No. 34, page 10238, February 16, 1979. The affirmative action plan must be available to the Secretary for review, upon request.

**§ 1386.13 Fair hearings.**

The State plan shall provide for a system of hearings under which applicants or recipients or their representatives may appeal the denial, reduction, or termination of a service, or failure to act upon a request for service with reasonable promptness. The procedures and provisions of 45 CFR 205.10 govern these hearings.

## Subpart B—State System for Protection and Advocacy of Individual Rights

**§ 1386.20 Requirements for participation in the developmental disabilities program.**

(a) In order for a State to receive an allotment under Subpart C, it must have in effect a system to protect and advocate the rights of persons with developmental disabilities.

(b) Failure to submit a report of or to carry out an approved system to protect and advocate the rights of persons with developmental disabilities will result in the loss of Federal funds for programs authorized under this subpart and Subpart C (State Plan for Provision of Services).

(c) The Protection and Advocacy (P&A) System must meet the following requirements—

(1) The P&A System must have the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of all individuals with developmental disabilities who are receiving services or are eligible for services in the State.

(2) The P&A System must have the authority to institute administrative and legal proceedings to redress the rights of institutionalized persons with developmental disabilities without the necessity of representing a named client. At the time of commencement of any proceeding under this section, the P&A System shall certify to the administrative body or court that:

(i) The P&A System has endeavored to eliminate the alleged conditions and practices by informal methods, including discussion with apropriate officials of the possible costs and fiscal impacts of alternative remedial measures;

(ii) The P&A System is satisfied that the appropriate officials have had a reasonable time to take appropriate action to correct such conditions or practices but have failed to do so;

(iii) The P&A System believes that administrative or legal proceedings are of general public importance and will materially further the protection of the rights, privileges, or immunities of developmentally disabled individuals secured by the Constitution or laws of the United States or of any State or locality.

(3) The P&A System must have appropriate access to the personal, medical, and other records pertaining to the care of institutionalized developmentally disabled persons who have been judicially declared mentally incompetent after giving reasonable notice to the guardians of such persons. In the case of an institutionalized developmentally disabled person who is not mentally impaired, the P&A System must have appropriate access to that person's relevant records after obtaining the consent of that person.

(4) The P&A System must establish procedures to protect the confidentiality of the records examined under 1386.20(c)(3). These procedures must conform to the requirements of 42 CFR Part 442.502. This requirement, however, in no way limits or restricts the Department's access to the records of the P&A System.

(5) The P&A System may not be administered or controlled by the State Planning Council.

(6) The P&A System must be independent of any agency, public or private, which provides treatment, services or habilitation to persons with developmental disabilities.

(7) The P&A System must have the authority on its own initiative to obtain access to institutions and programs serving persons with developmental disabilities. This right to access shall include the right to meet with persons with developmental disabilities in residential and non-residential facilities to explain the purposes of the protection and advocacy system, assistance that is available to them, and other details of the program. Exercise of this authority shall not require advance notice as long as the visits take place at a time and in a manner that does not disrupt the operation of the facility or program, for

example, a visit during normal visiting hours.

**§ 1386.21 Designated State protection and advocacy office.**

(a) The Governor shall designate the office for administering the State protection and advocacy system.

(b) The State protection and advocacy office must be a public or private, non-profit entity.

**§ 1386.22 Report on the state system.**

(a) At least once every three years the Governor shall submit an approvable report to the Commissioner describing the State system. The report must conform to these regulations and with guidelines issued by the Commissioner.

(b) The report must include—

(1) Assurances that the system will comply with the requirements listed in § 1386.20, including—

(i) An assurance that members and staff of the State planning council together with providers of services do not constitute a majority of a quorum of any board of directors of the system; and

(ii) An assurance that the staff of the State planning council will not serve as staff of the protection and advocacy office.

(2) An explanation of the administrative structure of the system including the executive order or a citation to the law establishing the system and the following information:

(i) If it is a public entity, an explanation of the office's location within the State structure; or

(ii) If it is a private non-profit entity, the name and title of the person in State government to whom it reports, and a copy of the articles of incorporation and bylaws;

(3) The goals and objectives for the system;

(4) The methods being used to ensure that the system is available to persons with developmental disabilities, especially those residing in institutions, and those not receiving services;

(5) The procedures by which the office determines which clients will be served, if choices must be made;

(6) A statement of the ways legal, administrative and other appropriate remedies are utilized by the system to achieve its goals;

(7) An explanation of the facilities and resources that are being used to operate the system;

(8) A list of other protective and advocacy services in the State which relate to this program, and explanations of cooperative relationships with them;

(9) Other information the Commissioner may require.

**§ 1386.23 Submittal of the report on the State system.**

(a) The report must be submitted by the Governor to the Commissioner for approval. The report must be submitted to the appropriate HEW Regional Office 60 days prior to the period for which it is applicable.

(b) Failure to submit an approvable report prior to the beginning of the period covered by the report shall result in the loss of Federal financial participation in costs resulting from obligations incurred during the period of the fiscal year for which an approvable description or revision has not been submitted. Failure to submit an approvable report at the appropriate time may also result in loss of Federal funds under the State plan submitted under Subpart C.

(c) The Secretary will not disapprove any report describing the protection and advocacy system or revision of the system until he or she has given the State reasonable notice and opportunity for a hearing governed by Subpart D of this part.

**§ 1386.24 Amendments to the report on the system.**

The Governor shall approve and submit to the Commissioner a description of any change in the system which will affect the way it is to carry out its required functions. These amendments must be submitted to and approved by the Commissioner prior to their implementation. The amendments must include a procedure for providing continuity of services to persons with developmental disabilities during the transition.

**§ 1386.25 Annual reports.**

(a) The following reports must be submitted to the Commissioner annually:

(1) Proposed budget for the next Federal fiscal year;

(2) Program performance report; and

(3) Financial status report.

(b) The program performance report shall describe the activities carried out under the system and any changes made in the system during the previous fiscal year.

(c) The proposed budget and the program performance report must be submitted by the Governor to the appropriate HEW Regional Office. The proposed budget for the next Federal fiscal year must be received in the regional Office 60 days prior to the beginning of the fiscal year to which it is applicable. The Financial Status Report must be submitted by either the Governor or the appropriate State financial official.

**§ 1386.26 Federal financial participation.**

(a) Federal financial participation is allowable for costs incurred—

(1) Under the State's approved report on the State system;

(2) For providing information and referral services to persons who contact the system for aid whether or not those persons are developmentally disabled;

(3) To solve or alleviate problems of discrimination or denial of rights related to the eligible person's disabilities.

(b) Costs for which Federal financial participation is not allowable are—

(1) Payments made after the end of the Federal fiscal year following the fiscal year in which the underlying obligation was initially incurred. [Sec. 1386.9, Liquidation of obligations];

(2) Except for information and referral services, costs incurred on behalf of persons who do not meet the definition of developmental disability in § 1385.2;

(3) Costs incurred for activities not included in the approved description of the system;

(4) Costs incurred for activities on behalf of persons with developmental disabilities to solve problems not directly related to their disabilities and which are faced by the general populace, for example, drawing up wills and initiating or defending against divorces; and

(5) Costs not allowed under applicable regulations.

**§ 1386.27 Prohibition of use of protection and advocacy system for lobbying.**

No money available under this subpart shall be used to lobby Congress as set forth in 18 U.S.C. 1913. For this purpose, lobbying means any unsolicited communication with members of the Congress for the purpose of influencing their actions relating to any legislation or appropriation before or after introduction of a bill.

## Subpart C—State Plan for Provision of Services for Persons with Developmental Disabilities

### State Planning Council

**§ 1386.30 Establishment of the State planning council.**

Each State which receives Federal assistance under this part must establish a State planning council.

**§ 1386.31 Makeup of the council.**

(a) The Governor shall appoint the members of the council from among the residents of the State, and shall make appropriate provisions for rotation of all members except the representatives of State/Federal programs. The State plan shall contain a statement of the policies

governing the rotation of council membership. The policies must ensure that all the consumers and their representatives are not replaced in a single year to assure the efficacy of the council's advocacy role, and to the extent possible, membership on the council must include representatives from minority groups.

(b) The council must at all times include in its membership a separate representative from each of the following State/Federal programs: developmental disabilities program, education for the handicapped, vocational and other rehabilitation programs, public assistance, medical assistance, social services, maternal and child health, crippled children's services, comprehensive health planning, mental health services, and mental retardation services. The Secretary may waive this requirement upon a request from the Governor of the State showing that State officials designated to represent more than one Federal/State program have the knowledge and authority to speak for and act for those programs. The council shall also include a representative of higher education training facilities (including a representative of a university affiliated facility if one is located in the State), and a single, different representative from each of the following groups: local governmental agencies, and non-governmental agencies and groups concerned with services to persons with developmental disabilities.

(c) At least one-half of the membership of the council shall consist of (1) persons who are themselves developmentally disabled, and (2) relatives or guardians of such persons.

(d) Of the number in (c) above, at least one-third shall be developmentally disabled persons themselves; and at least one-third shall be parents, other immediate relatives, or guardians of persons who are unable to represent themselves because of a mentally impairing developmental disability. One of the latter group shall represent an institutionalized person with a developmental disability.

(e) Consumer representatives shall not be employees of a State agency which receives funds or provides services under this Subpart, or managing employees of an entity providing services or receiving funds under this Subpart. In addition, an owner or person with a controlling interest in any entity receiving funds or providing services under this Subpart may not be a consumer representative.

The terms "managing employees," "owner or person with controlling interest" are defined in Sections 1126(b) and 1124(a)(3), respectively, of the Social Security Act.

### § 1386.32 Duties of the council.

(a) It shall be the duty of the council to advocate programs and policies for persons with developmental disabilities in order to improve the State's programs of care, treatment, habilitation, and other services for them. The council shall set broad policy, determine priorities among service needs, and set goals and objectives for the State program of services for persons with developmental disabilities. In the case of disagreements between a council and an administering agency concerning the adoption of a goal or policy of the State plan, the Governor shall have the final authority for making the decision. In addition, the council shall—

(1) Develop the State plan jointly with the designated State agency(ies), including the specification of areas of priority services under § 1386.47 of this subpart;

(2) Monitor, review, and evaluate the implementation of the State plan, not less often than annually;

(3) Review and comment on all State plans which relate to programs affecting persons with developmental disabilities, to the maximum extent feasible;

(4) Review and comment on applications for grants under Part 1387, except applications for projects of national significance;

(5) Submit to the Commissioner, through the Governor, an annual report of its activities. This report is part of the program performance report required under § 1386.41(d).

(b) The council chairperson shall submit the State plan, plan amendments, annual reviews (subparagraph (a)(2) of this section), and related documents to the Governor, as required by Office of Management and Budget Circular A-95. The Governor shall have 45 days to review the materials prior to their submission to the Commissioner. Any comments the Governor makes shall be transmitted to the Commissioner with the documents.

(c) The council chairperson shall submit the State plan and related documents to the Commissioner 60 days prior to the fiscal year to which they are applicable.

(d) The council shall not exert any authority or control over policy or activity of the protection and advocacy office. The council shall not administer the office in any way.

### § 1386.33 Council staff.

(a) In order to carry out its responsibilities and duties, the State council must have a staff responsible to the State council. The staff must be qualified to carry out the following functions: planning, monitoring, evaluation, advocacy, and management. The size of the professional staff will vary among States; however, each council shall have at least one full-time director and one full-time clerk/secretary.

(b) In determining the need for additional staff, the State shall take into account the particular needs of the council and the resources available to it.

(c) If necessary for the performance of its functions, the State council may employ consultants and may contract with individuals or entities for services.

## State Plan Requirements for Planning, Administration and Services

### § 1386.40 General.

In order to receive Federal financial assistance under this Subpart, a State shall have in effect a State plan which meets the requirements of § 1386.41 through § 1386.54 and which is approved by the Commissioner.

### § 1386.41 Designation of the State planning council and the State agency.

The State plan shall provide for—

(a)(1) The establishment of a State council, in accordance with § 1386.30; (2) for the assignment to the council of adequate personnel to enable the council to carry out its duties; and (3) the identification of the staff.

(b) Identification of the State agency which has been designated by the Governor to administer or supervise the administration of the State plan. If there is more than one agency, the portion of the State plan for which each is responsible shall be stated, and amounts of the allotment apportioned among the agencies shall be specified; and

(c) Identification of a program unit within the designated State administering agency which has primary responsibility for proper and efficient administration of the State plan.

### § 1386.42 Plan submittal and approval.

(a) All of the following documents must be submitted by the council chairperson to the Commissioner for approval prior to their implementation:

(1) The State plan must be revised at least once every three years;

(2) The State plan must be amended at any time that substantive changes affect its administration or priorities;

(3) A description of the extent and scope of services provided or to be provided as required by § 1386.44(c) must be submitted annually in order for the State to receive Federal funds under this Subpart.

(b) The State plan must contain a statement that it was jointly developed by the State council and the designated State agency. This statement must be signed by the chairperson of the State planning council and by the appropriate official(s) of the State agency.

(c) Failure to submit an approvable plan, plan amendments, or annual review prior to the fiscal year for which they are applicable shall result in the loss of Federal financial participation in the costs resulting from obligations incurred during the period of the fiscal year for which they were not submitted.

(d) The Commissioner shall approve any State plan, amendment, or revision provided it meets the requirements of the Act, these and other applicable regulations, and performance standards issued by the Commissioner.

**§ 1386.43 Methods of administration.**

The State plan must describe the policies, procedures, and methods to be employed for the proper and efficient administration of the State plan, including application procedures for subgrantees. It must describe methods to be used to inform the general public in the State of the kinds and locations of services and facilities which are or will be available. It must also describe methods to be used to notify interested persons in the State as to where and when the State plan can be examined.

**§ 1386.44 Description of objectives and services.**

The State plan must—

(a) State the specific objectives to be achieved and list the programs and resources to be used to meet the objectives;

(b) Describe the extent and scope of services being provided or to be provided to developmentally disabled persons under other State plans for Federally assisted State programs. These programs included, but are not limited to, education for the handicapped, vocational and other rehabilitation programs, public assistance, medical assistance, social services, maternal and child health, crippled children's services, comprehensive health, mental health, aging, mental retardation and other plans the Commissioner specifies. The State plan must describe how the State's allotment will be used to complement and augment, rather than duplicate or replace, services for persons with developmental disabilities who are eligible for Federal assistance under these programs;

(c) Assess and describe the extent and scope of the priority services (§ 1386.45) being or to be provided for each fiscal year; and

(d) Describe the method established for the periodic evaluation of the State plan's effectiveness in meeting the objectives described above.

**§ 1386.45 Priority services.**

For purposes of the State plan, priority services include case management, child development, alternative community living arrangements, and nonvocational social-developmental services. Priority services are defined as follows:

"Case management services" are services to assist in gaining access to needed social, medical, educational, and other services. The term includes: (1) follow-along services such as consultation and evaluation which ensure that the changing needs of the person and the family are recognized and appropriately met; and (2) coordination services which provide to persons with developmental disabilities support, access to other services, and monitoring of that person's progress.

"Child development services" are services to assist in the prevention, identification, and alleviation of developmental disabilities in children. They include: (1) early intervention services; (2) counseling and training of parents; (3) early identification of developmental disabilities; and (4) diagnosis and evaluation of developmental disabilities.

"Alternative community living arrangement services" are services to assist in maintaining suitable residential arrangements in the community. They include in-house services, for example personal aides and attendants, and other domestic assistance and supportive services; family support services; foster care services; group living services; respite care; and staff training, placement, and maintenance services.

"Nonvocational social-developmental services" are services to assist in the performance of daily living and work activities, for example: day activities, transportation, financial matters, recreation, civic concerns, and personal-social matters.

**§ 1386.46 Use of funds.**

The State plan must contain assurances that the State's Federal allotment will be used in whole or in part to—

(a) Make a significant contribution toward strengthening services for persons with developmental disabilities through agencies in the various political subdivisions of the State;

(b) Assist public or non-profit private entities;

(c) Supplement and increase the level of funds that would otherwise be made available for the purposes for which Federal funds are provided and not to supplant non-Federal funds; and

(d) provide for reasonable State financial participation in the cost of carrying out the State plan.

**§ 1386.47 Provision of priority services.**

(a)(1) The State plan must identify one or more priority service areas (§ 1386.45) on which Federal funds will be expended.

(2) The number of Federally funded priority service areas to be supported is determined by the appropriation for the fiscal year under Sec. 131 of the Act. Until the Federal appropriation exceeds $60 million for a year, a State is required to fund one, but not more than two, of the priority service areas identified in the State plan. No more than to three priority service areas may be funded when the appropriation exceeds $60 million but is less than $90 million per year.

(3) A State must select one Federal priority service area. At its option, depending on the size of the Federal appropriation (see paragraph (2) above), the State may select and identify one or two additional Federal priority service areas or one or two additional other service areas.

(4) The Commissioner, upon written application from the State council, may approve a waiver of the limitations described in paragraphs (a)(2) and (3) of this section. The application must demonstrate that—

(i) The funding of an additional area of priority services will not result in a disproportionate decrease in services in the other priority services areas;

(ii) Non-Federal expenditures for service activities in the fiscal year for which the waiver is requested will be not less than those reported on the Financial Status Report to the Secretary on Form HEW 269 for the fiscal year ended September 30, 1978; and

(iii) Insofar as possible, the requested area of service to be funded is one of the four Federal priority service areas. If the State finds that its need for another optional service (in addition to the one it found under paragraph (a) of this section) has a higher priority for that State than the remaining Federally established priority service areas, the State shall explain this finding in the application for the waiver. The application must be submitted to the Commissioner 90 days prior to the fiscal year for which funding is requested.

(b) The State council and State agency shall periodically (at least once every three years), examine the priority

service areas and the need for continuing them, and shall determine if changes are needed.

(c) The State, at its option, may implement its comprehensive plan for statewide services immediately or on a gradual basis. Whatever the decision of the council and agency, the State plan pertaining to priority service area or areas must be in full operation not later than October 1, 1980.

(d) The State plan must indicate that $100,000 or 65 percent of the State's Federal allotment, whichever is greater, will be expended for providing service activities in the priority areas identified in the plan.

(e) The State plan may include the following additional service activities if they are components of the selected priority service areas: (1) model service programs; (2) activities to increase the capacity of institutions and agencies to provide services; (3) coordinating the provision of services in the area with other services; (4) outreach related to the service area; and (5) training of personnel to provide the services.

(f) Special financial and technical assistance must be given to agencies providing services to residents of urban or rural poverty areas. The list of areas designated by the State Health Planning and Development Agencies (HPDA) and approved by the Secretary under Title XVI, Sec. 1624(13) Pub. L. 93–641, as amended by Pub. L. 96–79, shall be used for this purpose. This list was published in the Federal Register, Vol. 43, No. 19, January 27, 1978, and is available from the State HPDA and HEW Regional Offices.

**§ 1386.48 Standards for services and protection of rights.**

The State plan must assure that and describe how—

(a) Services are rendered on an individualized basis as provided for in § 1386.52 (Individual habilitation plans);

(b) The human rights of persons with developmental disabilities (especially those without familial protection) are protected, consistent with § 1385.3 (Rights of persons with developmental disabilities);

(c) Buildings used for delivery of services meet the standards adopted under the Architectural Barriers Act of 1968, 42 U.S.C. 4151–4157 and applicable Federal regulations. An exception may be made only if the grantee certifies, before the grant award is issued, that the facility will be in compliance in the period covered by the award; and

(d) Affirmative steps have been taken to assure participation in programs authorized under the Act of individuals generally representative of the developmentally disabled population, with special attention given to members of minority groups. The State plan shall provide that applications for subgrants contain detailed information on the total number of developmentally disabled people in the geographic area to be served, the number of minority persons with developmental disabilities in the area, the manner in which the services to be provided by the project will be made known to them, and what arrangements will be made to meet their special needs as members of minority groups.

**§ 1386.49 Professional assessment and evaluation programs.**

(a) The plan must provide for—

(1) An assessment of the adequacy of the skill level of persons, professional and paraprofessional, providing direct and indirect services; and

(2) An assessment of the adequacy of the State programs and plans supporting training of such professionals and paraprofessionals.

(b) The State plan must address the needs, disclosed by the two assessments, which must be met in order to achieve and maintain high quality of services. In developing this part of the plan, the State shall utilize resources of university affiliated facilities, where available and appropriate, and of other State and Federal manpower programs.

(c) The State plan must provide for planning and implementing the evaluation system in accordance with Section 110 of the Act.

**§ 1386.50 Utilization of community resources and volunteers.**

The plan must provide for the maximum utilization of all available community resources including volunteers (VISTA) serving under the Domestic Volunteer Service Act of 1973 (Pub. L. 93–113) and other appropriate voluntary organizations. Volunteer services must supplement, and must not be in lieu of, services of paid employees.

**§ 1386.51 Protection of employees' interests.**

(a) The State plan must provide for fair and equitable arrangements to protect the interests of all employees affected by actions under the plan to provide alternative community living arrangements. Specific arrangements for the protection of affected employees shall be developed through negotiations between the appropriate State authorities and employees or their representatives. Employees are to be given written notice prior to implementation of this priority service. The arrangements must include, without being limited to, provisions for—

(1) To the maximum extent practicable, the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;

(2) The continuation of collective bargaining rights;

(3) To the maximum extent practicable, the protection of individual employees against a worsening of their positions with respect to their employment;

(4) Maximum efforts to guarantee employment to employees of any State political subdivision thereof who will be affected by any program funded in whole or in part under provisions of the Act; and

(5) Employee training or retraining programs.

(b) *Performance standards.* The terms and conditions of such protective arrangements must include the following performance standards:

(1) *Preservation of rights and benefits.* The preservation of rights and benefits requires that any new job offer to an employee displaced due to alternative community living arrangement services will not result in the termination of accrued benefits, including pension benefits, vacation benefits, health and insurance benefits, seniority rights or similar benefits. This provision applies only to jobs offered by the State or local governments and not to jobs found independently by a terminated employee seeking alternative employment.

(2) *Continuation of collective bargaining rights.* This provision applies when:

(i) The administration of a facility would be turned over from one governmental unit to another (for example, from State to county); and

(ii) An entire employee group would be moved intact to a new facility.

(3) *Worsening of position.* A state cannot fulfill its responsibility to protect an employee against a worsening of his or her position when the job is terminated because of alternative community living arrangement services by offering a job at less pay, lower status, differenct functions, or with a substantial increase in health or safety hazard, unless such a position is the only one available.

(4) *Assurances of employment.* A displaced State or local government employee must be offered a job that conforms with these requirements if any is available. In order to meet this requirement the State agency shall

initiate policies and procedures to ensure that:

(i) Affected State and local government employees have transfer rights to employment in community facilities for the developmentally disabled operated by State or local governments;

(ii) All appropriate job vacancies are posted at locations convenient for employees;

(iii) Affected employees have the right to transfer to jobs in other State or local government departments;

(iv) Employees upon transfer to a new place of employment more than 50 miles beyond their previous employment have the right to relocation expenses; and

(v) Employees who qualify under State civil service have the right to early retirement.

(5) *Training and retraining.* Program policies must provide that training or retraining will be:

(i) In or near present place of employment of employee;

(ii) At no expense to employee; and

(iii) That employee's compensation will not be adversely affected during training.

**§ 1386.52 Individual habilitation plans.**

(a) The State plan must contain an assurance that each program (including programs of any agency, facility, or project) which receives funds from the State's allotment under this Subpart has a habilitation plan in effect for each developmentally disabled person who receives services from or under the program. The habilitation plan must be reviewed at least annually.

(b) The State plan must describe the methods to be used to facilitate an annual review of the habilitation plan. The State plan must include the following requirements for habilitation plans:

(1) Be in writing;

(2) Be developed jointly by—

(i) Representative(s) of the program primarily responsible for delivering or coordinating the delivery of services to the person with a developmental disability for whom the plan is established;

(ii) The developmentally disabled person; or

(iii) Where appropriate, that person's parents, or guardian, or other representative; and

(3) Be signed by the person or his or her representative, and the principal program representative;

(4) Contain a statement of the long-term habilitation goals for the person and the intermediate habilitation objectives relating to the attainment of the goals. The objectives shall be expressed in behavioral or other terms that provide measurable indices of progress;

(5) Describe how the objectives will be achieved and the barriers that might interfere with the achievement of them;

(6) State objective criteria and an evaluation procedure and schedule for determining whether such goals and objectives are being achieved;

(7) Provide for a program coordinator who will be responsible for the implementation of the plan;

(8) Contain a statement (in readily understandable form) of specific habilitation services to be provided, identify the agency which will deliver each service, describe the personnel (and their qualifications) necessary for the provision of those services, and specify the date of the initiation of each service to be provided and the anticipated duration of each service;

(9) Specify the role and objectives of all parties to the implementation of the plan; and

(10) Be reviewed at least annually by the agency which is primarily responsible for delivering or coordinating the delivery of services to the person with developmental disabilities. In the course of the review, the person and the person's parents, or guardian, or other representative shall be given an opportunity to review and participate in revising the plan.

**§ 1386.53 Federal financial participation.**

(a) Under this Subpart, Federal financial participation is available in costs resulting from obligations incurred under the approved State plan for the necessary expenses of the State council, the administration and operation of the State plan, and training of personnel.

(b) Expenditures which are not allowable for Federal financial participation are—

(1) Costs incurred by institutions or other residential or non-residential programs which do not comply with § 1385.3 of these regulations;

(2) Payments made after the end of the fiscal year following the fiscal year in which the underlying obligation was initially incurred (§ 1386.10, Liquidation of obligations);

(3) Costs incurred for activities not provided for in the approved State plan;

(4) Costs for construction and renovation of facilities and acquisition of land; and

(5) Unallowable costs identified in 45 CFR Part 74.

**§ 1386.54 Additional information and assurances.**

The State plan must contain such additional information and assurances as the Commissioner may find necessary to carry out the provisions and purposes of this part.

**§ 1386.55 Final disapproval of the State plan.**

Final disapproval of any State plan will be determined only after the following procedures have been complied with:

(a) The State plan has been submitted to the appropriate HEW Regional Office, and the Regional Office and State have been unable to resolve their differences.

(b) The Regional Office has prepared a detailed written analysis of its reasons for recommending disapproval and has transmitted its anaylses and all other relevant material to the Commissioner, and provided the State council and State agency with copies of the material.

(c) The Commissioner, after review of the records and the recommendation of the Regional Office, has determined whether the State plan, in whole or in part, is not approvable. This determination has been sent to the State and contains appropriate references to the records, statutory and regulatory provisions, and all relevant interpretations of applicable laws and regulations. The notification of the decision must inform the State of its right to appeal in accordance with 45 CFR Part 1386, Subpart D.

(d) The Commissioner's decision has been forwarded to the State council and agency by registered mail with a return receipt requested.

(e) A State has filed its request for a hearing with the Assistant Secretary for Human Development Services (ASHDS) within 21 days of the receipt of the decision. The request for a hearing must be sent by registered mail to the ASHDS. The date of mailing the request is considered the date of filing if it is supported by independent evidence of mailing, otherwise the date of receipt shall be considered the date of filing.

## Subpart D—Practice and Procedure for Hearings Pertaining to States' Conformity and Compliance with Developmental Disabilities Plans and Federal Requirements

### General

**§ 1386.80 Definitions.**

For purposes of this Subpart:

"Assistant Secretary" means the Assistant Secretary for Human Development Services (HDS) or a presiding officer.

"BDD" means Bureau of Developmental Disabilities, Rehabilitation Services Administration.

"Presiding officer" means anyone appointed by the Assistant Secretary to conduct any hearing held under this Subpart. The term includes the Assistant Secretary if the Assistant Secretary presides over the hearing

**§ 1386.81 Scope of rules.**

(a) The rules of procedure in this Subpart govern the practice for hearings afforded by the Department to States pursuant to § 1386.11, 1386.23, 1386.24 and 1386.42.

(b) Nothing in this Part is intended to preclude or limit negotiations between the Department and the State, whether before, during, or after the hearing to resolve the issues which are, or otherwise would be, considered at the hearing. Negotiations and resolution of issues are not part of the hearing, and are not governed by the rules in this Subpart, except as otherwise provided in this Subpart.

**§ 1386.82 Records to be public.**

All Pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding are subject to public inspection.

**§ 1386.83 Use of gender and number.**

As used in this Subpart, words importing the singular number may extend and be applied to several persons or things, and vice versa. Words importing either gender may be applied to the other gender or to organizations.

**§ 1386.84 Suspension of rules.**

Upon notice to all parties, the Assistant Secretary may modify or waive any rule in this Subpart, unless otherwise expressly provided, upon determination that no party will be unduly prejudiced and justice will be served.

**§ 1386.85 Filing and service of papers.**

(a) All papers in the proceedings shall be filed with the HDS Hearing Clerk in an original and two copies. Only the originals of exhibits and transcripts of testimony need by filed.

(b) All papers in the proceedings shall be served on all parties by personal delivery or by mail. Service on the party's designated representative will be deemed service upon the party.

**Preliminary Matters—Notice and Parties**

**§ 1386.90 Notice of hearing or opportunity for hearing.**

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing from the Commissioner to the State council and the designated State agency, or to the State protection and advocacy office or official. The notice shall state the time and place for the hearing, and the issues which will be considered. The notice will be published in the Federal Register.

**§ 1386.91 Time of hearing.**

The hearing shall be scheduled not less than 30 days nor more than 60 days after the date notice of the hearing is mailed to the State.

**§ 1386.92 Place.**

The hearing shall be held at a date, time, and place determined by the Assistant Secretary with due regard for the convenience and necessity of the parties or their representatives.

**§ 1386.93 Issues at hearing.**

(a) Prior to a hearing, the Assistant Secretary may notify the State in writing of additional issues which will be considered at the hearing. That notice shall be published in the Federal Register. If that notice is mailed to the State less than 20 days before the date of the hearing, the State or any other party, at its request, shall be granted a postponement of the hearing to a date 20 days after the notice was mailed, or such later date as may be agreed to by the Assistant Secretary.

(b) If any issue is resolved in whole or in part, but new or modified issues are presented, the hearing shall proceed on the new or modfied issues.

(c)(1) If at any time, whether prior to, during, or after the hearing, the Assistant Secretary finds that the State has come into compliance with Federal requirements on any issue in whole or in part, he or she shall remove the issue from the proceedings in whole or in part as may be appropriate. If all issues are removed the Assistant Secretary shall terminate the hearing.

(2)(i) Prior to the removal of an issue, in whole or in part, from a hearing involving issues relating to the conformity of State plan or report on the description of the protection and advocacy system with Federal requirements, the Assistant Secretary shall provide all parties other than the Department and the State (see § 1386.94(b)) with the Statement of his or her intention to remove an issue from the hearings and the reasons for that decision. A copy of the proposed State plan provision or report on the description of the protection and advocacy system on which the State and the Assistant Secretary have settled shall be sent to the parties. The parties shall have an opportunity to submit in writing within 15 days their views as to, or any information bearing upon, the merits of the proposed provision and the merits of the reasons for removing the issue from the hearing.

(ii) In hearings involving questions of noncompliance of a State's operation of its program with the State plan or system description, or with Federal requirements, the same procedure set forth in paragraph (2)(i) of this Subsection shall be followed with respect to any report or evidence resulting in a conclusion by the Assistant Secretary that a State has achieved compliance.

(d) The issues considered at the hearing shall be limited to those issues of which the State is notified as provided in § 1386.90 and paragraph (a) of this Section, and new or modified issues described in paragraph (b) of this Section, and shall not include issues or parts of issues removed from the proceedings pursuant to paragraph (c) of this Section.

**§ 1386.94 Request to participate in hearing.**

(a) The Department, the State council, the designated State agency, and the State protection and advocacy office, as appropriate, are parties to the hearing without making a specific request to participate.

(b)(1) Other individuals or groups may be recognized as parties if the issues to be considered at the hearing have caused them injury and their interests are relevant to the issues in the hearing.

(2) Any individual or group wishing to participate as a party shall file a petition with the HDS Hearing Clerk within 15 days after notice of the hearing has been published in the Federal Register, and shall serve a copy on each party of record at that time in accordance with § 1386.85(b). Such petition shall concisely state (i) petitioner's interest in the proceeding, (ii) who will appear for petitioner, (iii) the issues petitioner wishes to address and (iv) whether petitioner intends to present witnesses.

(3) Any party may file comments within 5 days of receipt of such petition.

(4) The presiding officer shall promptly determine whether each petitioner has the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participte as parties are made by individuals or groups with common interests, the presiding officer may request all of the petitioners to designate a single representative, or he or she may recognize one or more of the petitioners to represent all of them. The presiding officer shall give each petitioner written notice of the decision on its petition. If any petition is denied,

the presiding officer shall briefly state the grounds for denial.

(c)(1) Any interested person or organization wishing to participate as amicus curiae shall file a petition with the HDS Hearing Clerk before the commencement of the hearing. Such petition shall concisely state (i) the petitioner's interest in the hearing, (ii) who will represent the petitioner, and (iii) the issues on which petitioner intends to present argument. The presiding officer may grant the petition if he or she finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome and may contribute materially to the proper disposition of the issues.

(2) An amicus curiae may present a brief oral statement at the hearing at the point in the proceedings specified by the presiding officer. It may submit a written statement of position to the presiding officer prior to the beginning of a hearing, and shall serve a copy on each party. It may also submit a brief or written statement at such time as the parties submit briefs, and shall serve a copy on each party.

## Hearing Procedures

### § 1386.100 Who presides.

(a) The presiding officer at a hearing shall be the Assistant Secretary or someone designated by the Assistant Secretary.

(b) The designation of a presiding officer shall be in writing. A copy of the designation shall be served on all parties and amici curiae.

### § 1386.101 Authority of presiding officer.

(a) The presiding officer shall have the duty to conduct a fair hearing, avoid delay, maintain order, and make a record of the proceedings. The presiding officer shall have all powers necessary to accomplish these ends, including, but not limited to, the power to:

(1) Change the date, time, and place of the hearing, upon notice to the parties. This includes the power to continue the hearing in whole or in part;

(2) Hold conferences to settle or simplify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceedings;

(3) Regulate participation of parties and amici curiae and require parties and amici curiae to state their positions with respect to the issues in the proceeding;

(4) Administer oaths and affirmations;

(5) Rule on motions and other procedural items on matters pending before him or here, including issuance of protective orders or other relief to a party against whom discovery is sought;

(6) Regulate the course of the hearing and conduct of counsel therein;

(7) Examine witnesses;

(8) Receive, rule on, exclude, or limit evidence or discovery;

(9) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him or her;

(10) If the presiding officer is the Assistant Secretary, make a final decision;

(11) If the presiding officer is a hearing examiner, certify the entire record, including recommended findings and proposed decision, to the Assistant Secretary;

(12) Take any action authorized by the rules in this Subpart or 5 U.S.C. 551–559.

(b) The presiding officer does not have authority to compel the production of witnesses, papers, or other evidence by subpoena.

(c) If the presiding officer is a hearing examiner, his or her authority is to render a recommended decision with respect to program requirements which are to be considered at the hearing. In case of any noncompliance, he or she shall recommend whether Federal financial participation should be withheld with respect to the entire State plan or the report of the system description, or whether Federal financial participation should be withheld only with respect to those parts of the program affected by such noncompliance.

### § 1386.102 Rights of parties.

All parties may:

(a) Appear by counsel, or other authorized representative, in all hearing proceedings;

(b) Participate in any prehearing conference held by the presiding officer;

(c) Agree to stipulations of facts which will be made a part of the record;

(d) Make opening statements at the hearing;

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

(f) Present witnesses who then must be available for cross-examination by all other parties;

(g) Present oral arguments at the hearing;

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

### § 1386.103 Discovery.

The Department and any party named in the Notice issued pursuant to § 1386.90 shall have the right to conduct discovery (including depositions) against opposing parties as provided by the Federal Rules of Civil Procedure. There shall be not fixed rule on priority of discovery. Upon written motion, the presiding officer shall promptly rule upon any objection to discovery action. The presiding officer shall also have the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery so as to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the presiding officer may issue any order and impose any sanction other than contempt orders authorized by Rule 37 of the Federal Rules of Civil Procedure.

### § 1386.104 Evidentiary purpose.

The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence: rather, it must be presented in statements, memoranda, or briefs, as directed by the presiding officer. Brief opening statements, which shall be limited to a statement of the party's position and what is intends to prove, may be made at hearings.

### § 1386.105 Evidence.

(a) *Testimony.* Testimony shall be given orally under oath or affirmation by witnesses at the hearing. Witnesses shall be available at the hearing for cross-examination by all parties.

(b) *Stipulations and exhibits.* Two or more parties may agree to stipulations of fact. Such stipulations, or any exhibit proposed by any party, shall be exchanged at the prehearing conference or at a different time prior to the hearing if the presiding officer requires it.

(c) *Rules of evidence.* Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the presiding officer. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his or her direct examination. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidicen offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

### § 1386.106 Exclusion from hearing for misconduct.

Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at the hearing

before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

**§ 1386.107 Unsponsored written material.**

Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

**§ 1386.108 Official transcript.**

The Department will designate the official reporter for all hearings. The official transcript of testimony taken, together with any stipulations, exhibits, briefs, or memoranda of law filed with them shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance. Transcripts shall be taken by stenotype machine and not by voice recording devices, unless otherwise agreed by all of the parties and the presiding officer.

**§ 1386.109 Record for decision.**

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision, shall constitute the exclusive record for decision.

**Posthearing Procedures, Decisions**

**§ 1386.110 Posthearing briefs.**

The presiding officer shall fix the time for filing posthearing briefs. This time shall not exceed 30 days after termination of the hearing and receipt of the transcript. Briefs may contain proposed findings of fact and conclusions of law. If permitted, reply briefs may be filed no later than 15 days after filing of the posthearing briefs.

**§ 1386.111 Decisions following hearing.**

(a) If the Assistant Secretary is the presiding officer, he or she shall issue a decision within 60 days after the time for submission of posthearing briefs has expired.

(b)(1) If a hearing examiner is the presiding officer, he or she shall, within 30 days after the time for submission of posthearing briefs has expired, certify the entire record to the Assistant Secretary including recommended findings and proposed decision. The Assistant Secretary shall serve a copy of the recommended findings and proposed decision upon all parties and amici.

(2) Any party may, within 20 days, file exceptions to the recommended findings and proposed decision and supporting brief or statement with the Assistant Secretary.

(3) The Assistant Secretary shall review the recommended decision and, within 60 days of its issuance, issue his or her own decision.

(c) If the Assistant Secretary concludes:

(1) In the case of a hearing under § 1386.23, § 1386.24 or § 1386.42 that a State plan or report on the State's protection and advocacy system does not comply with Federal requirements, he or she shall also specify whether the State's total allotment for the fiscal year will not be authorized for the State or whether, in the exercise of his or her discretion, the allotment will be limited to parts of the State plan or the report not affected by the noncompliance.

(2) In the case of a hearing pursuant to § 1386.11, that the State is not complying with requirements of the State plan or the report on the description of the State's protection and advocacy system, he or she shall also specify whether Federal financial participation will not be made available to the State or whether, in the exercise of his or her discretion, Federal financial participation will be limited to categories under the State plan or the report on the description of the State's protection and advocacy system not affected by such noncompliance. The Assistant Secretary may ask the parties for recommendations or briefs or may hold conferences of the parties on these questions.

(d) The decision of the Assistant Secretary under this Section shall be the final decision of the Secretary and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 and the "Secretary's action" within the meaning of Section 138 of the Act. The Assistant Secretary's decision shall be promptly served on all parties and amici.

**§ 1386.112 Effective date of decision by the Assistant Secretary.**

(a) If, in the case of a hearing pursuant to § 1386.11, the Assistant Secretary concludes that a State plan or the report on the description of the State's protection and advocacy system does not comply with Federal requirements, and the decision provides that the allotment will be authorized but limited to parts of the State plan or the report on the description of the State's protection and advocacy system not affected by such noncompliance, the decision shall specify the effective date for the authorization of the allotment.

(b) In the case of a hearing pursuant to § 1386.23, § 1386.24, or § 1386.42, if the Assistant Secretary concludes that the State is not complying with requirements of the State plan or the report on the description of the State's protection and advocacy system, the decision that further payments will not be made to the State, or that payments will be limited to parts of the State plan or the report on the description of the State's protection and advocacy system not affected, shall specify the effective date for the withholding of Federal funds.

(c) The effective date shall not be earlier than the date of the decision of the Assistant Secretary and shall not be later than the first day of the next calendar quarter.

(d) The provisions of this section may not be waived pursuant to § 1386.84.

## PART 1387—SPECIAL PROJECTS.

3. Part 1387 is revised to read as follows:

Sec.
1387.1 Purposes of projects.
1387.2 Projects of national significance.
1387.3 Eligible applicants.
1387.4 Application content and procedure.
1387.5 Amount of grant.

**Authority:** Section 109, Pub. L. 88–164, as amended by Pub. L. 95–602.

**§ 1387.1 Purposes of projects.**

Special project grants may be made by the Commissioner to support a variety of means of increasing the effectiveness and efficiency of services provided under the two State formula grant programs. Not less than 25 percent of the appropriation under Sec. 145(f) of the Act must be used for projects of national significance, defined in § 1387.2.

(a) Special project grants may be made to assist in meeting the costs of conducting an activity or program (referred to here as a "Project") for—

(1) Demonstrations, including research, training, technical assistance and evaluation, for establishing programs to expand or otherwise improve services, particularly priority services, to persons with developmental disabilities who are disadvantaged or multi-handicapped;

(2) Demonstrations for establishing programs which hold promise of expanding or otherwise improving the State protection and advocacy systems. These demonstration projects may include research, training, and technical

assistance, and evaluation in connection with the service.

(b) Applications for grants under (a) may request assistance to carry out one or more of the following activities for developmentally disabled people:

(1) Public awareness and public education programs to assist in the elimination of social, attitudinal, and environmental barriers;

(2) Coordinating and using all available community resources to meet needs of recipients (especially those with disadvantaged backgrounds);

(3) Demonstrations of the provision of services to recipients disadvantaged because of their economic status;

(4) Technical assistance relating to planning, administration, services, and facilities;

(5) Training of specialized personnel needed for the provision of services for research directly related to such training;

(6) Developing or demonstrating new or improved techniques for the provision of services, including model integrated service projects;

(7) Gathering and disseminating information relating to developmental disabilities;

(8) Improving the quality of services; and

(9) Developing or demonstrating innovative methods to attract and retain professionals to serve in rural areas.

**§ 1387.2 Projects of national significance.**

(a) In order for a project to qualify as a project of national significance, it must be—

(1) Designed to have a major impact on developmental disabilities programs throughout the country;

(2) Have an objective which, if achieved, could be replicated and result in an improved delivery system for developmental disabilities services, or affect national policies or standards; or

(3) Involve activities to be conducted in a number of sites in various parts of the country as part of a unified program.

**§ 1387.3 Eligible applicants.**

Applications may be made by public and other non-profit agencies, organizations, and institutions of higher education, including community and junior colleges.

**§ 1387.4 Application content and procedure.**

(a) Priorities for projects to be funded will be announced, and criteria for judging applications will be listed in program announcements published from time to time in the **Federal Register.**

(b) Applications for grants must be submitted in accordance with procedures and deadline dates, as prescribed by the Commissioner in program announcements.

(c) The applicant shall provide a copy of the application for a grant under this subpart, except for projects of national significance, to the appropriate State planning council for review and comment, at the same time it submits the application to the Commissioner. The State planning council must submit its comments to the Commissioner with regard to a particular application within 30 days from the date of submission by the applicant in order to assure consideration of such comments.

**§ 1387.5 Amount of grant.**

The amount of any grant shall be determined by the Commissioner. In determining the amount of any grant under this Subpart, the Commissioner will exclude the amount of any other Federal grant for the project. The amount of any non-Federal funds required to be expended as a condition of any other Federal grant will be excluded from the cost of a grant under this Subpart.

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Part VIII

# Office of Management and Budget

## Office of Federal Procurement Policy

**Subcontracting Under Federal Contracts; Subcontracting With Women's Business Enterprises Under Federal Contracts; Final Contract Disputes Regulatory Coverage and Contract Disputes Clause**

## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

### Subcontracting Under Federal Contracts

**AGENCY:** Office of Federal Procurement Policy, Office of Management and Budget.

**ACTION:** Policy directive.

**SUMMARY:** This policy directive sets forth amendments to be made to the Federal Procurement Regulations (FPR), the Defense Acquisition Regulations (DAR), and the National Aeronautics and Space Administration Procurement Regulations (NASAPR) in implementation of section 211 of Pub. L. 95–507.

On October 24, 1978, the President signed into law Pub. L. 95–507 amending the Small Business Act and the Small Business Investment Act of 1958. Section 211 of Pub. L. 95–507 relates to subcontracting under federal contracts.

On January 16, 1979, the Office of Federal Procurement Policy published in the **Federal Register** (44 FR 3340) proposed regulatory guidance regarding section 211 (Subcontracting). On April 20, 1979, final regulatory guidance directing changes in the DAR and FPR was published in the **Federal Register** (44 FR 23610).

On October 29, 1979, the Office of Federal Procurement Policy published for comment in the **Federal Register** (44 FR 62093) proposed changes supplementing the guidance published on April 20, 1979. The October 29, 1979 publication also included for comment, in Part II thereof, proposed data collection formats. Comments were received with respect to both the subcontracting regulatory guidance and the proposed data collection formats. The final changes to the subcontracting regulatory guidance summarized below reflect the views in some of those comments. Comments received regarding the data collection formats are still being considered, and final versions of those formats will be published in the near future.

Several significant features to be found in the subcontracting regulatory guidance are as follows:

1. The Small Business and Small Disadvantaged Business Subcontracting solicitation provisions, for both negotiated and formally advertised procurements, have been expanded. Many of the earlier instructions to contracting officers—especially those requiring that officer to impose certain subcontract plan requirements on the offeror (or bidder)—have been incorporated into the solicitation clauses.

2. The regulatory guidance, as well as the solicitation clauses, contains a definition of the term "subcontract."

3. The instructions to the contracting officer sections now cover contracts with options and similar provisions, and letter contracts.

4. With respect to "commercial products" the plan to be submitted by the contractor and reviewed and approved by the Government will now cover not only the commercial product being procured under the immediate contract, but the company's or division's production generally. Also, if the contracting officer finds that the product being procured differs only insignificantly from the contractor's commercial product, he may regard the contract product, for the purposes of the subcontracting plan provision, as a commercial product. Finally, the contracting officer may ask another agency (e.g., an agency with the preponderance of the contracts with the contractor) to review and approve the contractor's plan for commercial products.

**DATE:** The changes set forth herein will be effective June 1, 1980.

**FOR FURTHER INFORMATION CONTACT:** Owen Birnbaum, Deputy Associate Administrator for Acquisition Law, (202) 395–3455.

Dated: April 29, 1980.

**Karen H. Williams,**

*Administrator.*

**Policy Letter 80–2**

*To the Heads of Executive Departments and Establishments*

**Subject: Regulatory Guidance on Section 211 of Pub. L. 95–507.**

There is a need in Government for uniformity and consistency in the application of procurement policy. This directive provides the uniform policy applicable to Section 211 of Pub. L. 95–507. The clauses and regulatory coverage that follow articulate this uniform policy. The Defense Acquisition Regualtions (DAR), the Federal Procurement Regulations (FPR), and the National Aeronautics and Space Administration Procurement Regulations (NASA PR) shall be amended to conform to this policy. This guidance supercedes in its entirety the guidance previously published in the **Federal Register** on April 20, 1979, (44 FR 23610).

A. Utilization of Small Business and Small Disadvantaged Business Concerns (over $10,000)

The following clause shall be included in all contracts over $10,000 except (1) contracts for services which are personal in nature and (2) contracts which will be performed entirely (including all subcontracts) outside any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico:

*Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals*

(a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency.

(b) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The contractor further agrees to cooperate in any studies or surveys as may be conducted by the Small Business Administration or the contracting agency which may be necessary to determine the extent of the contractor's compliance with this clause.

(c) (1) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(2) The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern—

(i) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(ii) whose management and daily business operations are controlled by one or more of such individuals.

The contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and other minorities, or any other individual found to be disadvantaged by

the Small Business Administration pursuant to section 8(a) of the Small Business Act.

(d) Contrators acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

(End of Clause)

B. Definitions

1. Business owners who certify that they are members of named groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans) are to be considered socially and economically disadvantaged.

2. The phrase "Native Americans" means American Indians, Eskimos, Aleuts and native Hawaiians. The term "Asian-Pacific Americans" means U.S. citizens whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia and Taiwan.

3. Other individuals may qualify as socially and economically disadvantaged under procedures which have been separately established by the Small Business Administration at 13 CFR 124.1–1(3)(iii).

4. The Office of Minority Small Business and Capital Ownership Development in the Small Business Administration has the final authority to determine the eligibility of a concern to be designated as a small disadvantaged business and shall answer inquiries from prime contractors and others regarding such eligibility.

5. The term "subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

C. Small Business and Small Disadvantaged Business Subcontracting (Negotiated)

All solicitations for negotiated contracts or negotiated amendments or modifications (including contracts, amendments, and modifications placed on a sole source basis), except those for procurements and set-asides pursuant to section 8(a) and section 15 of the Small Business Act as amended, which individually are expected to exceed $500,000, or in the case of contracts for the construction of any public facility, $1,000,000, and are required to include the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals, shall include a provision which requires the apparent successful offeror, provided the offeror is not a small business concern, to negotiate a detailed subcontracting plan. The provision is as follows:

*Small Business and Small Disadvantaged Business Subcontracting Plan (Negotiated)*

1. This provision does not apply to small business concerns.

2. The term "subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

3. The offeror acknowledges that it is aware of the subcontracting plan requirements in this provision; and if it is the apparent successful offeror, and if the contract offers subcontracting possibilities, agrees to negotiate a plan which includes:

a. Percentage goals (expressed in terms of percentage of total planned subcontracting dollars) for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; (for the purposes of the subcontracting plan, the contractor may include all purchases which contribute to the performance of the contract, including a proportionate share of products, services, etc., whose costs are normally allocated as indirect or overhead costs.)

As part of its establishment of percentage goals the apparent successful offeror shall also include in its subcontracting plan:

(1) A statement of: (a) total dollars planned to be subcontracted; (b) total dollars planned to be subcontracted to small business; and (c) total dollars planned to be subcontracted to small disadvantaged business.

(2) A description of the principal product and service areas to be subcontracted and an identification of those areas where it is planned to use (i) small business subcontractors, and (ii) small disadvantaged business subcontractors.

(3) A statement of the method used in developing proposed subcontracting goals for (i) small business, (ii) small disadvantaged business concerns (e.g., did the offeror use for subcontract solicitation purposes company source lists, the small business and disadvantaged small business source identification system provided by the Small Business Administration's Procurement Automated Source System, the National Minority Purchasing council Vendor Information Service, the Office of Minority Business Data Center in the Department of Commerce, and the facilities of local small business and minority associations?).

(4) If the offeror includes indirect and overhead costs as an element in establishing the goals in the subcontracting plan, the method used in determining the proportionate share of indirect and overhead costs incurred with (i) small business, and (ii) small disadvantaged business subcontractors shall be explained.

b. The name of an individual within the employ of the offeror who will administer the subcontracting program of the offeror and a description of the duties of such individual;

c. A description of the efforts the offeror will take to assure that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals will have an equitable opportunity to compete for subcontracts;

d. Assurances that the offeror will include the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals in all subcontacts which offer further subcontracting opportunities and to require all subcontractors (except small business concerns) which receive subcontracts in excess of $500,000, or in the case of a contract for the construction of any public facility, $1,000,000, to adopt and comply with a plan similar to the plan agreed to by the offeror. Such assurances shall describe the offeror's procedures for the review, approval, and monitoring for compliance with such plans;

e. Assurances that the offeror will submit such periodic reports and cooperate in any studies or surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent of compliance by the offeror with subcontracting plan; and

f. A recitation of the types of records the offeror will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in the plan, including the establishment of source lists of small business concerns and small business concerns owned and controlled by socially and economically

disadvantaged individuals; and efforts to identify and award subcontracts to such small business concerns. The records shall include at least the following (these records may be maintained on a plant-wide of company-wide basis unless otherwise indicated):

(1) Small and disadvantaged business source lists, guides and other data identifying small and small disadvantaged business vendors.

(2) Organizations contacted for small and disadvantaged business sources.

(3) On a contract-by-contract basis, records on all subcontract solicitations over $100,000, indicating on each solicitation (a) whether small business was solicited, and if not why not; (b) whether small disadvantaged business was solicited, and if not why not; and (C) reasons for the failure of solicited small business or small disadvantaged business to receive the subcontract award.

(4) Records to support other outreach efforts:

• Contacts with minority and small business trade associations;

• Contacts with business development organizations;

• Attendance at small and minority business procurement conferences and trade fairs.

(5) Records to support internal activities to guide and encourage buyers:

• Workshops, seminars, training programs, etc.

• Monitoring activities to evaluate compliance.

(6) On a contract-by-contract basis, records to support award data submitted to the Government to include name and address of subcontractor.

4. The offeror understands that:

a. No contract will be awarded unless and until an acceptable plan is negotiated with the contracting officer which plan will be incorporated into the contract, as a material part thereof.

b. An acceptable plan must, in the determination of the contracting officer, provide the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged persons to participate in the performance of the contract.

c. If a subcontracting plan acceptable to the contracting officer is not negotiated within the time limits prescribed by the contracting activity and such failure arises out of causes within the control and with the fault or negligence of the offeror, the offeror shall be ineligible for an award. The contracting officer shall notify the contractor in writing of his reasons for determining a subcontracting plan to be unacceptable. Such notice shall be given early enough in the negotiation process to allow the contractor to modify the plan within the time limits prescribed.

d. Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the contracting officer in determining the responsibility of the offeror for award of the contract.

e. It is the offeror's responsibility to develop a satisfactory subcontracting plan with respect to both small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals and that each such aspect of the offeror's plan will be judged independent of the other.

f. The offeror will submit, as required by the contracting officer, subcontracting reports in accordance with the instructions thereon, and as further directed by the contracting officer. Subcontractors will also submit these reports to the government's contracting officer or as otherwise directed, with a copy to the prime contractor's designated small and disadvantaged business liaison.

5. The failure of any contractor or subcontractor to comply in good faith with (a) the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals or (b) an approved plan required by this Small Business and Small Disadvantaged Business Subcontracting Plan (Negotiated) provision, will be a material breach of such contract or subcontract.

6. Commercial Products. If a commercial product (defined below) is offered the required subcontracting plan may relate to the company's production generally (both for commercial and non-commercial products) rather than solely to the item being procured under the government contract. In such cases, the contractor shall be required to submit one company-wide, annual plan to be reviewed for approval by the first agency with which it enters into a prime contract (which requires a subcontracting plan) during the fiscal year, or by another agency satisfactory to the contracting officer. The approved plan will remain in effect for the company's entire fiscal year for all of the company's or division's commercial products.

The term "commercial products" means products in regular production sold in substantial quantities to the general public and/or industry at established market or catalog prices. A product which, in the opinion of the contracting officer, differs only insignificantly from the contractor's commercial product may be regarded for the purpose of this clause as a commercial product.

(End of Provision)

*Instructions to Contracting Officers*

The following policy and procedural guidance is provided to contracting officers in making determinations as to the acceptability of a Small Business and Small Disadvantaged Business Subcontracting Plan (Negotiated) submitted by an apparent successful offeror, in accordance with the requirements of Pub. L. 95-507, Amendments to the Small Business Act and the Small Business Investment Act of 1958. This guidance is not intended to be all inclusive. Other factors may warrant consideration dependent upon the particular circumstances of the proposed acquisition. Ultimately, there is no substitute for the reasoned and objective judgment of a contracting officer exercised on a case by case basis.

(a) *Contracts with Options or Similar Provisions*—In the case of contracts with options, or similar provisions, requiring a subcontracting plan, the contracting officer shall obtain a satisfactory plan prior to award covering the basic and the option items of the contract. The price of the option items shall be included in determining whether the contract meets the subcontracting threshold, and the plan shall take into account the procurement of the option items. In the event the option or similar provision is not exercised, the contractor should not be bound by that portion of the plan relating to the option items.

(b) *Letter Contracts*—In the case of letter-type contracts requiring a subcontracting plan, the contracting officer shall seek to obtain a satisfactory plan within 90 days after award or before definitization, whichever comes first.

(c) *Acceptability of Proposed Plan*—In making determinations concerning the acceptability of a proposed subcontracting plan, the contracting officer should take the following actions:

(1) To the extent available, the contracting officer shall obtain the names and locations of principal proposed (i) small business, and (ii) small disadvantaged business subcontractors, including the type of product or service and the dollar value thereof to be awarded to each principal subcontractor. (This information will be used only to assist the contracting officer in making a determination as to

the acceptability of the proposed percentage and dollar subcontract goals. The offeror will not be contractually bound to make subcontract awards to the designated subcontractors nor will the names of the subcontractors be included in any subsequent approved plan.)

(2) Obtain and review information from all appropriate sources, including the prospective contractor, contract administration activities, Small and Disadvantaged Business Utilization Specialist, and SBA representatives concerning the apparent successful offeror's historical performance and achievements in placing subcontracts for the same or similar products or services with (i) small business, and (ii) small disadvantaged business subcontractors—if this information is not available for a specific product or service, the offeror's past performance and achievements in the placement of total subcontract awards to (i) small business, and (ii) small disadvantaged business subcontractors shall be examined.

(3) Evaluate the anticipated potential for subcontracting to (i) small business, and (ii) small disadvantaged business considering the make-or-buy policies or programs of the apparent successful offeror, the nature of the products or services to be subcontracted, and the known availability of (i) small business, and (ii) small disadvantaged business concerns in the geographical area where the work will be performed.

(4) Advise the apparent successful offeror of (i) the availability of the sources of information on potential small business and small disadvantaged business subcontractors and (ii) the names of any known potential small business and small disadvantaged business subcontract sources. If the proposed goals are questionable, the contracting officer shall emphasize that one or more of the sources of information should be used and potential small business and small disadvantaged business subcontract sources be considered to ensure development of realistic and acceptable goals.

(5) Obtain advice and recommendations of the Small and Disadvantaged Business Utilization Specialist and the assigned Small Business Administration Procurement Center Representative (if available) concerning the acceptability of the proposed plans.

(6) Negotiate subcontracting goals at a level which represents a good faith, aggressive, and comprehensive effort of the apparent successful offeror to use to the maximum practicable extent small and small disadvantaged subcontractors after appropriate consideration of their price, technical capability, and other pertinent factors. No goals will be negotiated upwards if it is apparent that such higher goals must result in significant increased costs to the Government or will seriously impede acquisition objectives. However, incentive subcontracting clauses should be considered in those cases where it is believed that additional and unique prime contractor effort could significantly increase small business and small disadvantaged business subcontract awards.

(7) The contracting officer shall promptly negotiate appropriate revisions to agreed subcontracting percentage and dollar goals if any subsequent amendments to the contract will have a major impact on the original planned volume or type of subcontracting effort. If agreement cannot be reached, the matter will be resolved under the Disputes Clause of the contract.

(8) In reviewing and negotiating a contractor's proposed small and disadvantaged business subcontracting plan, the contracting officer shall give due consideration to the contractor's "make-or-buy" policy or program. This is necessary to ensure that the respective programs are not in conflict, and the best interests of the Government are obtained. Furthermore, where the contract work involves products or services which are not generally available in the commercial marketplace or are particularly specialized, and the contractor has current capacity to perform the work, the contracting officer may recognize the reduced likelihood of subcontracting opportunities.

(d) *Forwarding to SBA of Plans Involving Commerical Products.*

Contracting officers receiving company-wide plans under paragraph 6 (commerical products) of both solicitation clauses—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (NEGOTIATED) and SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (ADVERTISED)—shall forward copies of such plans and approvals thereof to the Central Office of the Small Business Administration, 1441 "L" Street, N.W., Washington, D.C., Attention: AAPA.

(e) *Failure to Comply in Good Faith with the Subcontracting Requirements.*

The failure of any contractor or subcontractor to comply in good faith with (1) the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals, or (2) an approved plan required by the Small Business and Small Disadvantaged Business Subcontracting Plan provision, will be a material breach of such contract or subcontract.

If such a breach has occurred in the prime contract, the contracting officer shall review the available facts to determine what remedy is in the best interests of the Government.

Such remedies may include Termination of the Contract pursuant to the Termination for Default Clause, negotiated reduction in contract price, negotiation of a revised subcontracting plan to correct deficiencies, or other negotiated measures the contracting officer may deem appropriate. In determining the proper remedy, the contracting officer shall consider as a minimum (1) the reasons attributed to the failure to comply in good faith, (2) the Government's need for the contract deliverables, and (3) the impact a proposed remedy may have on exiting small and disadvantaged subcontractors.

If the failure to comply in good faith cannot be settled by agreement, a contracting officer decision pursuant to the contract disputes clause shall be issued.

D. Incentive Subcontracting Program

The following clause may be used in negotiated contracts for which a subcontracting plan is required.

*Incentive Subcontracting Program for Small Business and Small Disadvantaged Business (negotiated)*

(1) The contractor has estabilised, in its subcontracting plan, the following goals for awards to small business and small disadvantaged business concerns:

(i)—— [1] percent of the total planned subcontract amount of $—— [1] to small business concerns and

(ii)—— [2] percent of the total planned subcontract amount of $—— [1] to small business concerns owned and controlled by socially and economically disadvantaged individuals.

(2) To the extent that the contractor exceeds such subcontract goals in the performance of this contract, it will receive—— [3] percent (not to exceed 10 percent) of the dollar amount of such excesses, unless the contracting officer determines that such excess was not due to efforts by the contractor, i.e., subcontractor costs in excess of those contractually agreed upon or where the actual subcontract amount exceeds that

[1] Identified elsewhere in the contract.
[2] Identified elsewhere in the contract.
[3] Exact percentage to be inserted into the contract document.

estimated in the subcontract plan; or planned subcontracts which were not disclosed in the subcontract plan during contract negotiation.

(3) If the contract is a cost plus fixed fee type, the total of the fixed fee and the incentive payments made pursuant to this clause is subject to the limitations set forth in FPR 1–3.405–5(c)(2) and DAR 3–405.6(c)(2).

(End of Clause)

E. Small Business and Small Disadvantaged Business Subcontracting (Advertised)

All solicitations for formally advertised contracts or amendments or modifications thereto which, except those for procurements and set-asides pursuant to section 8(a) and section 15 of the Small Business Act as amended, offer subcontracting opportunities and are expected to exceed $500,000, or in the case of contracts for the construction of any public facility, $1,000,000, and are required to include the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals, shall include a provision which requires the bidder selected to be awarded the contract, provided the bidder is not a small business concern, to submit a detailed subcontracting plan.

The contracting officer shall include the solicitation notice below in all solicitations meeting the monetary threshold unless the contracting officer determines in writing that the proposed contract, amendment or modification, offers no subcontracting possibilities. If the contracting officer is not sure of the presence of subcontracting possibilities, the notice must be included; but the requirement to furnish a plan may be omitted on a showing by the bidder selected for award that subcontracting possibilities do not exist.

The provision is as follows:

*Small Business and Small Disavantaged Business Subcontracting Plan (Advertised)*

1. This provision does not apply to small business concerns.

2. The term "subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

3. The bidder acknowledges that it is aware of the subcontracting plan requirement in this provision; and if selected for award, will submit within the time specified by the contracting officer a subcontracting plan that will afford the maximum practicable opportunity to participate in the performance of the contract to small and small disadvantaged concerns, and will include:

a. Percentage goals (expressed in terms of percentage of total planned subcontracting dollars) for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; (For the purposes of the subcontracting plan, the contractor may include all purchases which contribute to the performance of the contract, including a proportionate share of products, services, etc., whose costs are normally allocated as indirect or overhead costs.)

As part of its establishment of percentage goals the apparent successful bidder shall also include in its subcontracting plan:

(1) A statement of: (a) total dollars planned to be subcontracted; (b) total dollars planned to be subcontracted to small business; and (c) total dollars planned to be subcontracted to small disadvantaged business.

(2) A description of the principal product and service areas to be subcontracted and an identification of those areas where it is planned to use (i) small business subcontractors, and (ii) small disadvantaged business subcontractors.

b. The name of an individual within the employ of the bidder who will administer the bidder's subcontacting program and a description of the duties of such individual;

c. A description of the efforts the bidder will take to assure that small business concerns and small business concerns owned and controlled by socially and economically disdavantaged individuals will have an equitable opportunity to complete for subcontracts;

d. Assurances that the bidder will include the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals in all subcontracts which offer further subcontracting opportunities and to require all subcontractors (except small business concerns) which receive subcontracts in excess of $500,000, or in the case of a contract for the construction of any public facility, $1,000,000, to adopt and comply with a plan similar to the plan agreed to by the bidder;

e. Assurances that the bidder will submit such periodic reports and cooperate in any studies or surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent of compliance by the bidder with the subcontracting plan; and

f. A recitation of the types of records the successful bidder will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in the plan, including the establishment of source lists of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; and efforts to identify and award subcontracts to such small business concerns. The records shall include at least the following (these records may be maintained on a plant-wide or company-wide basis unless otherwise indicated):

(1) Small and disadvantaged business source lists, guides and other data identifying small and small disadvantaged business vendors.

(2) Organizations contacted for small and disadvantaged business sources.

(3) On a contract-by-contract basis, records on all subcontract solicitations over $100,000, indicating on each solicitation (a) whether small business was solicited, and if not why not; (b) whether small disadvantaged business was solicited, and if not why not; and (c) reasons for the failure of solicited small business or small disadvantaged business to receive the subcontract award.

(4) Records to support other outreach efforts:

- Contacts with minority and small business trade associations,
- Contacts with business development organizations,
- Attendance at small and minority business procurement conferences and trade fairs.

(5) Records to support internal activities to guide and encourage buyers:

- Workshops, seminars, training programs,
- Monitoring activities to evaluate compliance.

(6) On a contract-by-contract basis, records to support award data submitted to the Government to include name and address of subcontractor.

4. The bidder understands that:

(a) It agrees to carry out the government's policy to provide the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate

in the performance of the contract, consistent with its efficient performance.

(b) If it does not submit a subcontracting plan within the time limits prescribed by the contracting agency, it will be ineligible to be awarded the contract.

(c) Prior compliance of the bidder with other such subcontracting plans under previous contracts will be considered by the contracting officer in determining the responsibility of the offeror for award of the contract.

(d) It is the bidders responsibility to develop a subcontracting plan with respect to both small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals and that each such aspect of the plan will be judged independently of the other.

5. The failure of any contractor or subcontractor to comply in good faith with (a) the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals or (b) the terms of any subcontracting plan required by this Small Business and Small Disadvantaged Business Subcontracting Plan (Advertised) provision, will be a material breach of the contract or subcontract.

6. Commercial Products. If a commercial product (defined below) is offered the required subcontracting plan may relate to the company's or division's production generally (both for commercial and noncommercial products) rather than solely to the item being procured under the government contract. In such cases, the contractor shall be required to submit one company-wide, annual plan to be reviewed for approval by the first agency with which it enters into a prime contract (which requires a subcontracting plan) during the fiscal year, or by another agency satisfactory to the contracting officer. The approved plan will remain in effect for the company's entire fiscal year for all of the company's or division's commercial products.

The term "commercial products" means products in regular production sold in substantial quantities to the general public and/or industry at established market or catalog prices. A product which, in the opinion of the contracting officer, differs only insignificantly from the contractor's commercial product may be regarded for the purpose of this clause as a commercial product.

(End of Provision)

*Instructions to Contracting Officers*

*(a) Informational Goals.* The contracting officer may, in a letter accompanying the solicitation or otherwise, inform the offeror of the goal the Government contemplates for subcontracting to both small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. Any such letter shall state that the goals are informational only and not legally binding.

*(b) Notification of Unsatisfactory Plans.* If the contracting officer believes that the subcontracting plan submitted pursuant to this section does not reflect the best effort by the bidder to award subcontracts to small and small disadvantaged firms to the fullest extent consistent with the efficient performance of the contract, he shall notify the agency's director of the Office of Small and Disadvantaged Business Utilization who shall in turn notify the Small Business Administration and request a review of the plan pursuant to Section 8(d) (10) and (11) of the Small Business Act. Such request for an SBA review shall not delay award of the contract. Prior compliance of the bidder with other such subcontracting plans under previous contracts will be considered by the contracting officer in determining the responsibility of the bidder for award of the contract.

*(c) Forwarding to SBA of Plans Involving Commercial Products.* Contracting officers receiving company-wide plans under paragraph 6 (commercial products) of both solicitation clauses—*Small Business and Small Disadvantaged Business Subcontracting Plan (Negotiated)* and *Small Business and Small Disadvantaged Business Subcontracting Plan (Advertised)*—shall forward copies of such plans and approvals thereof to the Central Office of the Small Business Administration, 1441 L Street NW., Washington, D.C., Attention: AAPA.

**EFFECTIVE DATE:** This Policy Letter is effective June 1, 1980.

**CONCURRENCE:** This Policy Letter has been concurred in by the Director of OMB.

[FR Doc. 80-13936 Filed 5-8-80; 8:45 am]
BILLING CODE 3110-01-M

## Subcontracting With Women's Business Enterprises Under Federal Contracts

**AGENCY:** Office of Federal Procurement Policy (OFPP), Office of Management and Budget.

**ACTION:** Policy directive.

**SUMMARY:** This policy directive sets forth amendments to be made to the Federal Procurement Regulations (FPR), the Defense Acquisition Regulations (DAR), and the National Aeronautics and Space Administration Procurement Regulations (NASAPR) relating to subcontracting with women's business enterprises under Federal contracts.

On May 18, 1979, the President signed Executive Order 12138 which created a National Women's Business Enterprise Policy, and prescribed arrangements for developing, coordinating and implementing a national program for women's business enterprise. Each department and agency of the Executive Branch was directed, within the constraints of statutory authority and as otherwise permitted by law, to take appropriate action to facilitate, preserve and strengthen Women's Business Enterprises and to ensure full participation by women in the free enterprise system.

To achieve the maximum practicable Federal contracting opportunity for women-owned firms, the Office of Federal Procurement Policy among other things, has directed the uniform revision of government-wide procurement regulations to assure that Federal prime contractors increase their use of women-owned firms as subcontractors.

These revisions include:

(a) Developing clauses for inclusion in prime contract solicitations and in prime contracts that encourage the use of women-owned firms as subcontractors to the maximum degree feasible; and

(b) Studying the feasibility of developing an incentive clause for inclusion in appropriate prime contracts to offer a dollar award to a prime contractor for subcontracting with women-owned firms in excess of an agreed upon goal for such subcontracting.

To implement (b) above, OFPP will in September 1980, evaluate the results of the pilot programs using incentive clauses for small and disadvantaged firms, as authorized in Pub. L. 95-507, and relate the lessons learned to the women business enterprise program.

To implement (a) above, the following Policy Letter sets forth changes to be made in the FPR, DAR and NASAPR. These changes are to be effective June 1, 1980, and are applicable to all solicitations and contracts arising therefrom, issued after June 1, 1980.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Dickerson, Deputy Associate Administrator for Acquisition Law, (202) 395-3455.

Dated: April 29, 1980.

Karen Hastie Williams,

*Administrator.*

**Policy Letter 80–4**

*To the Heads of Executive Departments and Establishments*

**Subject: Women's Business Enterprise Program**

*Background*—Executive Order 12138 noted that Congressional findings and the findings of the Interagency Task Force on Women Business Owners recognize:

1. The significant role which small business and women entrepreneurs can play in promoting full employment and balanced growth in our economy;

2. The many obstacles facing women entrepreneurs; and

3. The need to aid and stimulate women's business enterprise.

In response to these findings, the Executive Order established a National Women's Business Enterprise Policy and prescribed arrangements for developing, coordinating and implementing a national program for women's business enterprise. Each department and agency was directed to take affirmative action in support of women's business enterprise in appropriate programs and activities including, but not limited to, procurement.

The President's Memorandum for the Heads of Departments and Agencies dated May 18, 1979, accompanying E.O. 12138, noted that the Interagency Task Force on Women Business Owners found that efforts to encourage full participation of women in Federal procurement activity have been less than adequate. Subsequently, OFPP undertook to establish agency goals for the award of prime contracts to women-owned firms and to develop Government-wide procurement regulations to encourage Federal prime contractors to increase their use of women-owned firms as subcontractors.

*Action*—There is a need in Government for uniformity and consistency in the application of procurement policy. This directive provides a uniform policy applicable to the Women's Business Enterprise Program. The clauses and regulatory coverage that follow articulate this uniform policy. The Defense Acquisition Regulation (DAR), the Federal Procurement Regulations (FPR), and the National Aeronautics and Space Administration Procurement Regulations (NASA PR) shall be amended to conform to this policy.

Clauses for Women-Owned Business Concerns

1. The following clause shall be included in all contracts expected to exceed $10,000 except (i) contracts which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, Puerto Rico and the Trust Territory of the Pacific Islands, and (ii) contracts for services which are personal in nature.

Utilization of Women-Owned Business Concerns (Over $10,000)

(a) It is the policy of the United States Government that women-owned businesses shall have the maximum practicable opportunity to participate in the performance of contracts awarded by any Federal agency.

(b) The Contractor agrees to use his best efforts to carry out this policy in the award of subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, a "woman-owned business" concern means a business that is at least 51% owned by a woman or women who also control and operate it. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management. "Women" mean all women business owners.

(End of Clause)

2. The following clause shall be included in all contracts, amendments or modifications expected to exceed $500,000 or in the case of contracts for the construction of any public facility, $1,000,000 which require the Utilization Clause in (1) above.

Women-Owned Business Concerns Subcontracting Program (Over $500,000 or $1,000,000 for Construction Of Any Public Facility)

(a) The Contractor agrees to establish and conduct a program which will enable women-owned business concerns to be considered fairly as subcontractors and suppliers under this contract. In this connection, the contractor shall:

(1) Designate a liaison officer who will administer the Contractor's "Women-Owned Business Concerns Program."

(2) Provide adequate and timely consideration of the potentialities of known women-owned business concerns in all "make-or-buy" decisions.

(3) Develop a list of qualified bidders that are women-owned businesses and assure that known women-owned business concerns have an equitable opportunity to compete for subcontracts, particularly by making information on forthcoming opportunities available, by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of women-owned business concerns.

(4) Maintain records showing (i) procedures which have been adopted to comply with the policies set forth in this clause, including the establishment of a source list of women-owned business concerns; (ii) awards to women-owned businesses on the source list by minority and non-minority women-owned business concerns; and (iii) specific efforts to identify and award contracts to women-owned business concerns.

(5) Include the "Utilization of Women-Owned Business Concerns" clause in subcontracts which offer substantial subcontracting opportunities.

(6) Cooperate in any studies and surveys of the Contractor's women-owned business concerns procedures and practices that the Contracting Officer may from time-to-time conduct.

(7) Submit periodic reports of subcontracting to women-owned business concerns with respect to the records referred to in subparagraph (4) above, in such form and manner and at such time (not more often than quarterly) as the Contracting Officer may prescribe.

(b) The Contractor further agrees to insert, in any subcontract hereunder which may exceed $500,000 or $1,000,000 in the case of contracts for the construction of any public facility and which offers substantial subcontracting possibilities, provisions which shall conform substantially to the language of this clause, including this paragraph (b), and to notify the Contracting Officer of the names of such subcontractors.

(c) The contractor further agrees to require written certification by its subcontractors that they are bona fide women-owned and controlled business concerns in accordance with the definition of a women-owned business concern as set forth in the Utilization Clause 1(b) above at the time of submission of bids or proposals.

(End of Clause)

**EFFECTIVE DATE:** This Policy Letter is effective June 1, 1980, and shall be applicable to all solicitations, and contracts arising therefrom, issued after June 1, 1980.

**CONCURRENCE:** This Policy Letter has been concurred in by the Director of OMB.

[FR Doc. 80–13938 Filed 5–8–80; 8:45 am]

BILLING CODE 3110–01–M

## Final Contract Disputes Regulatory Coverage and Contract Disputes Clause

**AGENCY:** Office of Federal Procurement Policy, Office of Management and Budget.

**ACTION:** Policy directive.

**SUMMARY:** This policy directive sets forth amendments to be made to the Federal Procurement Regulations (FPR), the Defense Acquisition Regulations (DAR), and the National Aeronautics and Space Administration Procurement Regulations (NASAPR) relating to contract disputes regulatory coverage and the contract dispute clause.

On November 1, 1978, the President signed into law Pub. L. 95–563, the Contract Disputes Act of 1978. That Act, among other things, required certain changes to clauses and procurement regulations of the procuring agencies by March 1, 1979. To assure uniformity of language in the resulting changes, a suggested text of provisions to implement that Act was published at 44 FR 5219, January 25, 1979 for comment. After consideration of comments received and resulting changes to the suggested text, a set of interim final regulations and a Contract Disputes Clause was published at 44 FR 12519, March 7, 1979. This set of interim final regulations and Disputes clause contained language to be used by the affected agencies when amending their regulations. This language was to become final June 1, 1979, unless changed before that time.

The interim final rules were made final by notice published at 44 FR 34228, June 14, 1979, but the Disputes clause remained as interim. In addition, a second proposed Disputes clause was published there for comment.

Comments have been received and evaluated and this document (1) rescinds the regulations and contract Disputes clause issued March 7 and June 14, 1979, and (2) provides final regulatory coverage and a contract Disputes clause for incorporation into the Defense Acquisition Regulation, the Federal Procurement Regulations, and the National Aeronautics and Space Administration Procurement Regulations.

A major change from the regulations and interim Disputes clause, in use since March 1979, concerns the extent of the contractor's obligation to continue performance of work. Prior to the passage of the Contract Disputes Act, a contractor, pursuant to the Disputes clause then in effect, was in the event of a dispute arising under the contract, obligated to continue performance in accordance with the contracting officer's decision pending resolution of the dispute. On the other hand, if the dispute arose out of the contract, or in breach of the contract, there was no obligation to continue work. The interim Disputes clause expanded the contractor's obligation to continue performance to include disputes arising out of, or in breach of, the contract as well as under the contract. The final Disputes clause published here returns the situation to the pre-Contract Disputes Act obligation. Under the Disputes clause and the accompanying regulations, the contractor is obligated to continue performance only if the dispute arises under the contract. It is recognized, however, that in unusual circumstances the performance of some contracts may be vital to the national security or to the public health and welfare so that performance must be guaranteed even in the event of a dispute arising out of, or in breach of, contract. In those unusual cases, procuring agencies may provide for a change to the Disputes clause to assure a continuation of the work. In such cases agencies should also seek to provide appropriate financing to cover the additional work, provided that the Government's interests are properly secured.

The final Disputes clause and regulations also provide technical changes from the interim clause and regulations with regard to payment of interest, procedures for certification of a claim exceeding $50,000, and other areas. These changes are made to better reflect the intent of the Contract Disputes Act.

**DATES:** This regulatory coverage and contract Disputes clause are to be effective June 1, 1980, and shall apply to all solicitations and resulting contracts issued on or after June 1, 1980.

**FOR FURTHER INFORMATION CONTACT:** Ms. Patricia A. Szervo, Associate Administrator for Acquisition Law, (202) 395–3501.

Dated: April 30, 1980.

Karen Hastie Williams,

*Administrator.*

### OFPP Policy Letter 80–3

*To the Heads of Executive Departments and Establishments*

**Subject: Regulatory Guidance on Pub. L. 95–563, th contract Disputes Act of 1978**

There is a need in Government for uniformity and consistency in the application of procurement policy. This directive provides the uniform policy applicable to the Contract Disputes Act of 1978. The clauses and regulatory coverage that follow articulate this uniform policy. The Defense Acquisition Regulation (ADR), the Federal Procurement Regulations (FPR), and the National Aeronautics and Space Administration Procurement Regulations (NASA PR) shall be amended to conform to this policy. This guidance supersedes in its entirety the guidelines previously published in the **Federal Register**, on March 7, 1979 (44 FR 12519), and June 14, 1979 (44 FR 24228).

I. Regulatory Coverage—Resolution of Claims

1. *Contract Disputes Act of 1978:*

(a) General. The Contract Disputes Act of 1978 (Pub. L. 95–563, 41 U.S.C. 601–613) establishes procedures and requirements for asserting and resolving claims by or against contactors relating to a contract subject to the Act. In addition, the Act provides for the payment of interest on contractor claims, for the certification of contract claims in excess of $50,000, and a civil penalty for contractor claims that are fraudelent or based on a misrepresentation of fact.

(b) Definition of Claim:

(i) As used herein "claim" means a written demand by one of the contracting parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or related to the contract.

(ii) A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim for the purposes of the Act. However, where such submission is subsequently not acted upon in a reasonable time, or disputed either as to liability or amount, it may be converted to a claim under Section 6(a) of the Act as provided in Section 3, below.

(c) Government Policy on Settlement by Mutual Agreement. It is the Government's policy, consistent with the Act, to try to resolve all claims by mutual agreement at the contracting officer's level, without litigation. Implementation of this policy depends on an open mind with regard to the matter in dispute and the adequacy of the information provided in support of the claim by both the contractor and the Government. In appropriate circumstances, before issuance of a contracting officer's decision on a claim, informal discussions between the parties, to the extent feasible, by individuals who have not participated substantially in the matter in dispute, can aid in the resolution of differences by mutual agreement and should be considered.

(d) Contracting Officer Authority. Except as provided in this subsection (d), the contracting Officer is authorized (within any specific limitation in his warrant) to decide or settle all claims relating to a contract subject to the Act. The authority of this subsection (d) does not extend to (1) a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another Federal agency is specifically authorized to administer, settle, or determine, or (2) any claim involving fraud. See Section 2, below.

(e) Contracts Excepted from the Act. A contract with a foreign government or agency thereof, or with an international organization or subsidiary body thereof may be exempted for the Act and DAR Section 1–314 and FPR Section 1–1.318, if the head of the Agency determines that application of the Contract Disputes Act to the contract would not be in the public interest.

(f) Pub. L. 85–804 Requests. Requests for relief under Pub. L. 85–804 are not considered to be claims within the Contract disputes Act of 1978 or the Disputes clause, and shall continue to be processed under DAR Section XVII or FPR Section 1–17.

2. *Referreal of Suspected Fraudulent Claims*—If a contractor is unable to support any part of its claim and there is evidence that such inability is attributable to misrepresentation of fact or fraud on the part of the contractor, the contracting officer shall refer the matter to the designated Agency official responsible for investigating fraud.

3. *Initiation of a Claim*—Except as provided in the Act, (a) contractor claims shall be made in writing and submitted to the contracting officer for a decision, and (b) claims by the Government against a contractor shall be the subject of a contracting officer decision.

4. *Contracting Officer's Decision:*

(a) When a claim by or against a contractor cannot be satisfied or settled by agreement and a decision on the claim is necessary, the Contracting Officer shall:

(i) Review the facts pertinent to the claim;

(ii) Secure assistance from legal and other advisors; and

(iii) Coordinate with the contract administration office or Contracting Office, when appropriate.

(b) The Contracting Officer shall furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, and shall include in the decision:

(i) A paragraph substantially as follows:

This is the final decision of the Contracting Officer. This decision may be appealed to the Board of Contract Appeals.

If you decide to make such an appeal, you must mail or otherwise furnish written notice thereof to the Board of Contract Appeals within ninety days from the date you receive this decision. A copy thereof shall be furnished to the Contracting Officer from whose decision the appeal is taken. The notice shall indicate that an appeal is intended, shall reference this decision, and identify the contract by number. In lieu of appealing to the cognizant Board of Contract Appeals you may bring an action directly in the U.S. Court of Claims,[4] within twelve months of the date you receive this decision.

(ii) A description of the claim or dispute;

(iii) A reference to pertinent contract provisions;

(iv) A statement of the factual areas of agreement or disagreement;

(v) A statement of the Contracting Officer's decision, with supporting rationale;

(vi) Notification that the small claims procedure of the cognizant Board shall be applicable at the sole election of the contractor in the event that the amount in dispute as a result of the final decision is $10,000 or less; and

(vii) Notification that the accelerated procedure of the cognizant Board shall be applicable, at the sole election of the contractor in the event the amount in dispute as a result of the final decision is $50,000 or less.

(c) The Contracting Officer shall issue the decision within the following statutory time limitation:

(i) For claims not exceeding $50,000: Sixty days after receipt of the claim.

(ii) For claims exceeding $50,000: Sixty days after receipt of claim; provided, however, if a decision is not issued within sixty days the Contracting Officer shall notify the contractor of the time within which he will make the decision. The reasonableness of this time period will depend on the size and complexity of the claims and the adequacy of the contractor's supporting data and any other relevant factors.

(d) The amount determined payable pursuant to the decision, less any portion already paid, should be paid, if otherwise proper, without awaiting contractor action concerning appeal. Such payment shall be without prejudice to the rights of either party.

5. *Payment of Interest on Contractor's Claims*—The Government shall pay interest on a contractor claim on the amount found due and unpaid, from the date the Contracting Officer receives the claim until the date payment is made, at the rates fixed by the Secretary of the Treasury pursuant to the Renegotiation Act, Pub. L. 92–41.

6. *Disputes Clause:*

(a) The Act applies to all disputes with respect to contracting officer decisions on matters arising out of or relating to a contract. Agency Boards of Contract Appeals (BCA) created under the Act have the same jurisdiction as the Court of Claims with respect to a claim that is subject to the Act. Thus, the statutory agency BCAs continue to have all of the authority they possessed before the Act with respect to disputes arising under a contract, as well as authority to decide disputes relating to a contract. The Disputes clause set forth in Part II recognizes the all disputes authority established by the Act, and states certain requirements and limitations of the Act for the guidance of contractors and contracting agencies. It is not intended to affect the rights and obligations of the parties as provided by the Act, nor to constrain the authority of the statutory agency BCAs in the handling and deciding of contractor appeals pursuant to the Act.

(b) Obligation to Continue Performance—Section 6(b) of the Act authorizes contracting agencies to include a provision requiring a contractor to continue performance of the contract in accordance with the contracting officer's decision pending final decision on a claim. In general, prior to passage of the Act, the obligation to continue performance applied only to claims arising under a contract. Subparagraph (i) of the new Disputes clause is intended to require continued performance to the same extent as existed under the standard Disputes clause in effect prior to the Act.

7. *Certification of Contractor Claims Over $50,000:*

(a) Section 6(c)(1) of the Act requires that a contractor claim over $50,000 shall be certified that it is made in good faith; that the supporting data are accurate and complete to the best of the contractor's knowledge and belief; and that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable.

(b) The certification shall be executed by the contractor if an individual. When the contractor is not an individual, the certification shall be executed by a

[4] Except as provided in Sections 4 (maritime contracts) and 10(a)(2) (Tennessee Valley Authority) of the Act.

senior company official in charge at the contractor's plant or location involved, or by an officer or general partner of the contractor having overall responsibility for the conduct of the contractor's affairs.

II. Contract Disputes Clause

The following clause shall be included in all contracts subject to the Contract Disputes Act unless (1) exempted by the head of the Agency under 41 U.S.C. 603(c), or (2) modified in accordance with DAR 1–314 or FPR 1–1.318:

*Disputes Clause:*

(a) This contract is subject to the Contract Disputes Act of 1978 (Pub. L. 95–563).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved in accordance with this clause.

(c) (i) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this contract.

(ii) A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim for the purposes of the Act. However, where such submission is subsequently not acted upon in a reasonable time, or disputed either as to liability or amount, it may be converted to a claim pursuant to the Act.

(iii) A claim by the contractor shall be made in writing and submitted to the contracting officer for decision. A claim by the Government against the contractor shall be subject to a decision by the Contracting Officer.

(d) For contractor claims of more than $50,000, the contractor shall submit with the claim a certification that the claim is made in good faith; the supporting data are accurate and complete to the best of the contractor's knowledge and belief; and the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable. The certification shall be executed by the contractor if an individual. When the contractor is not an individual, the certification shall be executed by a senior company official in charge at the contractor's plant or location involved, or by an officer or general partner of the contractor having overall responsibility for the conduct of the contractor's affairs.

(e) For contractor claims of $50,000 or less, the Contracting Officer must render a decision within 60 days. For contractor claims in excess of $50,000, the Contracting Officer must decide the claim within 60 days or notify the contractor of the date when the decision will be made.

(f) The Contracting Officer's decision shall be final unless the contractor appeals or files a suit as provided in the Act.

(g) The authority of the Contracting Officer under the Act does not extend to claims or disputes which by statute or regulation other agencies are expressly authorized to decide.

(h) Interest on the amount found due on a contractor claim shall be paid from the date the claim is received by the Contracting Officer until the date of payment.

(i) Except as the parties may otherwise agree, pending final resolution of a claim by the contractor arising under the contract, the contractor shall proceed diligently with the performance of the contract in accordance with the contracting officer's decision.

**EFFECTIVE DATE:** This Policy Letter is effective June 1, 1980, and shall apply to all solicitations and resulting contracts issued on or after June 1, 1980.

**CONCURRENCE:** This Policy Letter has been concurred in by the Director of OMB.

[FR Doc. 80–13937 Filed 5–8–80; 8:45 am]
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Federal Register

Friday
May 9, 1980

Part IX

# Department of the Interior

## Office of the Secretary

## Involvement of Minority and Female-Owned Business Enterprises in Outer Continental Shelf Leasing Activities; Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 35

## Involvement of Minority and Female-Owned Business Enterprises in Outer Continental Shelf Leasing Activities

**AGENCY:** Department of the Interior.

**ACTION:** Proposed rulemaking.

**SUMMARY:** This proposed rule will establish a Departmental program for the active participation of business enterprises owned and controlled by minorities and women in all activities related to leasing of the Outer Continental Shelf.

**DATES:** Written comments must be received on or before July 8, 1980 and should reference the specific sections of the rule on which the comments are made.

**ADDRESSES:** All comments should be sent to, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, Room 2527, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20240. Comments will also be available for public review at this address during regular working hours (8:30 A.M. to 5:00 P.M.) Monday thru Friday.

**FOR FURTHER INFORMATION CONTACT:** Kenneth T. Kelly, Assistant Director, Division of Small Business Utilization, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, Department of the Interior, 202/343-4907.

**SUPPLEMENTARY INFORMATION:** In the process of considering amendments to the Outer Continental Shelf Lands Act, Congress expressed concern that the several Federal programs designed primarily to assure equal opportunity in employment and Federal contracting might not be automatically applicable to activities on the Outer Continental Shelf. In order to ensure that such provisions are applicable, Congress adopted Section 604 of the Outer Continental Shelf Lands Act Amendments (43 U.S.C. 1863). Section 604 requires each agency or department having responsibility for the promulgation or enforcement of regulations relating to the Outer Continental Shelf to take affirmative action, as deemed necessary, "to assure that no person shall, on the grunds of race, creed, color, national origin, or sex be excluded from receiving or participating in any activity, sale, or employment, conducted pursuant to the provisions of this Act or the Outer Continental Shelf Lands Act." The major thrust of these requirements is to enhance opportunities for the participation of business enterprises owned and controlled by minorities and women in the conduct of procurement activities involved with mineral leases and related activities on the Outer Continental Shelf.

The Department believes the Outer Continental Shelf Program is a potential area for increasing the involvement and participation of business enterprises owned and controlled by minorities and women in procurement activities associated with the program.

In light of the growing demand for energy in the United States, the search for oil and gas on the Outer Continental Shelf has critical and broad economic ramifications. The search for such resources involves a variety of offshore activities such as geophysical surveying, exploratory drilling, and development drilling and production. These activities also require a considerable amount of onshore support facilities such as temporary and permanent service bases, repair and maintenance yards, steel and/or concrete platform fabrication yards, pipelines and landfalls, and other general shore activities. It is in this support services area of the OCS Program that the Department believes a real potential exists for the involvement of minority and female-owned business enterprises (MBE's and FBE's). A number of minority and female-owned business concerns have already expressed an interest in the delivery of certain support service such as catering, barging, construction, and other services of a similar nature.

Therefore, the Secretary of the Interior has directed that regulations be promulgated to ensure opportunity for minority and female-owned business participation in all facets of the Department's programs which involve the leasing of OCS Lands.

The Department recognizes that, by necessity, policies of this nature do impose some administrative burdens on the regulated parties. The necessity for monitoring the performance of OCS lease holders and/or holders of other Federal authorizations, and for ensuring that only bonafide minority and female-owned business enterprises benefit from the program requires the creation of some recordkeeping and reporting requirements. The Department also recognizes that the initial implementation of the proposed rule may require a considerable effort on the part of some lessees and/or holders of other Federal authorizations. Therefore, it is the Department's intent to issue an effective implementation date of not less that 30 days after publication of its final rule. The Department invites public comments with regard to any paperwork burden, including time and administrative costs, that might result from the implementation of this proposed rule. The Department is particularly interested in receiving comments on the time-frame allotted for submission of the affirmative action plan as required in § 35.5(c).

In complying with §§ 35.5(g)(2) and 35.5(g)(11) of the proposed rule, reviewers should understand that the Department will expect lessees and other holders of Federal authorizations to utilize every known and available source for identifying business enterprises owned and controlled by minorities and women. This includes the Small Business Administration's Procurement Automated Source System (PASS), Minority and Women-owned business trade associations, State and local MBE and FBE listings, etc. The Department further recognizes that appropriate goals for MBE and FBE participation may vary in accordance with the availability of qualified MBE's and FBE's as well as the specific types of goods and services being procured.

The Department has been careful to limit the penalty for non compliance with these regulations to the possible imposition of civil penalties. However, it should be noted that the criminal penalties provision of section 24(c) of the Act is applicable to the filing of any false report.

The Department is particularly interested in receiving comments on some of the basic approach adopted in this proposal. Possible questions include (1) Are there alternative but equally effective ways of obtaining significantly increased MBE and FBE participation in OCS activities short of requiring the submission of an affirmative action plan (AAP)? (2) How should the Department treat the renewal of AAP's? Should each AAP have a limited life time? If so, how long? (3) Should the 12 actions delineated in § 35.5(g) of this title constitute the minimally acceptable AAP?

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

It is hereby determined that this rulemaking 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 PRIMARY AUTHOR OF THIS DOCUMENT IS:** Kenneth T. Kelly, Assistant Director, Division of Small Business Utilization, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, Department of the Interior, 202/343-4907.

Dated: May 6, 1980.

Larry E. Meierotto,

*Secretary of the Interior.*

Authority: Under the authority of Section 604 of the Outer Continental Shelf Lands Act Amendments of 1978, 43 U.S.C. 1863, it is proposed to add a new Part 35 to Subtitle, A, Title 43 of the Code of Federal Regulations to read as follows:

## PART 35—INVOLVEMENT OF MINORITY AND FEMALE-OWNED BUSINESS ENTERPRISES IN OUTER CONTINENTAL SHELF LEASING ACTIVITIES

Sec.

35.1 Purpose.
35.2 Definitions.
35.3 Applicability.
35.4 Policy.
35.5 Affirmative action plans.
35.6 Certificate of exemption.
35.7 Transfers of interest.
35.8 Compliance reviews.
35.9 Enforcement provisions.

Authority: Sec. 604. Pub. L. 95-372, 43 U.S.C. 1863 (1979 Supp.).

### § 35.1 Purpose.

The purpose of this part is to implement the provisions of Section 604 of the Outer Continental Shelf Lands Act Amendments of 1978. Section 604 requires that each agency or department having responsibility for the promulgation or enforcement of regulations under the Outer Continental Shelf Lands Act, as amended, take such affirmative action as deemed necessary to assure that "no person shall on the grounds of race, creed, color, national origin, or sex, be excluded from receiving or participating in any activity, sale, or employment, conducted pursuant to the provisions of this Act."

### § 35.2 Definitions. As used in this part.

(a) "OCS" means the Outer Continental Shelf, as that term is defined in 43 U.S.C. 1331 (a).

(b) "Act" means the Outer Continental Shelf Lands Act, as amended 43 U.S.C. 1331 et seq.

(c) "Lease" means any form of authorization which is issued under section 8 or maintained under section 6 of the Act and which authorizes exploration for, and development and production of minerals, or the land covered by such authorization, whichever is required by the context.

(d) "Lessee" or "Holder of other Federal Authorizations" means the party authorized by a lease, grant of right-of-way, or an approved assignment thereof, to explore, develop and produce the leased deposits in accordance with the regulations in 30 CFR Part 250, and 43 CFR Part 3300, including all parties holding such authority by or through the lessee.

(e) "Secretary" means the Secretary of the Interior or a subordinate authorized to act on the Secretary's behalf.

(f) "Authorized Officer" means the Director, Geological Survey or an appropriate designee.

(g) "OIG" means the Office of Inspector General within the Department of the Interior.

(h) "Discrimination" means any action or lack of action which has the effect of excluding a person or business enterprise from participating in contractual arrangements for the purchase of goods and services on the basis of race, creed, color, national origin, or sex.

(i) "Contract" means any business agreement or arrangement (in which the parties do not stand in the relationship of employer and employee) between a lessee or holder of other Federal authorization and any person which creates an obligation to furnish supplies or services, or to provide real or personal property for use. The term "contract" also includes any business agreement or arrangement between two persons which is related in any way to the discharge of activities conducted under any lease or Federal authorization issued pursuant to the Act.

(j) "Person" means a person or company, including but not limited to, a corporation, partnership, association, joint-stock venture, a trust or a mutual fund, and any receiver, trustee in bankruptcy, or official acting in a similar capacity for such company.

(k) "Subcontract" means any business agreement or arrangement between a contractor, lessee or holder of other Federal authorization (in which the parties do not stand in the relationship of employer and employee) in any way related to the performance of any one or more contracts as defined above.

(l) "Minority" includes:

(1) Black Americans (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(2) Hispanic Americans (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin regardless of race);

(3) Asian Pacific Americans and Pacific Islanders (all persons having origins in any of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(m) "Minority business enterprise" or "MBE" means a sole proprietorship, partnership, unincorporated association, joint venture or corporation that is at least 51 percent owned, controlled and operated by minority individuals. "Control" as used in this context means exercising the power to make policy decisions. "Operate" as used in this context means to be actively involved in the day-to-day management.

(n) "Female business enterprise" or "FBE" means a sole proprietorship, partnership, unincorporated association, joint venture or corporation that is at least 51 percent owned, controlled and operated by women, "Control" as used in this context means exercising the power to make policy decisions. "Operate" as used in this context means to be actively involved in the day-to-day management.

(o) "Affirmative action plan" or "AAP" means a formal written statement describing specific result-oriented procedures that will be taken to ensure the increased involvement of MBE's and FBE's in procurement activities associated with the conduct of activities on the Outer Continental Shelf.

### § 35.3 Applicability.

This subpart applies to oil and gas lease activities connected with the Outer Continental Shelf including the procurement of goods and services by contractors, lessees, and other holders of Federal authorizations related to the Outer Continental Shelf. This part applies only to those authorizations issued by the Department of the Interior after the effective date of these regulations. It applies to lessees or other holders of Federal authorizations, their agents, contractors, subcontractors, or other entities and individuals providing goods and/or services or involved in any way with the exploration, development, or production of oil and gas from a lease issued for an area of the OCS. Those holding ownership interest only may be exempted in accordance with the provisions under § 35.6.

### § 35.4 Policy.

It is the policy of the Department of the Interior to ensure implementation of an aggressive program through which lessees and other holders of Federal authorizations can actively seek out and

utilize business enterprises owned and controlled by minorities and women as contracting and subcontracting arrangements are established for oil and gas activities on the OCS. The Department does not view the implementation of such a program as a universal remedy but rather as a useful framework for promoting an appropriate business relationship between FBE/MBE's and the lessee/other holders of Federal authorizations. While it shall be the Department's policy to require completeness in the filing of AAP's and to conduct a credible and appropriate review of APP's, the Department does not intend to substitute its judgment of business relations for that of companies and contractors.

**§ 35.5 Affirmative Action Plans.**

(a) A written affirmative action plan (AAP) must be submitted by the lessee or holder of other Federal authorization, for each offshore area in which activities will be conducted. The AAP shall serve as a blueprint for the increased involvement of business enterprises owned and controlled by minorities and women as contractors, subcontractors and/or suppliers in all activities related to the OCS. For the purpose of this section there are four offshore areas: (1) The Gulf of Mexico, (2) the area offshore California, Oregon, Washington and Hawaii, (3) the area offshore the coast of Alaska, and (4) the area offshore the Atlantic coast.

(b) The AAP shall be broad enough in scope to cover all applicable activities of the lessee or holder of other Federal authorization that are expected to be undertaken during the full term of the lease or Federal authorization. An AAP may encompass several or all authorizations in an offshore area.

(c) The AAP shall be submitted to the Director, Geological Survey, or an appropriate designee within 60 days of the effective date of the first of any of the following actions:

(1) The issuance of a lease;

(2) The approval of the assignment of a lease;

(3) The approval of a grant of right-of-way;

(4) The approval of the assignment of a right-of-way; or

(5) The approval of the designation of an operator who will conduct activities on the OCS.

(d) The authorized officer shall review all timely submitted AAP's for acceptance or rejection within 60 calendar days from the date of its receipt. The authorized officer's decision to accept or reject an AAP must be based on known circumstances and market conditions, e.g., documented evidence to support cases where it is clearly known and established that a sufficient or adequate number of minority and/or female-owned enterprises are available to perform services or deliver goods for the conduct of activities on the OCS. The authorized officer shall establish a specific location in each offshore area where AAP's will be kept on file and made available for public inspection.

(e) In the event the authorized officer rejects the AAP, the lessee or holder of a Federal authorization shall be so informed, in writing, with a detailed listing of all deficiencies noted in the AAP. The authorized officer shall grant the lessee or holder of a Federal authorization a period of not more than 30 calendar days to correct the noted deficiencies. If the lessee or holder of a Federal authorization fails to respond or fails to correct the noted deficiencies within the time specified, the Secretary may undertake appropriate civil penalty procedures as provided in section 24(b) of the Act.

(f) In complying with the provisions of this section, the lessee or holder of a Federal authorization may refer to or incorporate a previously submitted and approved AAP. However, the authorized officer reserves the right to require additional supplemental data on a previously submitted AAP to be submitted within 30 days, if changed circumstances, market conditions, geographical locations, etc. should warrant it.

(g) In anticipation that the lease agreement or Federal authorization will result in a variety of activities associated with exploratory drilling, geophysical surveying, development drilling, production, and other onshore and offshore activities, the lessee or holder of a Federal authorization shall include in the AAP, a description of the specific actions to be taken in the establishment of a program to increase the business involvement of MBE's and FBE's in such activities. The AAP shall describe in detail a plan, which as a minimum shall contain the following actions:

(1) The appointment of a liaison officer who will administer the lessee's affirmative action program and a brief description of the liaison officer's duties, responsibilities, and authority. The liaison officer shall be the principal contact point for MBE/FBE's to obtain information and present proposals for their involvement in OCS activities.

(2) The development, maintenace, and utilization of an up-to-date separate listing of MBE and FBE sources including;

(i) A description of each business;

(ii) Type of organization;

(iii) The product or service offered;

(iv) Information on ownership and control; and

(v) All additional relevant data and affidavits which establish that the enterprise is owned, controlled, and managed by minorities and/or women.

These records are to be retained for a period of at least three years after expiration of the lease or other Federal authorization.

(3) A description of the steps that will be taken to ensure timely and full consideration of MBE's and FBE's in all procurement decisions, and a detailed description of how such procedures will be implemented.

The description shall include clearly defined procedures relevant to (i) the arrangement of solicitations, (ii) time for preparation of bids, (iii) quantity requirements, (iv) determination of specifications, (v) determination of delivery schedules, and (vi) the breaking out of large contract requirements into smaller contract requirements so as to maximize participation of MBE's and FBE's.

(4) A description of procurement arrangements that will be adopted so as to increase the participation of MBE's and FBE's in OCS activities including an analysis of the circumstances and extent to which the following types of procurement practices will be utilized:

(i) Noncompetitive procurements;

(ii) Procurements based on limited MBE and FBE competition;

(iii) Competitive procurements; and

(iv) Procurements based on joint venture arrangements with MBE's and FBE's.

(5) Specific procedures for the compilation and dissemination of information on procurement opportunities and OCS business practices to MBE and FBE trade organizations and associations, in sufficient detail and with sufficient advance notice to permit maximum opportunities for MBE and FBE participation.

(6) A description of specific efforts that will be made to cooperate with MBE and FBE technical and other assistance programs of Federal and State agencies, including the Small Business Administration, the Minority Business Development Agency, and the Economic Development Administration.

(7) A commitment to cooperate with the Secretary of the Interior in any studies and/or surveys of the lessee's MBE and FBE program that the Secretary or the Secretary's designee may wish to conduct.

(8) A description of specific efforts that will be made to identify and eliminate non-essential technical requirements and procedures, including the elimination of non-essential bonding and insurance requirements, provided such elimination is legally possible and does not pose undue threats to human health, safety or the environment.

(9) Specific procedures to be adopted for the purpose of certifying and verifying ownership and control of companies identified as MBE's and FBE's. The procedures shall include the requirements that firms submit affidavits as to their status as MBE's and FBE's as defined in § 35.2(m) and (n) of this title.

(10) The identification of a plan for holding regularly scheduled meetings with executives, management, supervisors, employees, and all procurement office personnel to explain MBE and FBE policies and procedures, stressing individual responsibilities for their effective implementation.

(11) A separately established percentage goal for both MBE and FBE participation in all identified, planned or anticipated prime contract requirements with estimated values of $100,000 or more. The MBE and FBE percentage goals must be realistically based and factually supported by known circumstances and market conditions.

(12) The description of a planned MBE and FBE subcontracting program for all prime contract awards valued at $500,000 or more. The subcontracting program must include a description of the method by which potential prime contractors will be informed that the extent to which MBE and FBE subcontractors are utilized will be a key factor in the selection of prime contractors to meet the lessee'e requirements. It must also include details on how MBE and FBE subcontractors will be verified and reported.

**§ 35.6 Certificate of exemption.**

In lieu of submitting the AAP the lessee or holder of a Federal authorization may submit a certificate of exemption in those instances where that entity has only an ownership interest in the lease or Federal authorization and do not, in any way, intend to engage in any post-lease activities related to the OCS.

**§ 35.7 Transfers of interest.**

Within 60 calendar days of the transfer of any record title interest in a lease, permit, right-of-way, or other Federal authorization, the assignee or transferee shall file an AAP in compliance with § 35.5 unless exempted under the provisions cited in § 35.6.

**§ 35.8 Compliance reviews.**

(a) An annual report by the lessee or holder of a Federal authorization will be required in order to demonstrate compliance with the AAP The report will required within 90 days after the end of each calendar year and shall be submitted to the authorized officer in accordance with any format and in such level of detail as he/she may deem appropriate. The annual report shall also contain a justification for failure to meet any of the established percentage goals for MBE and FBE participation as required in § 35.5(g)(11).

(b) The Office of Inspector General is responsible for verifying the accuracy of the annual report submitted in accordance with § 35.8(a). The lessee or holder of a Federal authorization shall make all pertinent information available to the OIG in connection with such verification.

**§ 35.9 Enforcement provisions.**

In the event the lessee or holder of a Federal authorization fails to comply with any of the provisions and requirements of this rule, the Secretary may undertake appropriate civil penalty procedures as provided in section 24(b) of the Act.

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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/SECRETARY | USDA/ASCS | | DOT/SECRETARY | USDA/ASCS |
| DOT/COAST GUARD | USDA/APHIS | | DOT/COAST GUARD | USDA/APHIS |
| DOT/FAA | USDA/FNS | | DOT/FAA | USDA/FNS |
| DOT/FHWA | USDA/FSQS | | DOT/FHWA | USDA/FSQS |
| DOT/FRA | USDA/REA | | DOT/FRA | USDA/REA |
| DOT/NHTSA | MSPB/OPM | | DOT/NHTSA | MSPB/OPM |
| DOT/RSPA | LABOR | | DOT/RSPA | LABOR |
| DOT/SLSDC | HEW/FDA | | DOT/SLSDC | HEW/FDA |
| DOT/UMTA | | | DOT/UMTA | |
| CSA | | | CSA | |

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

## REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

### Rules Going Into Effect Today

FEDERAL DEPOSIT INSURANCE CORPORATION

24384 4–9–80 / Management official interlocks; final amendments to existing regulations

FEDERAL HOME LOAN BANK BOARD

24384 4–9–80 / Management official interlocks; final amendments to existing regulations

FEDERAL RESERVE SYSTEM

24384 4–9–80 / Management official interlocks; final amendments to existing regulations

24447 4–10–80 / Reserve bank authority to extend grace period under Regulation L

INTERIOR DEPARTMENT

Fish and Wildlife Service—

24088 4–8–80 / Determination that Kern primrose sphinx moth (euproserpinus enter pe) is a threatened species

NATIONAL CREDIT UNION ADMINISTRATION

24384 4–9–80 / Management official interlocks; final amendments to existing regulations

TREASURY DEPARTMENT

24384 4–9–80 / Management official interlocks; final amendments to existing regulations

### Rules Going Into Effect May 10, 1980

FEDERAL HOME LOAN BANK BOARD

24446 4–10–80 / Electronic fund transfer amendments

FEDERAL RESERVE SYSTEM

8248 2–6–80 / Electronic fund transfer amendments

25379 4–15–80 / Electronic fund transfer (Regulations E); documentation of transfers; periodic statement disclosures; cash-dispensing terminal receipt requirements

### List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing May 6, 1980.

## THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 2½ hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between Federal Register and the Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

### WASHINGTON, D.C.

**WHEN:** May 30; June 13 and 27; July 11 and 25; at 9 a.m. (identical sessions).

**WHERE:** Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.

**RESERVATIONS:** Call Mike Smith, Workshop Coordinator, 202–523–5235. Gwendolyn Henderson, Assistant Coordinator, 202–523–5234.

### SALT LAKE CITY, UTAH

**WHEN:** May 19 and 20; at 9 a.m. (identical sessions.)

**WHERE:** Room 3421, Federal Bldg., 125 S. State St., Salt Lake City, Utah.

**RESERVATIONS:** Call Helen Ferderber, Salt Lake City, Federal Information Center, 801–524–5353.

### SEATTLE, WASH.

**WHEN:** May 23; 9 a.m.

**WHERE:** North Auditorium, Federal Bldg., 915 2nd Avenue, Seattle, Wash.

**RESERVATIONS:** Call the Seattle Federal Information Center, 206–442–0570.

### CHICAGO, ILL.

**WHEN:** May 28 and 29; at 9 a.m. (identical sessions.)

**WHERE:** Room 204A, Dirksen Federal Bldg., Chicago, Ill.

**RESERVATIONS:** Call Ardean Merrifield, 312–353–0339.

### ST. LOUIS, MO.

**WHEN:** June 24 and 25; at 9:00 a.m. (identical sessions.)

**WHERE:** Room 3720, Federal Office Bldg. 1520 Market Street, St. Louis, Mo.

**RESERVATIONS:** Call Evelyn Wiebusch, Federal Information Center, 314–425–4106.

### PITTSBURGH, PA.

**WHEN:** June 4 at 1:30 p.m. and June 5 at 9 a.m. (identical sessions.)

**WHERE:** Rooms 2212 and 2214 (both days), Federal Bldg., 1000 Liberty Ave., Pittsburgh, Pa.

**RESERVATIONS:** Call Mary Silipo, Pittsburgh Federal Information Center, 412–644–3456.