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Wednesday  
April 12, 1989

# Journal of Neuroscience



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Title 3—

Proclamation 5952 of April 10, 1989

The President

National Volunteer Week, 1989

By the President of the United States of America

## A Proclamation

During National Volunteer Week, we recognize all those Americans who generously donate their time and energy to the service of others. These selfless individuals have a profound influence upon the life of their communities and the character of our Nation.

The abundance of voluntarism and charitable giving across the United States today is not surprising—throughout our Nation's history, Americans have readily responded to the needs of others. The early American settlers relied on each other's help to break ground and build homes in the New World. Volunteers eventually won our country's Independence. The men who later wrote its Constitution set aside their farms and personal interests for a long hot summer in order to shape a government for the new Nation. Their work and the risks they took were not for personal profit, but were for the benefit of all Americans. Men of faith and vision, the Nation's Founding Fathers recognized their responsibilities toward others and toward posterity. Many delegates to the Constitutional Convention solemnly noted that their efforts would determine the fate of future generations.

The system of government the Founding Fathers framed so carefully has enabled voluntarism to thrive in the United States. For example, freedom of speech allows us to express openly our political and social concerns; freedom of assembly allows us to join together in efforts to improve our communities. In short, our Constitution ensures that the light of individual goodness is not extinguished by the heavy hand of government, but is instead kindled by the bright flame of liberty.

Our forefathers' sacrifices have helped the United States to become a great and prosperous nation. For the sake of generations to come, our own generation must likewise accept the obligation to serve others. From now on in America, any definition of a successful life must include service to one's neighbor. It is only by continuing this proud tradition of service that we ensure our Nation's success.

As we look around us today, we see signs of truly successful lives. We see neighbor helping neighbor, Americans serving Americans. Today, nearly half of all adult Americans are active as volunteers. We know them well: the grandmother at church or temple who cares for infants so their parents can attend services, the cook at the local soup kitchen, the tutor who helps the illiterate learn to read, the teen who visits nursing homes, the neighbor who campaigns door-to-door for his favorite candidate, and the family that opens its home to unwed mothers or foster children.

I salute these individuals and the numerous organizations across the country that help to coordinate their activities. My Administration is committed to promoting their efforts and encouraging others to join them—that is why I have established an Office of National Service at the White House, and that is why I personally urge every American to follow their fine example.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of April 9 through April 15, 1989, as National Volunteer Week. I ask all Americans to join in saluting and thanking our Nation's volunteers, as well as the organizations that support their efforts. I also encourage every American to take part in appropriate events and activities in observance of National Volunteer Week and in celebration of all that volunteers do for our country throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of April, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.

A handwritten signature in cursive script, reading "George Bush". The signature is written in dark ink and is positioned to the right of the main text of the proclamation.

[FR Doc. 89-8898  
Filed 4-11-89; 9:20 am]  
Billing code 3195-01-M

*Editorial note:* For the President's remarks of Apr. 10 on signing Proclamation 5952, see the *Weekly Compilation of Presidential Documents* (vol. 25, no. 15).

# Rules and Regulations

Federal Register

Vol. 54, No. 69

Wednesday, April 12, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 354

[Docket No. 89-032]

#### Commuted Traveltime Periods

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by adding or removing commuted traveltime allowances for various locations in Connecticut, Massachusetts, Michigan, New Jersey, and Rhode Island. Commuted traveltime allowances are the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by PPQ employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of the commuted traveltime between these locations.

**EFFECTIVE DATE:** April 12, 1989.

**FOR FURTHER INFORMATION CONTACT:** Paul R. Eggert, Director, Resource Management Support Staff, PPQ, APHIS, USDA, Room 623, Federal Building, Hyattsville, MD 20782, (301) 436-7250.

#### SUPPLEMENTARY INFORMATION:

#### Background

In regulations in 7 CFR Part 354 require inspection, laboratory testing, certification, or quarantine of certain

plants, plant products, animals and animal byproducts, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of PPQ on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR Part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as is practicable, the time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 354.2 by adding or removing commuted traveltime allowances for various locations in Connecticut, Massachusetts, Michigan, New Jersey and Rhode Island. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between these locations.

#### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conforming with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total

number of requests for these services in the United States.

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

#### Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the Federal Register.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

#### List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR Part 354 is amended as follows:

#### PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by removing or adding, in alphabetical order, the information as shown below:

**§ 354.2 Administrative instructions prescribing commuted traveltime.**

\* \* \* \* \*

**COMMUTED TRAVELTIME ALLOWANCES**  
[In hours]

Location covered	Served from—	Metropolitan area		
		Within	Out-side	
<i>Remove:</i>				
Connecticut:				
New London.....	Warwick, RI.....			4
New Jersey:				
Atlantic City.....	Freehold.....			3
Leonardo.....	Freehold.....			2
McGuire, AFB..	Freehold.....			2
<i>Add:</i>				
Connecticut:				
Groton (including New London)..	Warwick, RI.....			4
New Haven.....	Wallingford, CT.....			1
Massachusetts:				
Westover AFB.	Windsor Locks, CT.....			2
Undesignated ports.	Windsor Locks, CT.....			3
Michigan:				
Mt. Clemens.....	Romulus.....			4
Selfridge AFB...	Romulus.....			4
Pontiac.....	Romulus.....			4
New Jersey:				
Morristown International Airport.	Elizabeth.....			3
Rhode Island:				
Warwick.....	Groton, CT.....			4

Done in Washington, DC, this 7th day of April 1989.

James W. Glosser,  
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-8637 Filed 4-11-89; 8:45 am]

BILLING CODE 3410-34-M

**DEPARTMENT OF AGRICULTURE**

**Rural Electrification Administration**

**7 CFR Part 1750**

**Acquisitions, Mergers, and Consolidations; Telephone Program**

**AGENCY:** Rural Electrification Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Electrification Administration (REA) hereby amends 7 CFR Chapter XVII by adding Part 1750, Acquisitions, Mergers, and Consolidations. This new part consolidates, revises, and clarifies the policies, requirements, and procedures presently contained in various REA publications pertaining to acquisitions, mergers, and consolidations, including the following REA Bulletins:

- 320-4 Preloan Procedures for Telephone Loan Applicants
- 325-1 Financing Lines, Facilities, or Systems Outside of Rural Areas
- 326-1 Acquisitions of Telephone Facilities and Systems

The above Bulletins also contain certain other policies, requirements, and procedures that will be incorporated into other CFR parts. These Bulletins will then be rescinded.

Part 1750 sets forth the provisions and requirements of the RE Act and the REA administrative policies, requirements, and procedures concerning the acquisition, merger, or consolidation of telephone facilities and systems. The primary objectives of the final rule are to update, consolidate, clarify, and simplify REA policies and procedures; to lessen the paperwork burden on borrowers; and to decrease processing time by REA.

All borrowers that are parties to an acquisition, merger, or consolidation will be affected by this rule.

**EFFECTIVE DATE:** April 12, 1989.

**FOR FURTHER INFORMATION CONTACT:** F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2250, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382-9550. The Final Regulatory Impact Analysis describing the options considered in developing this rule is available on request from the above named individual.

**SUPPLEMENTARY INFORMATION:** This rule is issued in conformity with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect

on the economy of \$100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping provisions that are included in this final rule have been approved by the Office of Management and Budget (OMB). The OMB approval number for these requirements is 0572-0084.

Public reporting burden for this collection of information is estimated to average 16 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0572-0084), Washington, DC 20503.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

**Background**

Currently, the policies and requirements concerning the acquisition, merger, or consolidation of telephone

facilities and systems are contained in numerous REA Bulletins and REA Staff Instructions (internal instructions for REA personnel). Many of these are outdated and contain conflicting information. It is necessary to consolidate the information and make it available to the public by publishing it in the **Federal Register**.

This final rule eliminates some reporting requirements and streamlines others, reducing the borrowers' burden, while permitting REA to maintain the security of the government's loans.

REA does not permit loan funds to be used to acquire any stock or telephone plant in service or under construction of an affiliated company. REA will no longer place a valuation on facilities acquired with funds other than loan funds. Additionally, REA Forms 507, "Report on Telephone Acquisition," and 507a, "Report on Telephone Acquisitions—by Exchange," have been combined and considerably shortened.

Article II, section 15(c) of the mortgage, which applies to each borrower with an adjusted net worth of less than 20 percent of adjusted assets, includes certain requirements in the event of a change in ownership interests of the borrower, which in the sole opinion of the majority noteholders might adversely affect their security. Currently, these requirements are normally applied if the ownership and control of a borrower is to be transferred to a non-operating holding company. In the future, transfer of ownership to a non-operating holding company, in and of itself, will not be considered to have an adverse effect on REA's security.

7 CFR Part 1750 supersedes any sections of REA Bulletins with which it is in conflict.

#### Comments

In the Proposed Rule published on October 19, 1988, the Rural Electrification Administration invited interested parties to file comments on or before November 18, 1988.

Comments were received from:

Missouri Telephone Company  
 Eastern Missouri Telephone Company  
 Telephone and Data Systems, Inc. (TDS)  
 Rural Telephone Finance Cooperative (RTFC)  
 National Rural Telecom Association (NRTA)  
 United States Telephone Association (USTA)  
 Organization for the Protection and  
 Advancement of Small Telephone  
 Companies (OPASTCO)  
 National Association of Regulatory Utility  
 Commissioners (NARUC)

The comments received addressed the following issues and sections of the Rule:

#### Extension of Time for Comments

Several respondents requested an extension of the 30 day time period for submission of written comments.

Response—The 30 day public comment period was chosen because of the time constraints imposed by Pub. L. 100-203.

#### Specific Time Frames

Several respondents requested that REA set specific timeframes for its actions in the following §§ 1750.12(a), 1750.12(b), 1750.24(a)(7), 1750.30(k) and 1750.55(c).

Response—REA will carry out its responsibilities in a timely manner. Due to the different conditions and characteristics of each merger or acquisition, it is not possible to set specific time frames that would be appropriate for all circumstances.

#### § 1750.2 REA field representative assistance.

Several respondents proposed the elimination of this section because it merely advises, but does not require, the borrower to first discuss its plans with the GFR.

Response: REA believes that this advice should be retained because it would help expedite plans for an acquisition or merger. This section has been retained.

#### § 1750.3(a) Definitions—Acquisition.

Several respondents objected to the definition of "acquisition" and proposed that "Only when the size of the facility purchase rises to the level of a purchase of all of the assets of a company, or all of the assets needed to serve one or more exchanges, should the transaction be deemed an acquisition."

Response: The RE Act specifically refers to "acquisition . . . of lines, facilities or systems", which includes all acquisitions regardless of size. The definition has not been changed.

#### § 1750.3(j) Definitions—Interim financing.

Several respondents requested a clearer definition of interim financing to indicate the fact that the borrower has applied for REA financing to replace the interim financing.

Response: The definition has been changed to clarify this point. Further explanation of interim financing is contained in 7 CFR 1749, Subpart E.

#### § 1750.10(a)(3) Specific provisions.

One respondent asked whether REA approval of an acquisition or merger is required if a borrower has an adjusted net worth greater than 20 percent of adjusted assets.

Response: All borrowers, regardless of net worth, must obtain written approval of the majority noteholders before taking any action to reorganize, consolidate or merge into any other organization. When a borrower's adjusted net worth is less than 20 percent of adjusted assets, certain additional requirements apply under Article II, section 15(c) of the mortgage.

Several respondents requested that REA "specify the criteria it will consider in reaching a determination that REA's loan security is adversely affected by an acquisition or merger," thus invoking Article II, section 15(c) of the mortgage.

Response: Due to the varying circumstances under which acquisitions or mergers may occur, it is impossible to specify in advance all relevant criteria that need to be considered when determining if the government's security will be adversely affected by an acquisition or merger. Transfer of ownership to a non-operating holding company, in and of itself, will not be considered to have an adverse effect on REA's security.

#### § 1750.11(c) Approval criteria.

Several respondents commented that REA should specify all criteria used in approving an acquisition or merger and that the words "among other matters" be deleted.

Response: REA has specified the major factors to be considered when approving a merger or acquisition. Due to the individuality of each case, it is impossible to specify in advance all factors that may be relevant.

#### § 1750.11(c)(3) Approval criteria.

Several respondents commented that the words "is in the best interest of the Government" are too subjective and undefined. One of them proposed substituting the words: "might adversely affect the government's security."

Response: REA has other interests besides security. This wording will be retained.

#### § 1750.11(c)(4) Approval criteria

Several respondents commented that the meaning of "excessive rates" was undefined.

Response: "Excessive rates" was meant to refer to rates that would endanger the financial feasibility of the proposed system. The words "excessive rates" have been eliminated.

Several respondents requested that REA clarify the conditions that would constitute "endangerment of financial feasibility."

Response: Due to the varying circumstances under which acquisitions

or mergers may occur, it is impossible to specify in advance all conditions which would constitute endangerment of financial feasibility. In considering whether to approve a request for a merger or acquisition, REA will take into consideration any factors relevant to a specific proposal that, in the opinion of REA, might have an adverse effect on the government's security.

*§ 1750.12(b)(1) Approval of acquisitions and mergers.*

Several respondents requested that "compensating benefits" be defined and that examples be provided.

*Response:* A compensating benefit is required whenever the government relinquishes, impairs, or waives any of its rights or powers. This requirement is not limited to cases where the security of the government's loan is affected. Since various mergers and acquisitions involve many widely differing circumstances, the compensating benefits required, if any, for government approval can be determined only on a case-by-case basis. However, in the past, the following actions, often in combination, have been considered to provide some degree of compensation to the government, depending on the facts in the particular case: (1) Prepayment, (2) accelerated payment, and (3) agreement by the borrower not to borrow from REA again. In addition, the government may consider other actions to provide a compensating benefit.

*§ 1750.12(b)(3) Approval of acquisitions and mergers.*

One respondent requested clarification of the requirement that borrowers not extend credit to, perform services for, or receive services from affiliated companies, unless authorized by the Administrator.

*Response:* REA needs a broad-based prohibition on various types of transactions between insiders that might jeopardize loan security or otherwise be contrary to the interests of the government.

*§ 1750.12(b)(4) Approval of acquisitions and mergers.*

Several respondents requested clarification of under what circumstances REA may require additional documentation for the approval of an acquisition or merger.

*Response:* It is impossible to specify in advance all of the circumstances that may require additional documentation. While not all acquisitions or mergers will require additional documentation, some will. The type of additional documentation required will be determined by the specific

characteristics of the proposed acquisition or merger.

*§ 1750.20(b) Use of loan funds.*

Several respondents objected to REA's use of "necessary and incidental" as a test for providing financing for an acquisition.

*Response:* The test for financing acquisitions reflects REA's interpretation of the Act as it has been consistently applied since the inception of the REA loan program. Section 201 of the Act, which explicitly permits loans for the acquisition of telephone facilities, provides that the primary purpose of the loan must be to furnish and improve telephone service in rural areas. Pursuant to section 201, REA has approved loans that include funds for acquiring facilities only when REA determined that financing the acquisition of facilities was a necessary and incidental means to accomplishing the primary purpose of the loan—furnishing and improving telephone service in rural areas. This determination can be made only on a case-by-case basis. The legal principles underlying this interpretation and its application to specific cases are set forth in several opinions of the Office of General Counsel, Department of Agriculture.

*§ 1750.20(c) Use of loan funds.*

Several respondents requested that this section be deleted, stating that there is nothing in the Act that prohibits providing financing for the purpose of merging or consolidating telephone organizations.

*Response:* It has been a long-standing practice of REA not to provide this type of financing. Pursuant to the Act, the purpose of any financing must be to furnish or improve telephone service in rural areas. Providing financing for the sole purpose of merging or consolidating telephone organizations is not consonant with this purpose, and REA has never made loans on this basis. Concurrent with a merger or consolidation, REA has and will continue to consider making loans to the surviving telephone system to finance the improvement or extension of telephone service in rural areas. This point has been clarified.

*§ 1750.20(d) Use of loan funds.*

Several respondents requested that this section, which sets forth policy on acquisitions of existing borrowers, be deleted.

*Response:* If the property to be acquired is in the possession of an existing REA borrower, financing is already available to that borrower in

order to furnish or improve telephone service in that area and thus the financing of such acquisition is not "necessary" within the meaning of the Act. If, in REA's opinion, the government's security is endangered, REA may consider providing financing for an acquisition of an existing borrower if such acquisition, in the opinion of REA, would improve the likelihood of repayment of an outstanding REA loan. This section has been revised to further clarify REA's position.

*§ 1750.20(e) Use of loan funds.*

Several respondents objected to the words "any other factors deemed relevant by REA" and requested that REA state what specific factors they would use in determining the amount REA will lend for an acquisition.

*Response:* Due to the varying circumstances under which acquisitions may occur, it is impossible to specify in advance all relevant factors that need to be considered when placing a value on facilities to be acquired.

Several respondents commented that the meaning of "excessive rates" was undefined.

*Response:* See the response to the comment on § 1750.11(c)(4).

Several respondents requested that REA clarify the conditions that would constitute "endangerment of financial feasibility."

*Response:* See the response to the comment on § 1750.11(c)(4).

*§ 1750.21 Nonrural areas.*

Several respondents objected to including "incidental" in the test for financing acquisitions of facilities in nonrural areas.

*Response:* This test reflects REA's interpretation of the Act as it has been consistently applied since the inception of the program. Pursuant to this interpretation REA has included loan funds to finance facilities in non-rural areas only when the primary purpose of the loan is to furnish or improve service in rural areas, and REA determines that the financing of urban facilities is necessary and incidental to accomplish this primary purpose. This determination has and can be made only on a case-by-case basis. A discussion of the legal principles underlying this interpretation of the Act, as well as its application in specific cases, is set forth in a series of opinions of the Office of General Counsel, Department of Agriculture.

**§ 1750.22 Acquisition agreements.**

Several respondents commented that the word "normally" is not acceptable regulatory language and requested that REA list all conditions that would result in the approval of an acquisition prior to loan approval.

*Response:* Due to the varying circumstances under which an acquisition may occur, it is impossible to specify in advance all circumstances that might result in the approval of an acquisition prior to loan approval. The word "normally" allows REA flexibility to approve an acquisition for cases which, in the opinion of REA, merit such approval of prior to loan approval.

**§ 1750.24(a)(2) Submission of data.**

Several respondents requested that all referenced forms be published in the proposed rule.

*Response:* Since many forms are referenced in more than one regulation, it would be too costly to revise several regulations each time a form is changed. Required forms are available from REA upon request. See § 1750.4.

**§ 1750.24(a)(4) Submission of data.**

Several respondents requested that the word "Plans" be replaced with "A brief statement of the plans".

*Response:* This change has been made.

**§ 1750.24(a)(8)(vi) Submission of data.**

Several respondents requested that this section be deleted because it is only advisory.

*Response:* The section has been revised to clarify REA's position.

**§ 1750.24(a)(14) Submission of data.**

Several respondents requested that this section be deleted, stating that REA should list all items required for evaluating an acquisition.

*Response:* Due to the varying circumstances under which acquisitions may occur, it is impossible to specify in advance all relevant factors that need to be considered when evaluating a specific acquisition.

**§ 1750.25 Interim financing.**

One respondent requested that REA specify the circumstances under which it will provide shared first mortgage security and/or a lien accommodation for non-REA lenders as it pertains to interim financing of acquisitions.

*Response:* These circumstances are set forth in 7 CFR Part 1747, Lien Accommodations and Subordination Policy. A reference to 7 CFR Part 1747 has been added to this section.

**§ 1750.25(c)(3) Interim financing.**

Several respondents commented that this section is burdensome on the borrower, unnecessary, and should be deleted.

*Response:* This section is necessary in order to determine whether the property to be acquired will qualify for REA financing as set forth in § 1750.25(d).

**§ 1750.25(c)(5) Interim financing.**

Several respondents commented that this section is undefined and subjective, and should be deleted.

*Response:* Each acquisition must be thoroughly evaluated before a determination can be made whether or not a borrower qualifies for interim financing. It is impossible to anticipate all of the facts that need to be considered in approving interim financing. Therefore, the Administrator needs discretion to determine, in each case, whether all of the information necessary to approve interim financing for an acquisition has been obtained.

**§ 1750.25(d) Interim financing.**

Several respondents requested that this section be eliminated or amended to state the standards by which REA will consider financing.

*Response:* The requirements for an acquisition to qualify for REA financing are set forth in 7 CFR Part 1745.20.

**§ 1750.26 Acquisition of affiliates.**

Several respondents commented that the Act does not prohibit the use of loan funds for the acquisition of an affiliate, and therefore, this section should be deleted.

*Response:* A loan for the acquisition of an affiliate would not be necessary to extend or improve telephone service, within the meaning of the Act, due to common control of affiliated companies. This section will be retained.

**§ 1750.27(c) Release of loan funds, requisitions, advances.**

Several respondents commented that the words "to REA's satisfaction" are subjective and unnecessary and proposed that they be eliminated.

*Response:* The government must retain the ability to satisfy itself that an acquisition has been finalized since the use and security of millions of dollars in REA loans are at stake.

**§ 1750.27(d) Release of loan funds, requisitions, advances.**

Several respondents proposed that this section regarding title requirements be deleted because REA Bulletins cannot be used to deny a loan or advance in accordance with Pub. L. 100-203.

*Response:* Title requirements are a matter of contractual obligation of the borrower under the loan contract. Therefore the reference to REA Bulletin 380-1 has been deleted and title requirements will be codified in a future rule.

**§ 1750.30(d) Submission of data.**

Several respondents requested that the word "Plans" be replaced with "A brief statement of the plans".

*Response:* This change has been made.

**§ 1750.30(l) Submission of data.**

Several respondents commented that this section is undefined and unnecessary, and requested that it be deleted.

*Response:* The Administrator has the responsibility to determine, on a case by case basis, whether all of the information necessary to evaluate an acquisition or merger has been obtained in order to ensure that the government's security is reasonable adequate.

**§ 1750.41 Location of facilities.**

Several respondents requested that this section be deleted because the geographic locations of telephone facilities would not necessarily adversely affect operating efficiency and therefore should not be considered in an acquisition.

*Response:* The location of facilities to be acquired would not necessarily adversely affect operating efficiency, however, in some cases it could. The Administrator must have discretion to determine that the facilities financed are so located as to provide adequate security for the REA loan.

**§ 1750.42(a) Accounting considerations.**

Several respondents requested that reference to "REA" be amended to read "Generally Accepted Accounting Principles or other accounting conventions, as appropriate".

*Response:* The wording in this section has been modified to specify basis for REA determination that, in the absence of a regulatory commission, proper accounting has been applied.

**§ 1750.42(b) Accounting considerations.**

Several respondents commented that REA should have no jurisdiction over depreciation rates and requested that this section be deleted.

*Response:* REA has legitimate security and feasibility interests in how depreciation is handled in the case of an acquisition and has clearly indicated

that a determination will be made only in cases where a regulatory body does not have jurisdiction.

§ 1750.43 Notes.

Several respondents requested that this section be deleted, stating that they see no reason for the requirement of substitute notes in the case of an acquisition or merger.

*Response:* This section is included to allow flexibility for circumstances that might arise resulting in the need for substitute notes.

§ 1750.45(2)(b) *Unadvanced loan funds.*

One respondent requested that this section be modified to restrict only those funds advanced by REA.

*Response:* "Construction fund" is defined as the REA Construction Account required by § 2.4 of the standard loan contract into which all REA loan funds are advanced. The meaning of "other money" in this section is money that the borrower is contractually required to deposit in this account, the use of which is also subject to REA approval. Funds provided by other lenders would be under control of the applicable documents pertaining to those funds.

§ 1750.50 *Use of loan funds.*

Several respondents objected to including "incidental" in the test for the acquisition of toll line facilities. They also objected to the requirements of an acquisition agreement, original cost less depreciation valuation, connecting company concurrence, and a detailed inventory as being "excessive and unnecessarily burdensome" for the acquisition of a toll line only.

*Response:* The test for financing acquisitions reflects REA's interpretation of the Act as it has been consistently applied since the inception of the REA loan program. Section 201 of the Act, which explicitly permits loans for the acquisition of telephone facilities, provides that the primary purpose of the loan must be to furnish or improve telephone service in rural areas. Pursuant to section 201, the Administrator has approved loans that included funds for acquiring facilities only when the Administrator determined that financing the acquisition of facilities was a necessary and incidental means to accomplishing the primary purpose of the loan—furnishing or improving telephone service in rural areas. This determination can be made only on a case-by-case basis taking into account such matters as subscriber ratios and cost ratios. The legal principles underlying this interpretation and its

application to certain cases are set forth in several opinions of the Office of General Counsel, Department of Agriculture.

The information listed for submission in this section is necessary in order for REA to determine that security for the loan is adequate.

**List of Subjects in 7 CFR Part 1750**

Loan programs—communications, Telecommunications, Telephone.

Therefore, REA amends 7 CFR Chapter XVII by adding the following new Part 1750:

**PART 1750—ACQUISITIONS, MERGERS, AND CONSOLIDATIONS—TELEPHONE PROGRAM**

**Subpart A—General**

- Sec.  
1750.1 General statement.  
1750.2 REA Field Representative Assistance.  
1750.3 Definitions.  
1750.4 Availability of forms.

**Subpart B—Mortgage Controls on Acquisitions and Mergers**

- 1750.10 Specific provisions.  
1750.11 Approval criteria.  
1750.12 Approval of acquisitions and mergers.

**Subpart C—Acquisitions Involving Loan Funds**

- 1750.20 Use of loan funds.  
1750.21 Nonrural areas.  
1750.22 Acquisition agreements.  
1750.23 Loan design.  
1750.24 Submission of data.  
1750.25 Interim financing.  
1750.26 Acquisition of affiliates.  
1750.27 Release of loan funds, requisitions, advances.

**Subpart D—Acquisitions or Mergers Not Involving Additional Loan Funds**

- 1750.30 Submission of data.

**Subpart E—Requirements for All Acquisitions and Mergers**

- 1750.40 Preliminary approvals.  
1750.41 Location of facilities.  
1750.42 Accounting considerations.  
1750.43 Notes.  
1750.44 Final approval and closing procedure.

1750.45 Unadvanced loan funds.

**Subpart F—Toll Line Acquisitions**

- 1750.50 Use of loan funds.  
1750.51 With nonloan funds.

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

**Subpart A—General**

§ 1750.1 **General statement.**

(a) The standard REA loan security documents (see 7 CFR Part 1758 or REA Bulletins 320-4, 320-22, 321-2, 322-2, 323-1, 326-1) contain provisions

regarding acquisitions, mergers, and consolidations. This CFR part implements those provisions by setting forth the policies, procedures, and requirements for telephone borrowers planning to acquire existing telephone lines, facilities, or systems with REA loan or other funds, or planning to merge or consolidate with another system. This CFR part supersedes all REA Bulletins that are in conflict with it.

(b) This CFR part also details REA's requirements with respect to mergers and acquisitions involving REA loan funds.

§ 1750.2 **REA Field Representative Assistance.**

While not required, borrowers contemplating acquisitions or mergers should first discuss their plans with the General Field Representative (GFR) who will provide advice and assistance.

§ 1750.3 **Definitions.**

As used in this part:

(a) "Acquisition" means the purchase of another telephone system, lines, or facilities whether by acquiring telephone plant in service or majority stock interest of one or more organizations.

(b) "Acquisition agreement" means the agreement, including a sales agreement, between the seller and purchaser outlining the terms and conditions of the acquisition. Acquisition agreements also include any other agreements, such as options and subsidiary agreements relating to terms of the transaction.

(c) "Adjusted assets" has the meaning as defined in Article II, section 15(d) of the standard REA mortgage. See 7 CFR Part 1758.

(d) "Adjusted net worth" has the meaning as defined in Article II, section 15(d) of the standard REA mortgage. See 7 CFR Part 1758.

(e) "Administrator" means the Administrator of REA.

(f) "Affiliate" means an organization that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the borrower.

(g) "Borrower" means any organization which has an outstanding loan made or guaranteed by REA, or which is seeking such financing.

(h) "Consolidation" means the combination of two or more borrower or nonborrower organizations, pursuant to state law, into a new successor organization that takes over the assets and assumes the liabilities of those organizations.

(i) "Construction fund" means the REA Construction Account required by

§ 2.4 of the standard loan contract into which all REA loan funds are advanced. See 7 CFR Part 1758.

(j) "CFR" means the REA general field representative.

(k) "Interim financing" means funding for a project which REA has acknowledged could be included in a loan, should said loan be approved, but for which REA funds have not yet been made available. See 7 CFR Part 1749, Subpart E.

(l) "Loan" means any loan made or guaranteed by REA.

(m) "Loan contract" means the loan agreement between REA and the borrower, including all amendments thereto.

(n) "Loan funds" means funds provided by REA through direct or guaranteed loans.

(o) "Majority noteholders" means the holder or holders of a majority in principal amount of the notes outstanding at a particular time.

(p) "Merger" means the combining, pursuant to state law, of one or more borrower or nonborrower organizations into an existing survivor organization that takes over the assets and assumes the liabilities of the merged organizations. While the terms merger and consolidation have different meanings, for the purpose of this part, "mergers" also include consolidations as defined above. Furthermore, "mergers" also include acquisitions where the acquired systems, lines, or facilities and the acquiring system are operated as one system.

(q) "Mortgage" means the security agreement between REA and the borrower, including any amendments and supplements thereto.

(r) "Rural area" means any area of the United States, its territories and insular possessions (including any area within the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau) not included within the boundaries of any incorporated or unincorporated city, village or borough having a population exceeding 1,500. The population figure is obtained from the most recent data available, such as from the Bureau of the Census and Rand McNally and Company. For purposes of the "rural area" definition, the character of an area is determined as of a time the initial loan for the system is made.

(s) "Survivor" means (1) the successor corporation formed by the consolidation of one or more borrowers, (2) the corporation remaining after completion of a merger involving one or more borrowers, and (3) a corporation assuming all or a portion of an REA loan in connection with an acquisition.

(t) "Telephone service" means any communication service for the transmission of voice, sounds, signals, pictures, writing, or signs of all kinds through the use of electricity between the transmitting and receiving apparatus, and includes all telephone lines, facilities, or systems used to render such service. It does not mean (1) message telegram service, (2) community antenna television system services or facilities other than those intended exclusively for educational purposes, or (3) radio broadcasting services or facilities within the meaning of section 3(o) of the Communications Act of 1934, as amended.

#### § 1750.4 Availability of forms.

Single copies of REA forms and publications cited in this part are available from Administrative Services Division, Rural Electrification Administration, United States Department of Agriculture, Washington, DC 20250. These REA forms and publications may be reproduced.

#### Subpart B—Mortgage Controls on Acquisitions and Mergers

##### § 1750.10 Specific provisions.

(a) The standard form of REA mortgage (see 7 CFR Part 1758) contains certain provisions concerning mergers and acquisitions:

(1) Article II, section 4(a) requires the borrower to obtain the written approval of the majority noteholders before taking any action to reorganize, or to consolidate with or merge into any other corporation.

(2) Article II, section 4(b), if made applicable, provides certain exceptions to the requirements of section 4(a).

(3) Article II, section 15(c), which applies to each borrower with an adjusted net worth of less than 20 percent of its adjusted assets, sets forth, among other matters, certain requirements in the event of a change in ownership interests of the borrower, which in the sole opinion of the majority noteholders might adversely affect its or their security.

(b) Similar provisions are contained in other forms of documents executed by borrowers that have not entered into the standard form of mortgage.

(c) Mortgages and loan contracts may contain other provisions concerning mergers and acquisitions.

##### § 1750.11 Approval criteria.

(a) If a borrower is required by the terms of its mortgage or loan contract to obtain REA approval of a merger or acquisition, the borrower shall request

REA approval and shall provide REA with such data as REA may request.

(b) If loan funds are requested, the borrower shall comply with Subpart C of this part. If no additional loan funds are involved, the borrower shall comply with Subpart D of this part.

(c) In considering whether to approve the request, REA will take into account, among other matters:

(1) Whether the operation, management, and the economic and loan-repayment feasibility characteristics of the proposed system are satisfactory;

(2) Whether the merger or acquisition may result in any relinquishment, impairment, or waiver of a right or power of the Government;

(3) Whether the proposed merger or acquisition is in the best interests of the Government as note holder; and

(4) Whether the proposed purchase price and terms of an acquisition are reasonable, regardless of the source of funds used to pay for the purchase. REA will consider the purchase price unreasonable if, in REA's opinion, it will endanger financial feasibility.

##### § 1750.12 Approval of acquisitions and mergers.

(a) If a proposal is unsatisfactory to REA, then REA shall inform the borrower in writing of those features it considers objectionable and, as appropriate, recommend corrective action.

(b) If a proposal is satisfactory to REA, then REA shall inform the borrower in writing of its approval and any conditions of such approval. Among the conditions of approval are the following:

(1) REA shall require a compensating benefit in return for any relinquishment, impairment, or waiver of its rights or powers.

(2) If the survivor is an affiliate of another company, REA shall require any investments in, advances to, accounts receivable from, and accounts payable to the affiliated company contrary to mortgage provisions shall be eliminated in a manner satisfactory to the Administrator.

(3) REA requires that the borrower agree not to extend credit to, perform services for, or receive services from any affiliated company unless specifically authorized in writing by the Administrator or pursuant to contracts satisfactory in form and substance to the Administrator.

(4) REA may require the borrower to execute additional mortgages, loan agreements, and associated documentation.

**Subpart C—Acquisitions Involving Loan Funds****§ 1750.20 Use of loan funds.**

(a) See 7 CFR Parts 1745 and 1749 for REA's general loan policies and requirements.

(b) REA will finance an acquisition by a borrower only when the acquisition is necessary and incidental to furnishing or improving rural telephone service and the service area is eligible for REA assistance.

(c) REA does not make loans for the sole purpose of merging or consolidating telephone organizations. After a merger or consolidation, REA will consider making loans to the telephone system to finance the improvement or extension of telephone service in rural areas.

(d) Generally, REA will not make a loan for the acquisition of an existing borrower unless, in addition to all other requirements, such acquisition will improve the likelihood of repayment of an outstanding REA loan and all outstanding balances of the previous REA loans are paid in full.

(e) In determining the amount it will lend for each acquisition, REA shall place a valuation on all telephone facilities that are to be acquired with loan funds. REA may consider fair market value, the original cost less depreciation of the facilities, income generating potential, any improvement in the financial strength of the borrower as a result of the acquisition, and any other factors deemed relevant by REA to determine the reasonableness of the acquisition price and the amount of loan funds REA will provide for an acquisition. REA shall not consider the acquisition price reasonable or approve a loan if, in the Administrator's opinion, the acquisition price will endanger financial feasibility. If the acquisition price exceeds the amount REA will lend, the borrower provides the remainder.

(f) When a borrower intends to request REA loan funds for an acquisition, it shall present a proposal in writing to the Area Office as soon as possible. The borrower must either obtain REA approval prior to making any binding commitments with the seller or make the commitments subject to REA's approval. Failure to comply with these requirements will disqualify the borrower from obtaining an REA loan for the acquisition unless the Administrator determines there were extenuating circumstances.

**§ 1750.21 Nonrural areas.**

Loan funds may be approved for the acquisition and improvement of facilities to serve nonrural subscribers only if the principal purpose of the loan

is to furnish and improve rural service and only if the use of loan funds to serve nonrural subscribers is necessary and incidental to the principal purpose of the loan. For example, when the acquisition of an existing system located in and serving a nonrural area is necessary to serve as the nucleus of an expanded system to furnish area coverage service in rural areas, the loan may include funds to finance the acquisition. Approval for the use of loan funds in these circumstances shall be made only on a case by case basis by the Administrator.

**§ 1750.22 Acquisition agreements.**

When borrowers are seeking REA financing, acquisition agreements between the borrower and the seller must be in form and substance satisfactory to REA and shall be expressly conditioned on approval of the agreement by REA and on obtaining an REA loan. Normally, the acquisition agreement will not be approved by REA until the loan has been approved.

**§ 1750.23 Loan design.**

When loan funds are requested for an acquisition, details of the proposed acquisition shall be included in the Loan Design. See 7 CFR 1749.

**§ 1750.24 Submission of data.**

(a) REA will not approve any acquisition, other than of toll facilities (see Subpart F of this part), financed in whole or in part with loan funds until the borrower submits the following data to the GFR:

(1) For any nonborrowers involved, their most recent balance sheets, operating statements, detail of plant accounts, reports to the state commission, and audits, if available.

(2) Completed REA Form 507, "Report on Telephone Acquisition," which provides system data, including the type of purchase and purchase price, a system description, and data by exchange. See § 1750.4 for information on obtaining copies of this form.

(3) A map (such as a road map) showing county lines, the boundaries of the proposed acquisition and the borrower's existing service territory, and the names of other telephone companies serving adjoining areas.

(4) A brief statement of the plans for incorporating the acquired facilities into the borrower's existing system.

(5) The number of subscribers currently receiving service in the area to be acquired and the number of new subscribers that will be served over the next 5 years as a result of the acquisition.

(6) The proposed purchase price.

(7) Two copies of any options, bills of sale, or deeds, and four copies of any acquisition agreements. All of these documents are subject to REA approval. If the acquisition agreement is approved by REA, two copies of it shall be returned to the borrower.

(8) An appraisal by the borrower's consulting engineer or other qualified person of the physical plant to be acquired. The appraisal shall include the following:

(i) Inspection of each central office, noting the age and condition of the switch and associated equipment, and the extent and quality of maintenance of the equipment and premises.

(ii) Inspection of the outside plant, noting the general age and condition of cable and wire, poles and related hardware, pedestals, and subscriber drops. Any joint use or ownership shall be explained.

(iii) Inspection of miscellaneous items such as commercial office facilities, vehicles, furniture, tools and work equipment, and materials and supplies in stock, noting age and condition.

(iv) Inspection of all buildings and other structures (such as radio towers), noting age and condition.

(v) Detailed description of all real estate including the present market value that local real estate dealers, bankers, insurance agents, etc., place on the property.

(vi) Any widely accepted method, approved by REA, may be used to estimate the condition of the facilities in (a)(8)(i) through (a)(8)(iv) of this section. The "percent condition" method is recommended, but is not required.

(9) Copies of deeds to real estate to be acquired, with an explanation of the proposed use of the land.

(10) Copies of leases to be acquired.

(11) Copies of any existing mortgages with parties other than REA, indentures, deeds of trust, or other security documents or financing agreements relating to the property to be acquired and any contracts or other rights or obligations to be assumed as part of the acquisition.

(12) A list of all counties in which the proposed system will have facilities.

(13) If the borrower is a cooperative-type organization, a description of its plans for taking subscribers in as members, membership fees, equity payments required because of the acquisition, and extent of membership support.

(14) Any other data deemed necessary by the Administrator for an evaluation of the acquisition.

(b) For stock acquisitions, the borrower shall submit the following in

addition to the items listed in (a) of this section:

(1) A list of all stockholders of the company to be acquired and the number of shares each owns.

(2) Guarantees and indemnifications to be obtained from the sellers of the stock.

(Approved by the Office of Management and Budget under control number 0572-0084)

**§ 1750.25 Interim financing.**

(a) A borrower may submit a written request for REA approval of interim financing if it is necessary to close an acquisition before the loan to finance the acquisition is approved. Loan funds shall not be used to reimburse acquisition costs unless REA has granted approval of interim financing prior to the closing of the acquisition.

(b) REA will approve interim financing of acquisitions only in cases where loan funds cannot be made available in time for the closing.

(c) REA will not approve interim financing unless the following information is acceptable:

(1) A written request for approval of interim financing, including a brief description of the acquisition, an explanation of the urgency of proceeding with the acquisition, and the source of funds to be used.

(2) A completed REA Form 490, "Application for Telephone Loan or Loan Guarantee." See 7 CFR Part 1749.

(3) The portions of the Loan Design that cover the proposed acquisition, including cost estimates and information on any investments in nonrural areas. See 7 CFR 1749.

(4) The information required in § 1750.24 (a)(1) through (a)(8), (a)(14) and (b)(1).

(5) Any other data deemed necessary by the Administrator to approve the interim financing of the acquisition.

(d) Furthermore, REA will not approve interim financing if, in REA's judgment, the proposed acquisition will not qualify for REA financing or the proposed interim financing presents unacceptable loan security risks to REA.

(e) Because REA approval of interim financing is not a commitment to make a loan, REA will not approve interim financing unless the borrower is prepared to assume responsibility for financing all obligations incurred.

(f) If the borrower plans to proceed with the closing after receiving REA approval of interim financing, it must first receive preliminary approval from REA. See § 1750.40.

(g) See 7 CFR Part 1749 for regulations on interim financing for construction.

(h) See 7 CFR Part 1747 for conditions under which REA will provide shared

first lien and/or a lien accommodation for non-REA lenders.

**§ 1750.26 Acquisition of affiliates.**

A borrower shall not use REA loan funds to acquire any stock or any telephone plant or an affiliate.

**§ 1750.27 Release of loan funds, requisitions, advances.**

(a) REA will not approve the advance of loan funds until the borrower has fulfilled all loan contract provisions to the extent deemed necessary by REA.

(b) The first advance of loan funds pursuant to the loan contract normally shall provide funds needed for the acquisition. Unless the borrower has received approval of interim financing, it must submit the requisition in time for the advance to be made by the closing date.

(c) After the borrower has closed the acquisition, it shall furnish REA all documents necessary to demonstrate to REA's satisfaction that the transaction has been closed.

(d) Advances for improvements or expansion of the acquired facilities will not be approved until REA has determined that the transaction has been closed and the borrower has obtained satisfactory title to the acquired facilities.

(e) See 7 CFR Part 1751 (or REA Bulletin 320-4) for additional requirements for releases of loan funds and 7 CFR Part 1754 for additional requirements for requisitions and advances.

**Subpart D—Acquisitions of Mergers Not Involving Additional Loan Funds**

**§ 1750.30 Submission of data.**

When a borrower is not requesting loan funds for an acquisition or merger, the borrower shall first notify REA and submit for review by REA the documents and information listed in (a) through (l) of this section required by REA.

(a) For any nonborrowers involved, their most recent balance sheets, operating statements, detail of plant accounts, reports to the state commission, and audits, if available.

(b) Completed REA Form 507, "Report on Telephone Acquisition."

(c) A map (such as a road map) showing county lines, the boundaries of the proposed acquisition and the borrower's existing service territory, and the names of other telephone companies serving adjoining areas.

(d) A brief statement of the plans for incorporating the acquired facilities into the borrower's existing system.

(e) The number of subscribers currently receiving service in the areas

involved in the acquisition or merger and the number of new subscribers that will be served over the next 5 years as a result of the acquisition or merger.

(f) Copies of deeds of real estate to be acquired, with an explanation of the proposed use of the land.

(g) Copies of security documents of any other lenders involved and any contracts or other rights of obligations to be assumed by the survivor.

(h) A list of all counties in which the proposed system will have facilities.

(i) If Article II, section 4(b) of the standard mortgage has not been made applicable, plans for operating the unified system.

(j) In the case of a merger, the proposed articles of merger that are to be used.

(k) In the case of an acquisition, the proposed purchase price, plus two copies of any options, bills of sale, or deeds, and two copies of any acquisition agreements. All of these documents are subject to REA approval. If the acquisition agreement is approved by REA, two copies of it shall be returned to the borrower.

(l) Any other data deemed necessary by the Administrator for an evaluation of the acquisition or merger.

(Approved by the Office of Management and Budget under control number 0572-0084)

**Subpart E—Requirements for All Acquisitions and Mergers**

**§ 1750.40 Preliminary approvals.**

(a) In cases where the borrower's schedule for completion of the proposed action leaves insufficient time for REA to prepare and process the required documentation, including new mortgages and replacement notes, the borrower may request REA to give preliminary approval to the acquisition or merger. However, the borrower may not obtain additional loan funds until the documentation is completed to REA's satisfaction.

(b) Consideration of preliminary approvals generally will not be practicable in cases in which compensating benefits are required.

(c) REA will not give preliminary approval when the lien of the mortgage on after-acquired property may be affected.

(d) Before REA will grant preliminary approval, the borrower shall submit:

(1) Merger or acquisition documents required by state law;

(2) Acquisition agreements covering the transaction;

(3) Any required franchises, licenses, and permits;

(4) All required regulatory body approvals;

(5) All required corporate actions;

(6) Leases, contracts, and evidence of titles to be assigned to the purchaser; and

(7) The latest audited financial statements for any nonborrowers involved.

(e) If the information in (d) of this section is acceptable to REA, the borrower may proceed with the closing.

(Approved by the Office of Management and Budget under control number 0572-0084)

#### § 1750.41 Location of facilities.

Telephone facilities to be acquired must be located so that they can be efficiently operated by the borrower and provide adequate security for the REA loan.

#### § 1750.42 Accounting considerations.

(a) Proper accounting shall be applied to all acquisitions and mergers, as required by the regulatory commission having jurisdiction, or in the absence of such a commission, as required by REA based on Generally Accepted Accounting Principles or other accounting conventions as deemed necessary by REA.

(b) If REA determines that the plant accounts are not properly depreciated, the borrower should adjust its depreciation rates. Depending upon the characteristics of the case, commission jurisdiction and requirements, and similar factors, one of the following actions shall be taken:

(1) In states where commission approval of depreciation rates is required, a covenant shall be included in the loan contract that requires the borrower to:

(i) Have the consulting engineer make an original cost less depreciation inventory and appraisal of retained plant as part of the final inventory, and

(ii) Request commission approval of adjustments to its records on the basis of this inventory.

(2) In states where commission approval is not required, informal discussions between REA and the borrower may be undertaken to reach satisfactory voluntary adjustments. If this does not resolve the situation to REA's satisfaction, a covenant similar to that in paragraph (b)(1)(i) of this section shall be included in the loan contract and the borrower shall agree to submit evidence satisfactory to the Administrator that it has adjusted its records on the basis of the inventory.

#### § 1750.43 Notes.

Substitute notes may be required in the case of an acquisition or merger, regardless of the source of funds.

#### § 1750.44 Final approval and closing procedure.

(a) Legal documents relating to the acquisition or merger, including copies of required franchises, commission orders, permits, licenses, leases, title evidence, corporate proceedings, and contracts to be assigned to the purchaser shall be forwarded to the Area Office prior to closing.

(b) The Administrator will not give final approval to any acquisition or merger until all REA requirements relating to the transactions are satisfied.

(c) Following the Administrator's final approval of the proposal, the Area Office shall inform the borrower in writing of the necessary legal and other actions required for the advance of loan funds to finance the acquisition, including the submission, in form and substance satisfactory to the Administrator, of (1) all information and documents necessary to demonstrate that the transaction has been completed, and (2) all loan contracts, notes, mortgages, and related documents and materials required by REA.

(d) Deeds reflecting the change in ownership, executed bills of sale, and opinions of counsel shall be forwarded to the Area Office following closing.

(e) REA will not advance loan funds to furnish or improve service in the acquired or merged areas until the Administrator has given final approval and the transaction has been closed. REA may, however, advance funds if it determines that loan security will not be jeopardized.

(f) At the discretion of REA, a GFR may be present at the closing to assist the borrower and protect the interests of REA. Under certain circumstances the closing may take place prior to REA granting final approval for the transaction and the execution of amended loan security documents.

#### § 1750.45 Unadvanced loan funds.

(a) The unadvanced loan funds of a borrower that will not be a survivor of an acquisition or merger shall be advanced only to the survivor and only under the following circumstances.

(1) If the funds are to be used for purposes approved in prior loans, the funds shall be advanced after the effective date of the proposed action only when all loan contract prerequisites have been met and documents have been submitted in form and substance satisfactory to the Administrator.

(2) If the funds are to be used for new purposes, then in addition to the requirements in (a)(1) of this section, REA must also approve the change in purpose.

(b) No loan or other money in the construction fund shall be used to finance facilities outside areas to be served by projects approved by REA.

#### Subpart F—Toll Line Acquisitions

##### § 1750.50 Use of loan funds.

An acquisition of toll line facilities financed with loan funds must be necessary and incidental, as determined by the Administrator, to furnishing or improving telephone service in rural areas. The borrower shall submit to REA the acquisition agreement, the original cost less depreciation of the facilities, any concurrences with the connecting companies involved, and a detailed inventory of the facilities to be purchased. The borrower must submit to REA evidence, satisfactory to the Administrator, of the borrower's ownership of the toll line facilities before loan funds for improvement of those facilities will be advanced.

##### § 1750.51 With nonloan funds.

When an acquisition is limited to toll line facilities and loan funds are not involved, REA approval of the acquisition is not required. The borrower, however, shall submit to REA for its approval all concurrences with the connecting companies involved and any other proof of ownership of the toll facilities required by REA.

Dated: March 15, 1989.

Jack Van Mark,  
Acting Administrator, Rural Electrification Administration.

[FR Doc. 89-8252 Filed 4-11-89; 8:45 am]

BILLING CODE 3410-15-M

#### Farmers Home Administration

##### 7 CFR Parts 1910 and 1944

#### Section 504 Rural Housing Loans and Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is revising its regulation for section 504 loans and grants. This action is necessary to incorporate changes in authorizing statutes. The intended effect is to increase the amount of loan assistance available, expand loan purposes and eligibility criteria, authorize a waiver of personal resources; and, for assistance

over \$7500, require appraisals, property insurance, credit reports, title clearance and loan closings.

**EFFECTIVE DATE:** May 12, 1989.

**ADDRESSES:** Public reporting burden for this collection of information is estimated to average five minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office Of Management and Budget, Paperwork Reduction Project (OMB #0575-0062) Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** James A. Weibel, Senior Loan Officer, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5346, South Agriculture Building, Washington, DC 20250. Telephone (202) 382-1485.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined to be nonmajor, because there is no substantial change from practices under existing rules that would have an annual effect on the economy of \$100 million or more. There is no major increase in cost or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or significant adverse effects on completion, employments, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, the Administrator of the Farmers Home Administration, has determined that this action will not have a significant economic impact on a substantial number of small entities because, in terms of the total number rural communities, less than 100 will be affected annually.

This program/activity is listed in the Catalog of Federal Domestic Assistance under number 10.417, "Very Low-Income Housing Repair Loans and Grants." For the reasons set forth in the Final Rule Related Notice to 7 CFR Part 3015, Subpart V, 48 FR 19115, June 24, 1983, this program/activity is excluded from

the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

#### Background

A proposed rule was published in the *Federal Register* Vol. 53, No. 105, Wednesday, June 1, 1988, on pages 19924-19930. Written comments were solicited for 60 days. Comments were received from several respondents inside and outside the Agency. The respondents from outside the Agency were State and Federal special interest organizations. Comments were received on 50 specific sections or paragraphs which involved 11 different areas within the proposed regulation. Most of the comments, however, only involved four sections: § 1944.456 *Loan and grant purposes*, § 1944.457 *Loan and grant restrictions*, § 1944.58 *Eligibility requirements*, and § 1944.461 *Security and other requirements*.

#### Discussion

Several respondents commented that additional clarification was needed to define loan purposes for the improvement and modernization of houses. The organization of Paralyzed Veterans of America suggested defining loan and grant purposes to cover adapting a home to make it accessible for people with a disability or handicap. These comments were considered to have merit and were adopted.

One respondent commented on loan and grant purposes stating that there are virtually no grant programs which fund water/sewer/septic problems or assessments. Section 1944.456(b) does authorize the payment of reasonable connection fees, or prorata installation costs for utilities. However, while the specific payment of assessment fees is not mentioned, it was intended to be covered by the language of that paragraph. Therefore, we have clarified § 1944.456(b) to include payment of assessment fees which represent the property owners prorata share of the installation cost of water and sewer facilities. Also, an exception was added to § 1944.457(b)(5), which prohibits refinancing debts or obligations incurred

prior to filing an application, to allow for the payment of assessment fees.

One respondent stated that the requirement concerning when a family budget should be prepared needed to be clarified. Because § 1944.467(b) in actuality required that one be prepared in most cases and because a family budget is currently prepared in almost all situations anyway, § 1944.467(b) has been revised to require one in all cases.

One respondent recommended removing the total lifetime assistance requirement for both loans and grants, and other respondents recommended increasing the amount of lifetime assistance available because the cost of materials and labor had increased significantly over the years while the program dollar limit had not changed. Both these comments were considered to have merit.

The amount of lifetime assistance for loans has not changed since December 1976 when the limit was increased to \$7,500. Based on a national average from Marshall and Swift Building Cost Indexes, the cost of construction has increased over 85 percent since 1976. Also, the availability of loan funds has not, historically, been a problem, so removal of the lifetime assistance requirement would not adversely affect the number of persons helped. Therefore, the lifetime loan requirement was deleted and the amount of loan assistance available was increased to \$15,000. Unfortunately, the need and demand for grant funds exceeds the availability. Increasing the amount of lifetime grant assistance would reduce the number of persons the program could help, therefore, the amount of grant assistance was not changed.

All of the comments received concerning allowing packaging fees as an eligible loan/grant purpose were positive and in agreement. One comment suggested lengthening the amortization term of loans to 30 years. This was a good suggestion, however statutory requirements limit section 504 loan terms to 20 years.

One respondent requested additional clarification and a specific reference added for § 1944.463(a)(2) concerning performance of development work by contractors, builders or tradespersons, which was adopted. The respondent also recommended a value estimate be documented in the casefile in lieu of doing a complete appraisal because of the age, poor design and condition of the section 504 properties repaired. We agree a complete appraisal including the Marshall and Swift cost approach is time consuming and subjective, therefore, the appraisal requirement was

abbreviated and the cost approach was eliminated.

One respondent commented that eliminating definitions and referencing FmHA Instruction 1944-A for basic definitions and eligibility requirements makes the Instruction extraordinarily difficult to use, and the regulation should stand alone and not depend on other regulations for use.

The definitions and eligibility requirements cross referenced to 1944-A were duplication and deleting them reduced the regulation by five pages. Having "self-contained" program manuals would cause much duplication and increase in the volume of procedure tremendously. Cross references, when done properly, enable policies and procedures which are common to many programs or apply to numerous situations to be in one location, therefore, reducing duplication and the amount of volume.

Exhibit A was revised to comply with the Office of Management and Budget (OMB) Circular A-102 requirements. Exhibit C was developed and added to provide field office staffs with information and guidance concerning the administration of packaging and packaged applications.

All of the comments received were carefully considered and evaluated, and many of the recommendations were adopted into this final rule. The following revisions made to the proposed regulation are attributable to the comments received.

1. In § 1944.456, additional clarification of loan purposes for improvement or modernizing houses was added.
2. In § 1944.456, a loan/grant purpose for making houses accessible for persons with a disability or handicap was added.
3. In § 1944.457(a)(1), the lifetime loan assistance requirement was deleted.
4. In § 1944.458(d)(1), a definition of liquid assets was added.
5. In § 1944.461(a)(1)(iv), the time requirement for the unexpired portion of the leasehold interest was changed to 2 years beyond the term of the promissory note.
6. For § 1944.463(a)(2) clarification and addition of a specific reference concerning performance of development work by contractors, builders, or tradepersons.
7. In § 1944.467(a) (1) and (2), additional guidance on timeliness of processing applications was added.
8. In § 1944.467(b), a provision to require family budgets for all applicants was added.

9. In § 1944.467(c), a provision to clarify that the use of credit reports is at no cost to the applicant was added.

Additional minor changes were also made to the regulation of a clarifying nature or to delete some extraneous material.

#### List of Subjects

##### 7 CFR Part 1910

Credit, Grant programs—Housing and community development, Loan programs—Housing and community development.

##### 7 CFR Part 1944

Aged, Grant programs—Housing and community development, Loan programs—Housing and community development.

Therefore, FmHA amends Title 7, Chapter XVIII of the Code of Federal Regulations as follows:

#### PART 1910—GENERAL

1. The authority citation for Part 1910 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

#### Subpart B—Credit Reports (Individual)

2. Section 1910.53, paragraph (g) is revised to read as follows:

##### § 1910.53 Policy.

\* \* \* \* \*

(g) Credit reports will not be ordered for section 504 grant applicants or 504 loan applicants when the loan amount is \$7,500 or less. For 504 loans of more than \$7,500, credit reports will be obtained without a charge to the applicant. A credit report will not be ordered for a section 502 RH loan applicant if the requested loan will likely not exceed \$7,500, unless the County Supervisor determines a report is necessary. Although it is the policy not to order a report for section 502 RH loans of \$7,500 or less, a credit report may be necessary if the application indicates numerous debts or out of the area credit history. If a credit report is determined necessary, it will be ordered without charge to the applicant.

\* \* \* \* \*

#### PART 1944—HOUSING

3. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

#### Subpart J—Section 504 Rural Housing Loans and Grants

4. Sections 1944.451–1944.500 and Exhibit A are revised and Exhibit C is added to read as follows:

##### § 1944.451 General.

This subpart sets forth the policies and procedures and delegates authority for making initial and subsequent Rural Housing (RH) loans and/or grants to individuals under section 504 (a) of Title V of the Housing Act of 1949, as amended. The objective of the section 504 loan/grant program is to assist eligible, very low income, owner-occupants repair single family homes located in rural areas. Repairs may be made to improve or modernize the home, to make it safer and more sanitary, or to remove health and safety hazards. Grants are only available for repairs that remove health or safety hazards. Homes repaired with section 504 loan or grant funds must be modest in size and design.

##### § 1944.452 Equal credit opportunity.

Farmers Home Administration (FmHA) assistance and services will not be denied to any person based on race, sex, national origin, color, religion, marital status, age, handicap (provided the applicant possesses the capacity to enter into a legally binding contract), receipt of income from public assistance, or because an applicant has, in good faith, exercised any right under the Consumer Credit Protection Act.

##### § 1944.453 Definitions.

The terms used in this subpart are defined in Subpart A of Part 1944 of this chapter unless otherwise specified.

(a) *Hazard*. A condition of the home or site which jeopardizes the health or safety of the occupants and/or the members of the community.

(b) *Major hazard*. A condition of the home or site so severe that it is unfit for habitation.

(c) *Mobile Home*. A mobile home is an older manufactured unit often referred to as a "trailer," designed to be used as a dwelling but built prior to the enactment of Pub. L. 96-399 (October 8, 1980).

##### §§ 1944.454–1944.455 [Reserved]

##### § 1944.456 Loan and grant purposes.

Section 504 grant funds may be used only to pay costs for repairs and improvements which will remove identified health or safety hazards. Loan funds may be used to improve or modernize dwellings regardless of the removal of health or safety hazards.

Dwellings repaired with section 504 loan or grant funds need not be brought to agency development standards or thermal performance standards, nor must *all* of the existing hazards be removed provided the dwelling does not continue to have major health or safety hazards after the planned repairs are made. All work shall be in accordance with local codes and standards. When potentially hazardous equipment or materials (e.g. woodburning stoves) are being installed, all materials and installations shall be in accordance with applicable development standards of Subpart A of Part 1924 of this chapter. Authorized loan and grant purposes include but are not limited to the following:

(a) Installation or repair of sanitary water and waste disposal systems, together with related plumbing and fixtures, which will meet local health department requirements. Water supply and sewage disposal systems should be determined acceptable under Subparts A and C of Part 1924 of this chapter. However, those requirements may be waived by the State Director provided:

(1) The County Supervisor determines that the identified health hazard is severe and that the requirements in paragraph (a) of this section cannot be met, and

(2) The State Director agrees with the determination of the County Supervisor that the planned work is necessary and the requirements of paragraph (a) of this section (other than local health department requirements) are impractical.

(b) Payment of reasonable connection fees or prorata installation costs, which may include assessments for utilities (i.e., water, sewer, electricity or gas) which are required to be paid by the applicant and which cannot be paid from other funds.

(c) Energy conservation measures such as:

- (1) Insulation; and
- (2) Combination screen-storm windows and doors.

(d) Repair or replacement of the heating system including installing alternative systems such as woodburning stoves or space heaters, when appropriate.

(e) Electrical wiring.

(f) Repair of, or provision for, structural supports.

(g) Repair or replacement of the roof.

(h) Replacement of deteriorated siding.

(i) Payment of incidental expenses such as surveys, title clearance, loan closing, and architectural or other technical services.

(j) Necessary repairs to mobile/manufactured homes provided:

(1) The applicant owns the home and site and has occupied the home prior to filing an application with FmHA.

(2) The mobile/manufactured home is on a permanent foundation or will be put on a permanent foundation with section 504 funds. A permanent foundation will be either:

- (i) A full below-grade foundation, or
- (ii) A home on blocks, piers, or some similar type foundation, with skirting, and anchoring with tie-downs.

(3) The mobile/manufactured home is in need of repairs to remove health or safety hazards.

(k) Additions to dwellings with grant funds (conventional, manufactured or mobile) only when it is clearly necessary to remove health or safety hazards to the occupants.

(l) Repair or remodel houses to make accessible and usable for handicapped or disabled persons.

(m) Payment of application packaging fees if all of the following conditions are met:

(1) The services provided results in significant financial savings to the Government, either directly or by reducing the workload involved in processing applications or loans/grants,

(2) The charges are reasonable, considering,

(i) The amount and purpose of the assistance,

(ii) The repayment ability of the recipient, and

(iii) The cost of similar services in the same or a similar rural area; and

(3) The packager is not receiving other compensation for the services, such as, a real estate commission, grant funds, etc.

#### § 1944.457 Loan and grant restrictions.

(a) *Maximum loan or grant.* (1) Maximum assistance outstanding to any individual for initial or subsequent section 504 loans may not exceed a cumulative total of \$15,000.

(2) Lifetime assistance to any individual for initial or subsequent section 504 grants may not exceed a cumulative total of \$5,000.

(3) Transferees assuming section 504 loans are limited in the same manner to subsequent loans in amounts not to exceed the difference between the unpaid principal balance of the debt assumed and \$15,000.

(4) Document the amount of assistance provided each borrower/grantee on a list of section 504 recipients and retain it in the office operational file. Maintenance of the list will permit destruction of closed section 504 assistance case folders as prescribed in § 2033.10(b)(4)(i) of FmHA Instruction

2033-A (available in any FmHA office). The list must include the following information recorded at the time a section 504 loan/grant is made.

(i) Borrower or grantee name, address, and case number.

(ii) Name of co-borrower/grantee(s), if any.

(iii) Amount of the loan and/or grant.

(iv) Date loan and/or grant was made.

(b) *Limitation on use of loan or grant funds.* Section 504 loan or grant funds may not be used to:

(1) Assist in the construction of a new dwelling.

(2) Make repairs to a dwelling of such poor condition that when the repairs are completed, the dwelling will continue to be a major hazard to the safety and health of the occupants.

(3) Move a mobile/manufactured home from one site to another.

(4) Pay for any off-site improvements except for those purposes in § 1944.456(b) of this subpart.

(5) Refinance any debt or obligation of the borrower/grantee other than obligations incurred for items covered by § 1944.456 of this subpart entered into after date of application (except for the payment of assessments for the installation cost of sewer and water facilities).

(c) *Limitation on use of grant funds.* In addition to the restrictions in paragraph (b) of this section, section 504 grant funds may not be used to make changes to the dwelling for cosmetic or convenience purposes, unless the work is directly related to the removal of hazards. Cosmetic and convenience changes might include, but are not limited to:

- (1) Painting;
- (2) Paneling;
- (3) Carpeting;
- (4) Improving clothes closets or shelving;
- (5) Improving kitchen cabinets;
- (6) Air conditioning; or
- (7) Landscape plantings.

#### § 1944.458 Eligibility requirements.

Section 504 applicants must meet the following requirements:

(a) Meet the requirement of § 1944.9 (c) and (d) of Subpart A of this part.

(b) Meet the requirements of § 1944.9 (f) of Subpart A of this part. However, general credit requirements may be less stringent than those for section 502 loans. Very low-income applicants often have higher short-term debt loans in relation to income than persons with higher incomes which many times causes more late payments. Such a fact should not necessarily disqualify an applicant for a loan. The credit

worthiness determination will depend on the particular situation involved and the amount of assistance requested.

(c) Own and occupy a single family dwelling located in a rural area that is in need of repair. Evidence of ownership will be presented as outlined in § 1944.461 (a) of this subpart.

(d) Be unable to obtain financial assistance from other non FmHA credit or grant sources, and lack personal resources that can be utilized to meet their needs. Personal resources such as cash, stocks, bonds, certificates of deposit, real estate assets, etc., will be considered in the following manner:

(1) Evaluation of personal resources will exclude the dwelling and a minimum adequate site, personal automobile, household goods, and liquid assets up to \$5,000. Liquid assets are cash or any other asset that can be converted to cash in 90 days or less.

(2) In cases where the family is experiencing unusually high medical expenses, the District Director may waive requiring the use of liquid assets down to \$5,000.

(3) Personal assets which the applicant's livelihood are dependent upon (a major source of income essential to pay basic living expenses) or assets that are not economically feasible to liquidate may be exempted by the District Director.

(e) Have an adjusted annual income at the time of loan/grant approval, as defined in § 1944.6 of Subpart A of this part, which does not exceed the applicable very low-income limits in Exhibit C of Subpart A of this part (available in any FmHA office).

(f) Have sufficient and dependable income to repay the section 504 loan. An applicant whose income is not sufficient to fully meet the loan payments may obtain as a co-signer(s) a person(s) with dependably available income which will be sufficient to repay the loan. Form 1944-3, "Budget and/or Financial Statement" will be prepared for section 504 applicants to determine repayment ability.

(g) For grant assistance be an applicant/co-applicant that is 62 years of age or older and unable to repay a section 504 loan amortized over the maximum number of years for that cost of the repairs. In all cases involving a section 504 grant, Form FmHA 1944-3 will be completed before approval to determine loan repayment ability, and grant amount. The budget must evidence the applicant's lack of repayment ability for any part of the assistance to be received as a grant.

#### §§ 1944.459-1944.460 (Reserved)

#### § 1944.461 Security and other requirements.

(a) *Evidence of ownership.* Applicants must submit evidence of ownership for retention in the case file. This evidence may be a certified or photocopy of the original ownership instrument. County Supervisors may seek advice from the Regional Attorney when necessary to determine the validity or adequacy of the evidence of ownership.

(1) The following will represent ownership:

- (i) Full marketable title.
- (ii) A land purchase contract.
- (iii) An undivided interest in the property to be repaired when:

(A) The County Supervisor has no reason to believe the applicant's position of owner/occupant will be jeopardized as a result of the improvements to be made with loan/grant funds.

(B) In the case of a loan to be secured by a mortgage, any co-owner living or planning to live in the household will sign the mortgage.

(C) In the case of a grant, any co-owner living or planning to live in the household will sign the repayment agreement.

(iv) A leasehold interest in the property to be repaired. When the applicant's "ownership" interest in the property is based on a leasehold interest, the lease must be in writing and a copy must be included in the case file. The unexpired portion of the lease must not be less than 2 years beyond the term of the Promissory Note or, in the case of a grant, a period of not less than 5 years. The lease must also meet the requirements of § 1944.15(a)(5)(iv) of Subpart A of this part.

(v) A life estate, with the right of present possession, control, and beneficial use of the property.

(vi) Grazing permits or land assignments may be accepted only for unsecured loans or grants made to Indians living on a reservation, when historically the documents have been used by the Tribe and have had the comparable effect of a life estate.

(2) The following may also be accepted as evidence of ownership:

(i) Any instrument, whether or not recorded, which is commonly considered evidence of ownership.

(ii) Evidence that the applicant is listed as the owner of the property by the local taxing authority and that real estate taxes for the property are paid by the applicant.

(iii) Affidavits by others in the community that the applicant has occupied the property as the apparent

owner for a period of not less than 10 years, and is generally believed to be the owner.

(b) *Real estate mortgage.* A section 504 loan of \$2,500 or more will be secured by a mortgage on the property (or any leasehold interest or land purchase contract) being improved with the loan. The total of all debts secured by the property may not exceed the value of the security. In the case of possessory rights on an Indian reservation or State-owned land, exceptions to the usual security requirements must be made in accordance with § 1944.18(b) (2) or (3) of Subpart A of this part.

(1) *Subsequent loans.* Subsequent loans will be secured by a mortgage when the subsequent loan plus any outstanding loan balance is \$2,500 or more. When a real estate mortgage is required, each outstanding promissory note will be described in the mortgage.

(2) *Undivided ownership interest.* Security on an undivided ownership interest may exclude mortgaging the co-owner's interests when:

(i) One or more of the co-owners are not legally competent, cannot be located, or the ownership rights are divided among such a large number of co-owners that it is not practical for all interests to be mortgaged;

(ii) The interests excluded do not represent more than 50 percent of all ownership interests;

(iii) All legally competent co-owners using or occupying the dwelling sign the mortgage; and

(iv) The loan does not exceed the portion of market value of the property represented by the interests of the owners who sign the mortgage.

(3) *Life estates.* Security on a life estate ownership interest may exclude mortgaging the remaindermen's interests when:

(i) One or more of the remaindermen are not legally competent, cannot be located, or the remainder rights are divided among such a large number of remaindermen that it is not practical to obtain the signatures of all remaindermen;

(ii) The interests excluded do not represent more than 50 percent of all remainder interests;

(iii) All legally competent remaindermen using or occupying the dwelling sign the mortgage; and

(iv) The loan does not exceed the portion of market value of the property represented by the interests of the remaindermen who sign the mortgage.

(c) *Note only.* Loans of less than \$2,500 may be unsecured. In such cases,

only a promissory note need be obtained.

(d) *Repayment agreement.* (1) Grant recipients will be required to sign a repayment agreement (See Exhibit A of this subpart) which requires that if the property is sold by the grantee or the grantee's heirs or estate before the end of a three-year period, the full amount of the grant will be repaid to the Government. When ownership is a life estate interest, or an undivided ownership interest in the property, all co-owners living or planning to live in the household must sign the repayment agreement.

(2) In the event the property is sold before the expiration of the three-year period, the County Supervisor will service the account to the extent possible and practical, to protect the Government's interest and promote FmHA's recovery of grant funds.

#### § 1944.462 Rates and terms.

(a) The interest rate for all section 504 loans is one (1) percent per annum.

(b) Loan terms will not exceed 20 years and should be based on the borrower's repayment ability. Loans made in combination with grants should be amortized for 20 years, thereby maximizing the loan amount while minimizing the grant amount.

#### § 1944.463 Technical services.

(a) *Planning and performing development work.* Cost estimates or bid prices for the removal of health or safety hazards will be based on the list of essential repairs prepared by the FmHA representative after an inspection visit of the property. Exhibit B of this subpart or a similar format will be used to submit bids or cost estimates. Borrower-method construction dockets will contain written cost estimates describing materials and specifications with a complete cost breakdown on materials and labor for each item of development. For development work covered by contract, Form FmHA 1924-6, "Construction Contract", and Form FmHA 1924-2, "Description of Materials," will be used. In the case of substantial rehabilitation or new construction, Form FmHA 1924-19, "Builder's Warranty," is required.

(1) Specifications of materials must include details such as quantity, quality, sizes, grades, styles, model numbers, etc., as appropriate. Each item developed must be described specific enough to clearly identify the work and material to be furnished.

(2) Contractors, builders, or tradespersons must be competent to perform the specified development work. All development work will be in

accordance with § 1924.6 of Subpart A of Part 1924 of this chapter.

(b) *Development plans.* The County Supervisor will prepare Form FmHA 1924-1, "Development Plan," according to § 1924.5(b) of Subpart A of Part 1924 of this chapter.

(c) *Inspections.* In addition to the initial property inspection, the authorized FmHA representative will make development inspections of work in place as follows:

(1) On new construction, such as room additions, make inspections in compliance with § 1924.9 of Subpart A of Part 1924 of this chapter.

(2) Make a final inspection on individual major items of development before issuing payment.

(3) Make a final inspection of all section 504 loan and grant development work before payment-in-full.

(4) Record all development inspections of Form FmHA 1924-12, "Inspection Report."

(d) *Appraisal.* An appraisal of the real estate or leasehold interest is required when the total indebtedness (including land sale contracts) is more than \$7,500. When an appraisal is not made, the County Supervisor will document the estimated market value of the property in the case file.

(1) On a nonfarm tract or small farm, or on a leasehold interest in a nonfarm tract or small farm, an abbreviated appraisal will be made in accordance with Subpart C of Part 1922 of this chapter using the comparable sales data approach only. A small farm for the purpose of this subpart is a farm as defined in § 1944.2(g) of Subpart A of this part which has value primarily as a residence rather than for the production of agricultural commodities, and repayment of the RH loan is not dependent on farm income.

(2) On a farm tract or leasehold interest in a farm tract the appraisal will be made in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1).

(e) *Title clearance requirements.* (1) Total FmHA indebtedness of \$7,500 or less, secured with a real estate mortgage, need not meet the title requirements of Part 1807 of this chapter (FmHA Instruction 427.1). In those cases the County Supervisor will use all practical means to verify that title and lien information is complete and accurate. In most cases, this can be accomplished by a search of the courthouse records.

(2) Total FmHA indebtedness of more than \$7,500, secured with a real estate mortgage, title clearance and legal services for making and closing the loan will be provided in accordance with Part

1807 of this chapter (FmHA Instruction 427.1).

#### § 1944.464 Insurance requirements.

All applicants will be counseled and encouraged to have adequate hazard and flood insurance.

(a) *National flood insurance.* Repairs of less than \$7,500 under this subpart are considered nonsubstantial improvements under the National Flood Insurance Program, and, therefore, flood insurance is not required.

(b) *Real property insurance.* Buildings on the property which are to be taken as security for assistance of more than \$7,500 will be insured in accordance with Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1).

#### §§ 1944.465-1944.466 [Reserved]

#### § 1944.467 Processing applications.

(a) *Application.* Application for section 504 assistance will be made on Form FmHA 410-4, "Application for Rural Housing Loan Assistance (Non Farm Tract)," or Form FmHA 410-1, "Application for FmHA Service," which are available at local County Offices, and processed in accordance with Subpart A of Part 1910 of this chapter.

(1) When the request for assistance involves the removal of health or safety hazards the County Supervisor must visit the property within 30 days of receipt of the application to determine and identify what repairs are essential.

(2) The visit will be made prior to the applicant's eligibility determination, unless the applicant is clearly not eligible, and will be documented in the running case record identifying the existing hazards and essential repairs needed. Applications for assistance to remove health or safety hazards will receive priority processing.

(b) *Family budget.* Form FmHA 1944-3, "Budget and/or Financial Statement", will be prepared for all section 504 applicants. When determining repayment ability, the budget will consider and account for items such as:

(1) Non-cash benefits (food stamps, scholarships, free clothing, meals on wheels, free transportation, etc.) which help reduce the applicant's budgeted expenses. Receipt of benefits will be properly documented, and the appropriate budgeted expenses will be reduced to reflect these benefits.

(2) Income from sources not used to determine adjusted income such as earnings from employment of minors or from a full-time student, who is neither the applicant nor spouse, foster care payments, or any similar income. These sources of income will be considered to the extent that they are used to offset

budgeted expenses even though not included in "annual income".

(c) *Credit investigation.* Credit reports will be used for all loans of more than \$7,500, and will be ordered at no cost to the applicant in accordance with Subpart B of Part 1910 (available in any FmHA office). Credit reports will not be used for grant assistance or loans of \$7,500 or less.

(d) *Verification of income.* Income from employment will be verified by use of Form FmHA 1910-5, "Request for Verification of Employment". Income from Social Security (SS), Supplemental Security Income (SSI), welfare, pension and other similar sources will be verified by the most convenient method for reasonable accuracy.

(e) *Cost estimates.* Written cost estimates will be required as outlined in § 1944.463 of this subpart for all work to be performed. If, in the judgment of the County Supervisor the cost estimates are not competitive, additional cost estimates will be obtained. All cost estimates will be prepared and submitted according to § 1944.463(a) of this subpart.

(f) *Use of packagers.* Governmental entities or non-profit groups, such as churches, civic organizations, and Community Action Programs (CAP), etc., may package section 504 loan and grant applications. Each County Supervisor should actively seek the assistance of these organizations and provide adequate orientation and training concerning the responsibilities of a packager and the information required to package applications. See Exhibit C of this subpart (available in any FmHA office).

(g) *Determination of eligibility.* Eligibility for all section 504 loan and grant applicants will be determined under § 1944.458 of this subpart.

(h) *Notification.* Give notification of eligibility or adverse action to all applicants under § 1910.6 of Subpart A of Part 1910 of this chapter. Adverse actions will be processed under Subpart B of Part 1900 of this chapter.

**§ 1944.468 Loan or grant approval.**

(a) Section 504 loans or grants will be approved in accordance with Subpart A of Part 1901 of this chapter.

(b) The loan/grant approving official is responsible for reviewing the case file to determine that the proposed loan/grant complies with established policies and regulations, and that funds are available. Income and financial information used in eligibility determinations or loan/grant approvals must not be over 90 days old.

(c) At loan approval, the loan/grant approving official will prepare Forms

FmHA 1940-1, "Request for Obligation of Funds," and 1944-2, "Single Family Housing Fund Analysis," and complete Form FmHA 1940-41, "Truth in Lending Disclosure Statement," using the actual terms of the transaction, and deliver it to the applicant. For transactions that are subject to cancellation, all property owners with the right to cancel will receive Form FmHA 1940-43, "Notice of Right to Cancel."

**§ 1944.469 Loan closing or grant settlement.**

All grants and loans of \$7,500 or less may be closed or settled by the County Supervisor or designee.

(a) *Effective date of loan closing or grant settlement.* A loan secured by a real estate mortgage is closed when the mortgage is filed for record. In other cases, the loan and/or grant is closed or settled when the promissory note or repayment agreement and any other required instrument is executed by the borrower/grantee.

(b) *Promissory note.* Form FmHA 1940-16, "Promissory Note," will be used for each loan made under this subpart. The note will be prepared and signed according to Part 1807 of this chapter (FmHA Instruction 427.1), including co-signers when appropriate. Each promissory note will be prepared for monthly payment.

(c) *Repayment agreement.* Exhibit A of this subpart, prepared in original and one copy, will be used for grant assistance. The original signed document will be retained in position 2 of the County Office case file, and a copy given to the grantee.

(d) *Mortgage.* Form FmHA 427-1, "Real Estate Mortgage for (State)," will be used for each loan to be secured by a real estate mortgage. Each change made in the text by deletion, substitution or addition (excluding filling in the blanks) will be initialed in the margin by each person signing the mortgage and by the FmHA official making the change. Mortgages for loans on leasehold interests will be taken according to § 1944.18(b)(5) and § 1944.15(a)(5) (iv) and (v) of Subpart A of this part. For loans secured by a real estate mortgage subject to the right to cancel, Form FmHA 1940-43 will be given at closing to all entitled individuals according to Subpart I of Part 1940 of this chapter.

(e) *Supervised bank accounts.* A supervised bank account will be established in accordance with Subpart A of Part 1902 of this chapter, unless all the proceeds are disbursed to a supplier or contractor at closing. Funds from other sources deposited in supervised bank accounts will be accounted for by using columns 5 through 14 of Form

FmHA 402-2, "Statement of Deposits and Withdrawals."

(f) *Disbursement of funds.* Loan funds secured by a real estate mortgage may not be disbursed until the right to cancel time period has expired. Funds will be disbursed as follows:

(1) Payments for work completed will be in accordance with § 1924.6 of Subpart A of Part 1924 of this chapter.

(2) Funds deposited in supervised bank accounts will be disbursed in the following order of priority:

(i) Applicant contribution;  
(ii) Funds from sources other than FmHA;

(iii) FmHA section 504 loan funds.  
(iv) FmHA section 504 grant funds.

(g) *Unused funds.* Unused section 504 grant funds will be handled as follows:

(1) When all planned development has been completed, remaining funds may be used for any additional authorized purposes, as agreed upon by the recipient and FmHA. If no such agreement can be reached, the funds will be returned through the Concentration Banking System (CBS), as prescribed in FmHA Instruction 1951-B (available in any FmHA office). For offices not using CBS, they will forward Form FmHA 451-2, "Schedule of Remittances," along with the check to the Finance Office.

(2) The funds also will be returned to the Finance Office when:

(i) All planned development cannot be completed because the contractor is unable or unwilling to do so and the recipient—even with the assistance of the County Supervisor—is unable to obtain another contractor; or

(ii) the purpose of the loan/grant cannot be accomplished because the borrower/grantee no longer resides in the dwelling.

(3) Funds will be returned to Finance Office in the following manner:

(i) Any funds returned shall first be applied to reducing a grant. The collecting office will enter payment code 21 (other) on Form FmHA 451-2, with a brief explanation ("Recovery of Section 504 Housing Repairs Grants").

(ii) If a grant was not involved or the amount of any grant has already been returned, then remaining funds shall be returned to the Finance Office and applied to the borrower's loan account as a refund.

(h) *Deceased borrower/grantee.* (1) When a borrower/grantee dies prior to disbursement of funds for development work performed, payment may be authorized when:

(i) There is evidence the recipient or their authorized representative accepted

the work as complete and satisfactory, and

(ii) An inspection of the development work is completed by an authorized FmHA representative.

(2) When a loan is secured by a real estate mortgage, the State Director may withdraw funds to pay commitments for goods delivered or services performed, in accordance with § 1902.15(d)(1)(iii) of Subpart A of Part 1902 of this chapter.

(3) In any other instance not covered by paragraphs (1) or (2), the funds will be returned to Finance Office.

§§ 1944.470-1944.471 [Reserved]

§ 1944.472 Subsequent section 504 loans and/or grants.

Subsequent section 504 loans or grants may be made for the same purposes and under the same conditions and limitations as initial section 504 loans and grants.

§ 1944.473 Unauthorized loans and/or grants.

Unauthorized loans and/or grants are those where it is determined the recipient was not eligible for the assistance received or where the loan and/or grant was approved for unauthorized purposes. Cases of these types will be serviced according to Subpart M of Part of 1951 of this chapter.

§ 1944.474 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and recommendation of the Assistant Administrator, Housing. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, propose alternative course of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§§ 1944.475-1944.499 [Reserved]

§ 1944.500 OMB control number.

Collection of information requirements contained in this subpart have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0062.

Exhibit A—Section 504 Repayment Agreement

I/we the undersigned, hereby agree not to sell the property located at \_\_\_\_\_ being repaired with grant funds provided by the Farmers Home Administration for a period of three years from the date of this agreement. Should I/we sell the above-described property within three years, I/we agree to repay to the Farmers Home Administration, at the time of the sale, the full amount of the grant, which is \$\_\_\_\_. I/we further agree that if within three years from the date of this agreement the property is sold by either my estate or my heirs, the person or estate selling the property will repay the grant to FmHA.

\_\_\_\_\_  
(Grantee)

\_\_\_\_\_  
(Grantee)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Representative, Farmers Home Administration)

\_\_\_\_\_  
(Date)

\* \* \* \* \*

Exhibit C

Exhibit C (Guidance on Packaging Applications for Section 504 Rural Housing Assistance) is not published in the CFR or the Federal Register but is available in any FmHA office.

Date: March 14, 1989.  
Neal Sox Johnson,  
Acting Administrator, Farmers Home Administration.  
[FR Doc. 89-8639 Filed 4-11-89; 8:45 am]  
BILLING CODE 3410-07-M

7 CFR Part 1951

Reporting Delinquent Borrowers to Credit Bureaus

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Single Family Housing Loan servicing regulations to implement a provision of the Debt Collection Act (Pub. L. 97-365) authorizing Federal agencies to refer loans to credit bureaus. This will result in other potential lenders being made aware that an applicant is indebted to FmHA and the status of that debt. The intended effect of this action is to notify the public that FmHA will disclose information on borrowers to credit bureaus. The regulations are also being amended to eliminate the condition that an inequitable effect on a borrower will allow an exception to be granted to the requirements in the regulations.

EFFECTIVE DATE: May 12, 1989.

FOR FURTHER INFORMATION CONTACT: Bob Nelson, Management Analyst, Financial and Management Analysis Staff, Farmers Home Administration, U.S. Department of Agriculture, Room 5505 South Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, telephone (202) 475-4705.

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

The Administrator, Farmers Home Administration, has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal activity significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

The Debt Collection Act of 1982 (Pub. L. 97-365) authorizes the Federal Government to disclose information on debts to credit reporting agencies. FmHA changes its regulations to implement 31 U.S.C. 3711, which authorizes agencies to disclose information on debts to consumer reporting agencies. FmHA is implementing this procedure to ensure that other lenders are aware if an applicant for credit is indebted to FmHA and the status of that debt. Credit bureau reporting will encourage borrowers to keep their accounts current. This will reduce interest costs to the Government and will reduce the amount of time spent by FmHA servicing loans to delinquent borrowers.

The exception authority provision currently in Subpart G is also revised to eliminate the condition that an exception may be granted if there were an inequitable effect on a borrower. This is not consistent with the intent behind the use of the exception authority in general which is to avoid an adverse impact on the Government so long as granting the exception does not violate any statutory authority.

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410—Low Income Housing Loans (section 502 Rural Housing Loans). For the reasons set forth in the Final Rule and related notice(s) to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983), this activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The proposed rule was published for comment (53 FR 44013) on November 1, 1988. The only comments received were internal and administrative in nature. Changes were made to the proposed rule to accommodate these comments and the rule, as revised, is adopted.

#### Lists of Subjects in 7 CFR Part 1951

Account servicing and Low and moderate income housing loans—Servicing.

Therefore, FmHA amends Chapter XVIII, Title 7, Code of Federal Regulations to read as follows:

#### PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

#### Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

2. Section 1951.318 is redesignated as § 1951.320, new § 1951.318 is added, and newly designated § 1951.320 is revised to read as follows:

##### § 1951.318 Reporting to credit bureaus.

(a) *Initial reporting.* The Finance Office will initially report to credit bureaus monthly payment borrowers whose accounts are 3 payments or more past due, or annual payment borrowers whose accounts are past due by at least  $\frac{1}{2}$  of the annual installation amount on January 1. The Finance Office will notify borrowers that their account is to be reported. Borrowers who are to be reported as delinquent will have 60 days to bring the account current. If the account is not brought current during

that time, the account will be reported to the credit bureau as delinquent, and the status of the account updated monthly to the credit bureau file for seven years. Referrals will include any or all of the following information:

- (1) Case number, including Social Security Number.
- (2) Name, including co-borrower, if any.
- (3) Association code (e.g., individual or joint).
- (4) Special comments code (e.g., account in dispute).
- (5) Street address.
- (6) City, State, ZIP code.
- (7) Date loan was made.
- (8) Type of loan (e.g., real estate).
- (9) Loan number.
- (10) Total loan amount.
- (11) Date of last payment.
- (12) Status (e.g., in collection, foreclosure started).
- (13) Date loan became delinquent.
- (14) Unpaid balance.
- (15) Amount past due.
- (16) Terms.

(b) *Reviewing account status.* (1) The Finance Office will provide the servicing field office with a listing of those borrowers who are referred to the credit bureau. Upon receipt of the listing, the field office will verify the information reported as correct. If the information is incorrect, the field office will submit the incorrect account status as a problem case. All problem cases will be submitted once a month to the Finance Office through the State Correspondence Coordinator. When it is necessary to delete a borrower from a credit bureau reference, the Finance Office will send the servicing field office a listing of those borrowers who are deleted.

(2) If a borrower desires an explanation of the account or disagrees with the stated delinquency during the 60-day period between notification and referral, the borrower may request a meeting with the County Supervisor to discuss the account. If a borrower questions the account status, the account will not be referred until it is determined if the status is correct. The County Supervisor will notify the Finance Office to withhold the referral until the borrower's questions are resolved.

(3) After an account has been referred, borrowers may question information reported by contacting the credit bureau or any FmHA office. The field office should immediately notify the Finance Office of a borrower's request for review. The Finance Office will determine within 15 days what corrective action, if any, is necessary to resolve the request. If it is determined that borrower account corrections are

necessary, the request for correction will be submitted through the State Correspondence Coordinator to the Finance Office as a problem case. Agency failure to respond promptly to a borrower request for review may result in a credit bureau deleting FmHA credit information for that borrower.

#### § 1951.320 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision or failure to take action in the case of an omission would adversely affect the Government's interest. The Administrator will exercise this authority upon the request of the State Director with the recommendation of the Assistant Administrator for Housing; or upon request initiated by the Assistant Administrator for Housing. Requests for exception must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action and show how the adverse effect will be eliminated or minimized if the exception is granted.

Dated: March 8, 1989.

Neal Sox Johnson,  
*Acting Administrator, Farmers Home Administration.*

[FR Doc. 89-8568 Filed 4-11-89; 8:45 am]

BILLING CODE 3410-07-M

#### Animal and Plant Health Inspection Service

#### 9 CFR Part 97

[Docket No. 89-034]

#### Commuted Traveltime Periods

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations concerning overtime services provided by employees of Veterinary Services (VS) by adding commuted traveltime allowances in Illinois. Commuted traveltime allowances are the periods of time required for VS employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by VS employees and, under

certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of the commuted traveltime between these locations.

**EFFECTIVE DATE:** April 12, 1989.

**FOR FURTHER INFORMATION CONTACT:** Louise Rakestraw Lothery, Assistant Director, Resource Management Staff, VA, APHIS, USDA, Room 739, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7517.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in 9 CFR Part 97 require inspection, laboratory testing, certification, or quarantine of certain animals, animal products, plants, plant products, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of VS on a Sunday or holiday, or at any other time outside the VS employee's regular duty hours, the Government charges a fee for the services in accordance with 9 CFR Part 97. Under circumstances described in § 97.1, this fee may include the cost of commuted traveltime. Section 97.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the time required for VS employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 97.2 of the regulations by adding commuted traveltime allowances between certain locations in Illinois. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between these locations.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The number of requests for overtime services of a VS employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

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

**Effective Date**

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 533, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

**List of Subjects in 9 CFR Part 97**

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

Accordingly, 9 CFR Part 97 is amended as follows:

**PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS**

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

**Authority:** 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51 and 371.2(d).

2. Section 97.2 is amended by adding, in alphabetical order, the information as shown below:

**§ 97.2 Administrative instructions prescribing commuted traveltime.**

**COMMUTED TRAVELTIME ALLOWANCES**

[In hours]

Location covered	Served from—	Metropolitan area	
		Within	Out-side
<i>Add:</i>	.	.	.
Illinois:			
Bloomington.....	Avon.....	.	.
Peoria.....	Avon.....	.	.
			4
			2

Done in Washington, DC, this 7th day of April 1989.

**James W. Glosser,**  
*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 89-8638 Filed 4-11-89; 8:45 am]

**BILLING CODE 3410-34-M**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 89-NM-49-AD; Amdt. 39-6190]

**Airworthiness Directives; Boeing Model 737 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 737 series airplanes, which requires repetitive inspection and cleaning of the Auxiliary Power Unit (APU) shroud drains and plenum fuel drain. This amendment is prompted by a report of an uncontained APU tailpipe fire, which caused severe fire damage to the empennage flight control surfaces. This condition, if not corrected, could result in the loss of primary flight control surfaces.

**DATE:** April 25, 1989.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Simonson, Propulsion

Branch, ANM-140S; telephone (206) 431-1965. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** The FAA recently received a report of an incident involving a Boeing Model 737 airplane, where the airplane experienced severe vibration in flight. Investigation revealed significant fire damage to the left elevator, trim tab, and tail cone. It was reported that the elevator fire was started by an uncontained APU tailpipe fire. The fire appears to have been fueled by undrained fuel from an unsuccessful APU start, which was present because of a clogged drain. This condition, if not corrected, could result in the loss of primary flight control surfaces.

The FAA has reviewed and approved Boeing Service Letter 737-SL-49-14, Revision A, dated March 29, 1989, which describes procedures for inspection and cleaning of the APU drain system.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires repetitive inspections and cleaning of the APU shroud drains and plenum fuel drain in accordance with the service bulletin described above. Additionally, operators are required to submit a report to the FAA of any clogged fuel drains detected during the initial drain line inspection.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2120-0056.

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

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

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow

the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

#### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

#### PART 39—[AMENDED]

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

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

2. By adding the following new airworthiness directive:

#### § 39.13 [Amended]

**Boeing:** Applies to all Model 737 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To preclude the possibility of an uncontained auxiliary power unit (APU) fire due to blocked shroud and fuel drains, accomplish the following:

A. Prior to the accumulation of 150 flight hours after the effective date of this AD, perform a one-time inspection of the exhaust flange and the exhaust muffler heat shield skin joint and remove any excess or loose sealant, and perform an inspection and cleaning of the APU shroud, plenum and combustor drain lines, in accordance with Boeing Service Letter 737-SD-49-14, Revision A, dated March 29, 1989. Thereafter, at intervals not to exceed 500 hours, or immediately following maintenance involving the drain system (e.g., APU change, etc.) perform an inspection and cleaning of the APU shroud drains and plenum fuel drain in accordance with the previously mentioned letter.

B. Report all clogged fuel drains detected during the initial drain line inspection required by paragraph A., above, within 10 days after the inspection to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

**Note:** The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 25, 1989.

Issued in Seattle, Washington, on March 31, 1989.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-8560 Filed 4-11-89; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 88-NM-59-AD; Amdt. 39-6191]

#### Airworthiness Directives; Boeing Model 737-100 and -200 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737-100 and 737-200 series airplanes, which requires modification of the Air/Ground Sensing System to allow the thrust reverser activation to be enabled by a second means in addition to the existing logic. This amendment is prompted by reports of pilot inability to obtain effective braking while landing at above normal speeds during adverse weather and runway conditions. Without this modification, a condition could develop which would delay the time a pilot has to obtain reverse thrust when abnormal landings are made during adverse

weather and runway conditions. This condition, if not corrected, could result in overrun of the departure end of the runway.

**EFFECTIVE DATE:** May 10, 1989.

**ADDRESSES:** Service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Kenneth J. Schroer, Aerospace Engineer, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1943. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 737-100 and -200 series airplanes, which requires modification of the Air/Ground Sensing System to require the thrust reverser activation to be enabled by a second means, was published in the *Federal Register* on June 15, 1988 (53 FR 22332).

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

One commenter did not consider that any revision of the present Model 737 logic system is warranted. This commenter stated that overstressing the use of reverser thrust in relation to other braking systems is misleading and may lead to the pilot's failure to recognize lack of spoiler deployment and ineffective braking. The FAA does not concur with this statement due to the fact that the use of thrust reversers is stressed in Model 737 Operations Manuals, in particular when addressing landing on wet or slippery runways. The emphasis is on the early use of all means of stopping the airplane and to use the thrust reversers as soon as possible during landing roll since they are most effective at high speed. At least one major U.S. operator has an Operations Manual with the statement that under these conditions stopping capability becomes increasingly dependent on reverser thrust. The use of thrust reverser override switches has also been emphasized by some crews when flying into wet runways. In addition, most pilot guides emphasize landing distances with and without the

use of thrust reversers. The impact is substantial in stopping distance with the use of thrust reversers and even though this information is labeled as not being FAA approved it may have considerable impact on a flight crew's decision process. The FAA does not give credit for use of thrust reversers when establishing landing distances, but does acknowledge their use as an effective means for deceleration at high speeds. In light of this, the FAA has determined that the proposed modification is appropriate.

Two commenters stated that the Air/Ground System failure rate established from service history does not support the need for a redundant or new installation. The FAA does not concur. The FAA never stated that the failure rate of a component or system was the subject of or the basis for this AD, but that the Air/Ground logic system, as installed on the main landing gear, was not addressing the exposure which occurs during higher speed landings on runways with poor friction. This is supported by Boeing simulation data which indicates that, under certain airplane flight conditions, it can be shown that without speed brakes and at high speeds, the force on the main gear can be such that the Air/Ground Sensor indicates the airplane is not in ground mode. This condition is aggravated by a nose down elevator position. The recommended procedure for landing on wet or slippery runways is to immediately lower the nose wheels and hold on the runway with light forward control column pressure. This nose down condition is intended to increase gear loading, and to improve wheel spinup and directional stability. Under conditions of higher speed and slippery runway, however, without proper wheel spinup, deployment of flight spoilers will not occur for a significant distance unless manual deployment is performed by the pilot. As was noted in the NPRM, manual deployment of the spoilers may be a delayed reaction because normally the spoilers are deployed by the automated operation of this system. In light of this, the FAA has determined that improvement of the system design is necessary, rather than solely the correction of the failure of components.

One commenter expressed concern over a possible reduction in the overall reliability of the thrust reverser system as a result of this proposed modification. The FAA will review the reliability of the system as part of the manufacturer's service bulletin approval process to verify an acceptable level of integrity.

One commenter stated that it was inappropriate for the FAA to require those operators who presently use nose

gear logic to enable thrust reverser operation, to install a redundant enabling means on the Main Gear. The FAA notes that the AD was not intended to require this. The AD is applicable to Model 737-100 and 737-200 series airplanes that presently do not use nose gear compression logic to enable thrust reversers. Action required by this AD is intended to correct for those specific landing conditions noted above.

Two of the commenters requested that the compliance period be extended from 12 months to 24 or 36 months. The commenters' concerns were based on the projected heavy impact on the airline maintenance workload, as well as the fact that the manufacturer has not prepared a service bulletin that provides any procedures for installation of the modification. Further, Boeing has issued a Flight Operations Technical Bulletin (No. 737-300-9/737-200-2), on February 19, 1988, which reiterates that prompt activation of the speedbrakes is necessary should auto-deployment not occur. This Technical Bulletin reiterated an Operations Manual statement that the pilot not flying ensure that the speedbrake handle is full up. After considering this information, the FAA has determined that the compliance time may be extended to 18 months without significantly impacting safety. The final rule has been changed accordingly. The FAA has determined that this change will neither increase the economic burden on any operator nor expand the scope of the AD.

The economic impact paragraph, below, has been revised to more accurately reflect the number of affected airplanes and the cost involved in accomplishing the required modification. Additionally, an estimated cost of the required parts has been included.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described above.

There are approximately 1,090 Model 737-100 and -200 series airplanes of the affected design in the worldwide fleet. It is estimated that 361 airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. The cost of the required parts is estimated to be \$500 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$613,700.

The regulations adopted herein will not have substantial direct effects on the

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

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Boeing Model 737 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

#### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

#### PART 39—[AMENDED]

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

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

2. By adding the following new airworthiness directive:

#### § 39.13 [Amended]

**Boeing:** Applies to Model 737-100 and 737-200 series airplanes, certificated in any category, which presently do not use nose gear compression logic to enable thrust reversers. Compliance is required as indicated, unless previously accomplished.

To ensure timely deployment of reverse thrust when landing under adverse weather and runway conditions, accomplish the following:

A. Within 18 months from the effective date of this AD, install an FAA-approved modification to the Air/Ground Sensing System which causes the thrust reverser logic to be enabled by nose gear strut compression in addition to the present logic of the right main gear oleo compression.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager,

Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

**Note:** The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

This amendment becomes effective May 10, 1989.

Issued in Seattle, Washington, on March 31, 1989.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-8559 Filed 4-11-89; 8:45 am]

**BILLING CODE 4910-13-M**

#### 14 CFR Part 39

[Docket No. 89-NM-45-AD; Amdt. 39-6187]

#### Airworthiness Directives; Boeing Model 737-200, -300, and -400 Series Airplanes Equipped With Walter Kidde Dual Loop Fire/Overheat Detection Systems

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737-200, -300, and -400 series airplanes, equipped with certain Walter Kidde Dual Loop fire/overheat detection systems, which requires a revision to the engine fire detection system test procedure. This amendment is prompted by reports that the fire/overheat detection system may become inoperative after an electrical power transfer, with no indication of failure given to the flightcrew. This condition, if not corrected, could result in a situation where a propulsion system overheat or fire may not be annunciated to the flightcrew, which could jeopardize continued safe flight and landing.

**EFFECTIVE DATE:** April 24, 1989.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard N. Simonson, Propulsion

Branch, ANM-140S; telephone (206) 431-1965. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** Boeing Commercial Airplanes has reported that, during a laboratory testing of the Walter Kidde Dual Loop fire/overheat detection module, supply power was accidentally interrupted. After the power interruption, the fire detection module became inert and would not respond to inputs from the fire detection loops. Upon investigation, it was determined that the problem was a result of voltage buildup on the input gate of a logic chip. This condition, if not corrected, could result in a situation where a propulsion system overheat or fire occurring after the detection system failure may not be annunciated to the flightcrew.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires a revision to the FAA-approved Airplane Flight Manual (AFM) to revise the engine fire detection system test procedure to preclude the possibility of flight with an inoperative fire detection system. The procedure is revised to require that a fire detection/overheat warning system test be performed after every electrical power generating system configuration change to ensure that the fire/overheat detection system is operative.

The requirements of this AD are considered to be interim action. Boeing Commercial Airplanes is presently working with Walter Kidde Aerospace, Inc., to develop a design change in the fire detector module which will eliminate the possibility of the fire detection system being inoperative in flight. When this modification is approved and available, the FAA may consider further rulemaking action to revise this AD to provide for a terminating action.

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

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

to warrant the preparation of a Federalism Assessment.

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

#### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

#### PART 39—[AMENDED]

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

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

2. By adding the following new airworthiness directive:

#### § 39.13 [Amended]

**Boeing:** Applies to Model 737-200, -300, and -400 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To reduce the potential for dispatching an airplane with an inoperative fire/overheat system, accomplish the following:

A. Within 10 days after the effective date of this AD, inspect the engine fire/overheat detection module to determine the part number.

1. If part number 10-61096-41, -71, -81, -91, -92, or 10-62061-1, -2, -3, -11, or -12 is installed, add the following Engine Fire Detection System Test Procedure to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM:

- a. Prior to engine start, accomplish fire/overheat warning system test.
- b. After engine start, and with the electrical power supply system in the flight configuration, accomplish the fire/overheat warning system test.
- c. In the event of an electrical power supply configuration change inflight (e.g., generator

failure), perform the fire/overheat warning system test. In the event that this test is unsuccessful, land at the nearest suitable airport.

2. If part numbers other than those listed in paragraph A.1., above are installed, no further action is required.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

**Note:** The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98108. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 24, 1989.

Issued in Seattle, Washington, on March 30, 1989.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 89-8561 Filed 4-11-89; 8:45 am]

**BILLING CODE 4910-13-M**

#### 14 CFR Part 39

[Docket No. 89-NM-21-AD; Amdt. 39-6188]

#### Airworthiness Directives; Boeing Model 747 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive, applicable to Boeing Model 747 series airplanes, which requires a one-time inspection of the outboard engines' fuel control cable pulley bracket assemblies to determine if properly installed, and reinstallation and repair, if necessary. This amendment is prompted by reports of engine control cable strand separation and wear, due to improper installation of the brackets. Total cable rupture

could result in uncommanded engine thrust.

**EFFECTIVE DATE:** April 24, 1989.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sulmo Mariano, Propulsion Branch, ANM-140S, telephone (206) 431-1970. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

**SUPPLEMENTARY INFORMATION:** There have been reports of six instances of improper installation of an engine control cable pulley bracket on Boeing Model 747 series airplanes. The pulley brackets were found to be rotated 180 degrees from the correct orientation. In some cases, interference between the control cable and pulley bracket spacer had resulted in spacer and fastener chafing. In other cases, there was evidence of cable strand separation. Total cable separation could result in uncommanded engine thrust operation. This improper installation of brackets can exist in all of the Boeing Model 747 fleet except the -400 series (due to differences in the design configuration of the bracket assembly).

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-76A2074, dated January 19, 1989, which describes procedures for an inspection for proper installation of the outboard engines' control cable pulley bracket assemblies located at Inboard Leading Edge Station (ILES) 1116, correction of the installation if incorrectly installed, and repair of worn parts.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires a one-time inspection to determine if the control cable bracket assemblies located at ILES 1116 are properly installed, correction of the installation if incorrect, and repair of worn parts, if necessary, in accordance with the service bulletin previously described. Additionally, operators are required to submit a report to the FAA of any incorrectly installed assembly identified during the inspection.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public

procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2120-0056.

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

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

#### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

#### PART 39—[AMENDED]

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

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

2. By adding the following new airworthiness directive:

#### § 39.13 [Amended]

**Boeing:** Applies to Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747-76A2074 dated January 19, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To eliminate the potential for uncommanded thrust operation due to engine control cable rupture, accomplish the following:

A. Within the next 30 days after the effective date of this AD, inspect control cable pulley bracket assemblies of the outboard engines located at Inboard Leading Edge Station (ILES) 1116 for proper installation and wear, and attach decals, in accordance with the accomplishment instructions of Boeing Alert Service Bulletin 747-76A2074, dated January 19, 1989.

B. If the installation is incorrect, prior to further flight, remove and install the pulley bracket in the correct position; and/or if parts are found to be worn, prior to further flight, replace worn parts; in accordance with the accomplishment instructions of Boeing Service Bulletin 747-76A2074.

C. Report any incorrect pulley bracket installations detected during the inspections required by paragraph A., above, to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, within seven days after the completion of the inspection.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

**Note:** The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 24, 1989.

Issued in Seattle, Washington, on March 30, 1989.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-8557 Filed 4-11-89; 8:45 am]

**BILLING CODE 4910-13-M**

#### 14 CFR Part 39

[Docket No. 88-NM-170-AD; Amdt. 39-6185]

#### Airworthiness Directives; McDonnell Douglas Model DC-9 and C-9 (Military) Series Airplanes, Including Model DC-9-80 Series and Model MD-88 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes two existing airworthiness directives (AD), applicable to McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, including Model DC-9-80 series and Model MD-88 airplanes, which currently require inspection and repair or replacement, if necessary, of the dorsal fin attach angles. Those actions were prompted by reports from operators of cracks found in the dorsal fin attach angles. This action rescinds the current terminating action, requires repetitive inspections, and provides for a new terminating action. This amendment is prompted by reports of new fatigue cracks found in the dorsal fin attach angles. This condition, if not corrected, could compromise the structural integrity of the adjacent structure and cause subsequent failure of the empennage section.

**EFFECTIVE DATE:** May 9, 1989.

**ADDRESSES:** The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael N. Asahara, DC-9/MD-80 Program Manager, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach California 90806-2425; telephone (213) 988-5321.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD

82-10-51-R3, Amendment 39-4481 (47 FR 47803; October 28, 1982) and AD 88-17-51, Amendment 39-6016 (53 FR 35306; September 13, 1988), applicable to McDonnell Douglas Model DC-9 series airplanes, including Model DC-9-80 series and Model MD-88 airplanes, to require certain structural inspections, and repair or replacement, as necessary, of the fuselage skin under the dorsal fin, was published in the Federal Register on December 23, 1988 (53 FR 51820).

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

Three comments were received from airline operators requesting that the proposed airworthiness directive clarify that the accomplishment of the replacement or modification of the attach angle is not terminating action for all requirements of the proposed AD, as indicated in paragraph D.1., since inspections must resume after the accumulation of 30,000 additional landings. The FAA concurs with the request, and paragraph D. has been revised to reflect this information.

Two commenters requested that the eddy current or dye penetrant inspection of the dorsal fin attach angles, P/N 5939711-1, -2, -501, and -502, as proposed in paragraph C.2. be deleted. It is their contention that the visual inspection specified in paragraph C.1. is sufficient to detect cracks in those attach angles. The FAA concurs. The manufacturer has provided adequate data to substantiate that continued repetitive visual inspections of those attach angles will provide an acceptable means of inspection to adequately detect cracks in a timely manner. The FAA has revised paragraph C.2. of the final rule accordingly. The FAA has determined that this change will not increase the economic burden on any operator, nor will it expand the scope of the AD.

Two commenters requested that the inspection and modification requirements of proposed paragraphs A. and B. that were previously included in AD 82-10-51-R3 be deleted. The commenters suggested that it is obvious that any Model DC-9 airplane still flying has more than exceeded the compliance threshold specified in that AD. The FAA does not concur, since no evidence has been provided to substantiate that the entire fleet of affected Model DC-9 series airplanes has reached those thresholds or complied with the requirements. Therefore, the FAA considers it necessary to retain the portions of the previously-issued AD related to these requirements.

One commenter stated that Service bulletin 53-223, which is referenced as "terminating action" in proposed paragraph D.1., applies only to airplanes on which one-piece attach angles have been installed; and that the proposed AD does not address what action is to be taken for aircraft having two-piece attach angles installed. The FAA does not concur. As proposed in the NPRM, operators of airplanes having two-piece attach angles have two options: first, they can continue to operate an airplane in accordance with paragraphs A., B., and C. of the AD; or, second, they can modify the airplane by installing a one-piece attach angle which has been modified in accordance with Service Bulletin 53-223.

One commenter stated that the proposed AD does not include credit for recently installed attached angles. The FAA disagrees. The applicability statement of the AD provides the necessary guideline to give credit for work previously accomplished.

Another commenter stated that the wording of the AD should include the phrase, "\* \* \* or later approved revisions [of the applicable service bulletin]." The FAA disagrees, as it is FAA policy not to include such references. Later revisions of the service bulletins may be approved as an alternate means of compliance with this AD, as provided by paragraph E.

The last commenter indicated that McDonnell Douglas is currently completing a design evaluation of a "new" attach angle. The FAA is aware of such an effort, and may consider further rulemaking, as appropriate, when any new design attach angle is approved and available.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule, with the changes previously described.

There are approximately 1,520 Model DC-9 series airplanes in the worldwide fleet. It is estimated that 824 airplanes of U.S. registry will be affected by this AD, that it will take approximately 47 manhour per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$1,549,120.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not

have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model DC-9 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

#### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

#### PART 39—[AMENDED]

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

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

2. By superseding AD 82-10-51 R3, Amendment 39-4481 (47 FR 47803; October 28, 1982), and AD 88-17-51, Amendment 39-6016 (53 FR 35306; September 13, 1988), with the following new airworthiness directive:

#### § 39.13 [Amended]

McDonnell Douglas: Applies to Model DC-9 and C-9 (Military) series airplanes, including Model DC-9-80 series airplanes and Model MD-88 airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural failure of the empennage section, accomplish the following:

A. For airplanes equipped with dorsal fin two-piece attach angles, part numbers 5912188-27, -28, -29, and -30, accomplish the following:

1. Within 100 landings after May 17, 1982 (the effective date of Telegraphic AD T88-10-51-R1, later issued as Amendment 39-4481), visually inspect, from inside the airplane, the upper fuselage skin between longerons 4L through 4R for cracks in the area adjacent to the following fuselage stations appropriate to the model being inspected:

Series -10 and -20: Fuselage Stations (FS) 901.400;

Series -30 and C9: FS 1080.400;

Series -40: FS 1158.400;

Series -50: FS 1251.400; and

Series -80: FS 1422.400.

2. If no cracks are found, accomplish the interim modification in accordance with McDonnell Douglas Service Sketch 3414, Revision D, dated May 11, 1982 (hereinafter referred to as 3414D), prior to the accumulation of 50 landings after June 7, 1982, for DC-9 and C-9 series aircraft, fuselage numbers 1 through 950; and prior to the accumulation of 400 landings from May 17, 1982, for all other affected airplanes. Verification that no cracks exist must be repeated immediately prior to accomplishment of the interim modification. The visual inspection required by paragraph A.1., above, must be repeated at intervals not to exceed 2,000 landings after the accomplishment of the interim modification. Prior to accumulating 4,000 landings from May 17, 1982, accomplish the modification specified in paragraph D.1., below.

3. If cracks are found, before further flight, accomplish the interim modification described in McDonnell Douglas Service Sketches 3413, Revision J, dated March 25, 1983 (hereinafter referred to as 3413J) and 3414D, and repeat the visual inspection required by paragraph A.1., above, thereafter at intervals not to exceed 2,000 landings. Prior to accumulating 4,000 landings from May 17, 1982, accomplish the modification specified in paragraph D.1., below.

B. For airplanes with dorsal fin one-piece attach angle, part number 5912188-5 or -6, accomplish the following:

1. Within 500 landings from May 17, 1982, for airplanes with less than 2,000 landings; and within 100 landings from May 17, 1982, for airplanes with 22,500 or more landings; conduct the visual inspections, from inside the airplane, in accordance with paragraph A.1., above. In addition, conduct a visual inspection of the dorsal fin attach angle, from the outside of the airplane, for cracks.

2. If no angle cracks are found, conduct an eddy current inspection of the angle in accordance with McDonnell Douglas DC-9 Alert Service Bulletin A53-154, Revision 4, dated August 24, 1982; or conduct a dye penetrant inspection of the angle, within 1,000 additional landings, and thereafter at intervals not to exceed 3,000 landings, until the modification specified in paragraph D.1., below, is accomplished.

3. If skin cracks are found, before further flight, accomplish the modification described in McDonnell Douglas Service Sketch 3413J, and conduct eddy current inspections of the angle in accordance with paragraph B.2., above, and thereafter at intervals not to exceed 3,000 landings, until the modification specified in paragraph D.1., below, is accomplished.

4. If dorsal fin attach angle cracks are found, accomplish the repair described in DC-9 Structural Repair Manual, Chapter 53-05, Figure 19, prior to the accumulation of 50 landings from June 7, 1982, for Model DC-9 and C-9 series airplanes, fuselage numbers 1 through 896; and prior to the accumulation of 400 landings from May 17, 1982, for all other affected airplanes. Verification that no skin cracks exist must be repeated immediately prior to accomplishment of the repair.

5. A dye penetrant or eddy current inspection of the angle in accordance with

paragraph B.2., above, must be repeated at intervals not to exceed 3,000 landings after the accomplishment of the repair until the modification specified in paragraph D.1., below is accomplished. As an alternative to this procedure, accomplish the interim modification described in McDonnell Douglas Service Sketch 3414D, in accordance with the compliance schedule specified in paragraph B.4., above. The visual inspection required by paragraph B.1., above, must be repeated at intervals not to exceed 2,000 landings after the accomplishment of the interim modification. Prior to the accumulation of 4,000 landings from May 17, 1982, accomplish the modification specified in paragraph D.1., below.

C. For airplanes equipped with dorsal fin attach angle part number 5939711-1, -2, -501, or -502, accomplished the following:

1. Prior to the accumulation of 7,500 landings since installation of the above attach angle, or within 100 landings after August 19, 1988 (the effective date of telegraphic AD 88-17-51), whichever occurs later, unless previously accomplished within the last 2,000 landings, conduct a visual inspection of both angles, RH and LH, for cracks.

2. If no angle cracks are found, conduct a visual inspection of the angle in accordance with McDonnell Douglas DC-9 Alert Service Bulletin A53-223, dated November 30, 1988, (hereinafter referred to as ASB53-223), at intervals not to exceed 2,000 landings, until such time as the angles are replaced in accordance with paragraph D.1., below.

3. If dorsal fin attach angle cracks are found, before further flight, replace or modify cracked dorsal fin attach angle(s) in accordance with ASB53-223.

4. If skin cracks are found, before further flight, accomplish the modification in accordance with McDonnell Douglas Service Sketch 3413J.

#### D. Modification.

1. Replacement or modification of the dorsal fin attach angle in accordance with ASB53-223, may be accomplished in lieu of the repetitive inspections required by paragraphs A., B., or C., above.

2. Upon the accumulation of 30,000 landings after accomplishing the replacement or modification described in paragraph D.1., above, resume repetitive inspections in accordance with paragraph C., above, at intervals not to exceed 2,000 landings.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

**Note:** The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the

manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-00 (54-60). These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

This amendment becomes effective May 9, 1989.

Issued in Seattle, Washington, on March 30, 1989.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-8558 Filed 4-11-89; 8:45 am]

**BILLING CODE 4910-13-M**

## Coast Guard

### 33 CFR Part 100

[CGD 05-89-19]

#### Special Local Regulations for Marine Events; British and Irish Festival; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of implementation of 33 CFR 100.501.

**SUMMARY:** This notice implements 33 CFR 100.501 for the British and Irish Festival. This event will consist of a sculling competition involving various amateur competitors. The competition will be held in the Elizabeth River parallel to Town Point Park/Otter Berth Areas of Waterside, Norfolk Harbor, Norfolk and Portsmouth, Virginia. The regulations in 33 CFR 100.501 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

**EFFECTIVE DATES:** The regulations in 33 CFR 100.501 are effective from 2:00 p.m. to 6:00 p.m., on April 22, 1989.

**FOR FURTHER INFORMATION CONTACT:** Billy J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

**Drafting Information:** The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant

Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

*Discussion of Regulation:* Norfolk Festevents, Ltd. submitted an application on February 6, 1989 to hold a sculling competition involving various amateur competitors during the British and Irish Festival. The competition will be held in the Elizabeth River parallel to the Town Point Park and Otter Berth Areas of Waterside, Norfolk Harbor, Norfolk and Portsmouth, Virginia, on April 22, 1989. Because this is the type of event contemplated by these regulations, and because the safety of the participants would be enhanced by the implementation of the special local regulations for this regulated area, the regulations in 33 CFR 100.501 are being implemented.

Date: April 4, 1989.

A. D. Breed,

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

[FR Doc. 89-8573 Filed 4-11-89; 8:45 am]

BILLING CODE 4910-14-M

### 33 CFR Part 100

[CGD 05-89-18]

#### Special Local Regulations for Marine Events; Fitness Fest Raft Race; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of implementation of 33 CFR 100.501

**SUMMARY:** This notice implements 33 CFR 100.501 for the Fitness Fest Raft Race. The event will consist of a raft race featuring "anything that floats", running parallel to the Town Point Park promenade, Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, Virginia. The regulations in 33 CFR 100.501 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

**EFFECTIVE DATES:** The regulations in 33 CFR 100.501 are effective from 11:00 a.m. to 4:00 p.m., on May 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** Billy J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

*Drafting Information:* The drafters of this notice are Billy J. Stephenson,

project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

*Discussion of Regulation:* Norfolk Festevents, Ltd. submitted an application on January 19, 1989 to hold raft races featuring "anything that floats", parallel to the Town Point Park promenade, Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, Virginia, on May 6, 1989. Because this is the type of event contemplated by these regulations, and because the safety of the participants would be enhanced by the implementation of the special local regulations for this regulated area, the regulations in 33 CFR 100.501 are being implemented.

Date: April 4, 1989.

A. D. Breed,

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

[FR Doc. 89-8572 Filed 4-11-89; 8:45 am]

BILLING CODE 4910-14-M

### 33 CFR Part 117

[CGD7-89-05]

#### Temporary Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary rule.

**SUMMARY:** The Coast Guard is temporarily changing the regulation governing the Port Orange drawbridge in Volusia County, Florida, by extending the hours of the existing regulations to provide draw openings on 20-minute intervals on weekdays. Construction of the adjacent high rise bridge has slowed vehicular traffic on the roadway. This temporary change is being made during the peak seasonal vessel migration period to facilitate the movement of vehicular traffic across the drawbridge.

**DATES:** These temporary regulations become effective April 3, 1989 and terminate on May 31, 1989.

**ADDRESSES:** Comments should be mailed to Commander (oan), Seventh Coast Guard District, Brickell Plaza Federal Building, 909 SE. 1st Avenue, Miami, Florida 33131-3050. The comments and other materials referenced in this notice will be available for inspection and copying on the 4th Floor, of the Brickell Plaza Federal Building, 909 SE. 1st Ave., Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays.

Comments also may be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Walt Paskowsky, (305) 536-4103.

#### **SUPPLEMENTARY INFORMATION:**

Interested persons are invited to participate in this temporary rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

Prompt implementation is necessary to synchronize the rules with peak seasonal vessel traffic. The Commander, Seventh Coast Guard District, will evaluate all communications received, the overall effect of this temporary regulation change and determine a course of future action on this proposal.

*Drafting Information:* The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

*Discussion of Temporary Regulations:* The Port Orange drawbridge presently opens on signal, except that, year round, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays, the draw need open only at 8 a.m. and 5 p.m. On weekends and Federal holidays between March 15 and October 15, the bridge opens on the hour, 20 minutes after the hour, and 40 minutes after the hour between 10 a.m. and 6 p.m.

This change which adds 20-minute scheduled openings between 8:30 a.m. and 4:30 p.m., Monday through Friday, is intended to space draw openings and virtually eliminate "back to back" openings which can contribute significantly to vehicular traffic delays during these periods. It is being implemented on a temporary basis because the new high level fixed bridge presently under construction is expected to be opened to traffic in October.

#### **List of Subjects in 33 CFR Part 117**

Bridges.

*Temporary Regulations:* In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is temporarily amended as follows:

#### **PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); 33 CFR 117.43.

2. Paragraph (g) of § 117.261 is revised to read as follows for the period April 3, 1989 through May 31, 1989. Because this is a temporary rule, this revision will not appear in the Code of Federal Regulations.

**§ 117.261 Atlantic Intracoastal Waterway, St. Marys River to Key Largo.**

(g) Port Orange bridge, mile 835.5 at Port Orange. The draw shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m., Monday through Friday except Federal holidays, the draw need open only at 8 a.m. and 5 p.m. From 8:30 a.m. to 4:30 p.m. the draw need open only on the hour, 20 minutes after the hour and 40 minutes after the hour. On Saturdays, Sundays, and Federal holidays from 10 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

Dated: March 30, 1989.

J. L. Linnon,

*Captain, USCG, Acting Commander, Seventh Coast Guard District.*

[FR Doc. 89-8574 Filed 4-11-89; 8:45 am]

BILLING CODE 4910-14-M

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 17**

RIN: 2900-AD44

**Definition of Department of Veterans Affairs Medical Facilities To Include Certain Recreational Facilities**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final regulation.

**SUMMARY:** The Department of Veterans Affairs (VA) is amending its medical regulations (38 CFR Part 17) to expand the definition of VA's medical facilities to include public or private facilities at which the Secretary provides recreational activities for patients undergoing hospital, nursing home and domiciliary care and medical treatment.

**EFFECTIVE DATE:** May 12, 1989.

**FOR FURTHER INFORMATION CONTACT:** Paul C. Tryhus, Chief, Policies and Procedures Divisions (136F), Veterans Health Services and Research Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2143.

**SUPPLEMENTARY INFORMATION:** Under VA's regulations which define VA

medical facilities (38 CFR 17.30(w)), the term "VA facilities" means: (1) Facilities over which the Secretary has direct jurisdiction; (2) Government facilities for which the Secretary contracts.

This amendment simply incorporates into VA regulation a statutory language change contained in the Veterans' Benefits and Services Act of 1988, Pub. L. 100-322, which expanded this definition to include "(3) public or private facilities at which the Secretary provides recreational activities for patients receiving care under section 610 of this title."

VA finds good cause for dispensing with advance publication of this statutory definition change for public notice and comment. Since prior publication is unnecessary and not required by law this change is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612. These provisions are promulgated by Congress as contained in the Veterans' Benefits and Services Act of 1988, Pub. L. 100-322. Accordingly, the changes are now published as final regulations.

Since this technical amendment is not a "rule" as defined in section 1(a) of Executive Order 12291, Federal Regulation, it is not subject to the requirements of the Executive Order.

Catalog of Federal Domestic Assistance Numbers: 64.009 and 62.011)

**List of Subjects in 38 CFR Part 17**

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Veterans.

Approved: April 5, 1989.

Edward J. Derwinski,

*Secretary of Veterans Affairs.*

**PART 17—[AMENDED]**

In 38 CFR Part 17, § 17.30 is amended by adding paragraph (w)(3) to read as follows:

**§ 17.30 Definitions.**

(w) *VA facilities.* \* \* \*

(1) \* \* \*

(3) Public or private facilities at which the Secretary provides recreational activities for patients receiving care under section 610, Title 38, United States Code.

(Authority: 38 U.S.C. 601(4))

[FR Doc. 89-8608 Filed 4-11-89; 8:45 am]

BILLING CODE 8320-01-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[FRL-3552-2]

**Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Mendocino County APCD and Five Other APCD's**

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

**ACTION:** Final rule.

**SUMMARY:** On November 21, 1986, and March 18, 1987, the California Air Resources Board (CARB) submitted to the EPA revisions to the California State Implementation Plan (SIP). These revisions affect the counties of Mendocino, Placer, San Joaquin, Shasta, Siskiyou, and Ventura. This notice takes final action on the noncontroversial rules submitted. The revisions strengthen or retain equivalent emission control requirements of the current SIP. EPA has reviewed these revisions and determined that they are consistent with the Clean Air Act, 40 CFR Part 51, and EPA policy.

**EFFECTIVE DATE:** This action will be effective June 12, 1989, unless notice is received within 30 days that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Copies of the EPA's Technical Evaluation Report and the submitted revisions are available for public inspection at the Region 9 office, during normal working hours. Address any comments to John Ungvarsky at the EPA Region 9 office listed below.

The submittals can also be viewed at the California Air Resources Board or at the appropriate District Office listed below.

California Air Resources Board, Stationary Source Division, Criteria Pollutants Branch, Industrial Section, 1025 "P" Street, Room 210, Sacramento, California 95814  
Mendocino County Air Pollution Control District, Courthouse Square, Ukiah, California 95482

Placer County Air Pollution Control District, 11582 "B" Avenue, Auburn, California 95603

San Joaquin County Air Pollution Control District, 1601 E. Hazelton Avenue, Courthouse, Room 701, Stockton, California 95202

Shasta County Air Pollution Control District, 1855 Placer Street, County Courthouse, Redding, California 96001

Siskiyou County Air Pollution Control District, 525 South Foothill Drive, County Courthouse, Yreka, California 96097  
 Ventura County Air Pollution Control District, 800 South Victoria Avenue, Ventura, California 93009  
 U.S. Environmental Protection Agency, EPA Library, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460

Plan Section (A-2-3), U.S. Environmental Protection Agency, Region 9, Air and Toxics Division, 215 Fremont Street, San Francisco, California 94105; (415) 974-7639, FTS 454-7639.

1987 the California Air Resources Board submitted to EPA rule revisions to be incorporated into the California State Implementation Plan. This notice contains noncontroversial rules where adverse public comment is not anticipated. These revisions either clarify or strengthen existing rules. A list of the rules is provided below.

**SUPPLEMENTARY INFORMATION:**

**Background**

On November 21, 1986 and March 18,

**FOR FURTHER INFORMATION CONTACT:**  
 John Ungvarsky, State Implementation

**RULE REVISIONS SUBMITTED ON NOVEMBER 21, 1987**

District	Rule No.	Title
Mendocino County APCD.....	200	Permit Requirements.
Placer County APCD.....	225	Wood Fired Appliances.
San Joaquin County APCD.....	411.2	Transfer of Gasoline Into Vehicle Fuel Tanks.
	416	Exceptions.
	416.1	Agricultural Burning.
Shasta County APCD.....	1:1	Title.
	1:2	Definitions.
	2:10	Applications.
	2:13	Action on Applications Interim Variances (repealed).
	2:23	Posting of Permit to Operate.
	2:26	Revocation of Permit.
	2:27	Submittal of Information.
	3:2	Specific Air Contaminants.
	3:3	Gasoline Loading and Transfer in the Sacramento Valley Air Basin.
	3:8	Orders for Abatement (repealed).
	4:1	Applicable Sections of the Health and Safety Code.
	4:2	General.
	4:7	Petition for Abatement (repealed).
	4:7	Additional Rules.
	4:9	Failure to Comply with Rules (repealed).
	4:10	Service of Notices, Etc. (repealed).
	4:11	Answers (repealed).
	4:12	Withdrawal of Petition (repealed).
	4:13	Place of Hearing (repealed).
	4:14	Notice of Hearing (repealed).
	4:15	Rules of Evidence and Procedure (repealed).
	4:16	Preliminary Matters (repealed).
	4:17	Official Notice (repealed).
	4:18	Continuances (repealed).
	4:19	Hearing and Decision (repealed).
	4:20	Effective Date of Decision (repealed).
	4:21	Issuance of Subpoenas: Subpoenas Duces Tecum (repealed).
	4:22	Confidential Information (repealed).

**RULE REVISIONS SUBMITTED ON MARCH 18, 1987**

District	Rule No.	Title
Siskiyou County APCD.....	1.1	Title.
	1.2	Definitions.
	1.3	Public Records.
	1.5	Validity.
	2.3	Transfers.
	2.7	Conditional Approval.
	2.8	Denial of Application.
	2.9	Appeals.
	2.10	Further Information.
	2.11	Monitoring Requirements.
	2.12	Equipment Breakdown.
	2.13	Regulation for Public Availability of Emission Data (Deleted).
Ventura County APCD.....	23	Exemptions From Permit.

**EPA Evaluation**

The EPA has evaluated these revisions against the Clean Air Act, 40 CFR Part 51, and EPA policy. The EPA is approving these revisions because they

are consistent with the previously mentioned regulations. The revisions are primarily administrative and either strengthen or retain the State Implementation Plan (SIP). The revisions

include minor wording and title changes, the addition of definitions for clarity, and the clarification of administrative policies involving trade secrets, public records, permit applications, vapor

recovery systems, and monitoring requirements. New rules include the regulation of wood burning appliances and guidelines for equipment breakdown. The remaining revisions either delete or repeal rules which were combined with existing rules, are no longer applicable, or are now incorporated by references using the California Health and Safety Code. EPA's Evaluation Reports for each rule are available at the Region 9 office in San Francisco during normal business hours.

#### EPA Action

The EPA is approving these rules submitted on November 21, 1986 and March 18, 1986 and incorporating them into the California SIP. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective June 12, 1989 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this section will be effective June 12, 1989.

#### Regulatory Process

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709)

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 12, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2))

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

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the State of

California was approved by the Director of the Federal Register on July 1, 1982.

Date: March 31, 1989.

David P. Howekamp,  
Acting Regional Administrator.

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

#### PART 52—[AMENDED]

##### Subpart F—California

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.220 is amended by adding paragraphs (c) (171) and (172) to read as follows:

##### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(171) Revised regulations for the following APCD's were submitted on November 21, 1986 by the Governor's designee.

(i) Incorporation by reference.

(A) Mendocino County APCD.

(1) Amended Rule 200(d), adopted on July 8, 1986.

(B) Placer County APCD.

(1) New Rule 225, adopted on June 17, 1986.

(C) San Joaquin County APCD.

(1) Amended Rules 411.2, 416, and 416.1, adopted on June 24, 1986.

(D) Shasta County APCD.

(1) New or amended Rules 1:1, 1:2 (except "fugitive emissions"), 2:10, 2:23, 2:26, 2:27, 3:2, 3:3, 4:1, 4:2, and 4:7 adopted on July 22, 1986.

(2) Previously submitted to EPA on June 30, 1972 and approved in the Federal Register on September 22, 1972 and now removed without replacement, Rule 2:13.

(3) Previously submitted to EPA on July 19, 1974 and approved in the Federal Register on August 22, 1977 and now removed without replacement, Rules 3:8, 4:7, 4:9, 4:10, 4:11, 4:12, 4:13, 4:15, 4:16, 4:17, 4:18, 4:20, 4:21, and 4:22.

(4) Previously submitted to EPA on October 13, 1977 and approved in the Federal Register on November 14, 1978 and now removed without replacement, Rules 4:14 and 4:19.

(172) Revised regulations for the following APCD's were submitted on March 11, 1987, by the Governor's designee.

(i) Incorporation by reference.

(A) Siskiyou County APCD.

(1) New or amended Rules 1.1, 1.2 (A3, A4, A8, A9, B3, B4, C1, C5, C6, C8, C10, D1, D2, E1, F1, H2, I2, I3, M3, M4, O1, P1, P3, P4, P8, R3, R4, R6, S1, S2, S3, S5, S6, T2, V1), 1.3, 1.5, 2.3, 2.7, 2.8, 2.9, 2.10,

2.11, and 2.12 adopted on November 25, 1986.

(2) Previously submitted to EPA on February 21, 1972 and approved in the Federal Register on May 31, 1972 and now removed without replacement, Rule 1.2 (M).

(3) Previously submitted to EPA on July 25, 1973 and approved in the Federal Register on August 22, 1977 and now removed without replacement, Rule 2.13.

(B) Ventura County APCD.

(1) Amended Rule 23, adopted on October 21, 1986.

\* \* \* \* \*

[FR Doc. 89-8417 Filed 4-11-89; 8:45 am]

BILLING CODE 6580-50-M

#### 40 CFR Part 52

[SC-017; FRL 3553-5]

#### Approval and Promulgation of Implementation Plans; South Carolina: Stack Height Review

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves a declaration by South Carolina that recent revisions to EPA's stack height regulations do not necessitate source-specific revisions to the State Implementation Plan (SIP). The State was required to review its SIP for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that South Carolina has satisfied its obligations under section 406 of the Clean Air Act Amendments of 1977 to review its SIP with respect to EPA's revised stack height regulations. No emission limitations were affected by stack height credit above GEP or any other dispersion technique.

EFFECTIVE DATE: This action will be effective on May 12, 1989.

ADDRESSES: Copies of the materials submitted by South Carolina may be examined during normal business hours at the following locations:

Public Information Reference Unit,  
Library Systems Branch,  
Environmental Protection Agency, 401  
M Street SW., Washington, DC 20460  
Air Programs Branch, Region IV,  
Environmental Protection Agency, 345  
Courtland Street NE., Atlanta, Georgia  
30365

South Carolina Department of Health  
and Environmental Control, 2600 Bull  
Street, Columbia, South Carolina  
29201

FOR FURTHER INFORMATION CONTACT:  
Beverly T. Hudson, EPA Region IV Air

Programs Branch, at the above listed address, telephone (404) 347-2864 or FTS 257-2864.

**SUPPLEMENTARY INFORMATION:** On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credit and other dispersion techniques as required by section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club v. EPA*, 719 F. 2d 436. On October 11, 1983, the court issued its decision, ordering EPA to reconsider portions of the stack height regulations, reversing certain portions, and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 S. Ct. 3571), and on July 18, 1984, the Court of Appeals formally issued a mandate implementing its decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms, including "excessive concentration," "dispersion techniques," "nearby," and other important concepts, and modify some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of Pub. L. 95-95, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credit above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within 9 months of promulgation, as required by statute.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65 m in height and sources with emissions of sulfur dioxide (SO<sub>2</sub>) in excess of 5,000 tons per year. These limits correspond

to the *de minimis* GEP stack height and the *de minimis* SO<sub>2</sub> emission exemption from prohibited dispersion techniques. Sources were exempted from further review if they fell under the grandfathering clause (i.e., in existence before December 31, 1970), if their stack height was less than *de minimis* stack height (65 m), or if their actual height was less than the calculated Good Engineering Practice (GEP) stack height. The remaining sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory. South Carolina has indicated that the documentation is available for review at the State Office (listed above).

On May 7, and December 2, 1986, South Carolina submitted for EPA's approval documentation for Good Engineering Practice (GEP) Stack Height. EPA proposed to approve the declaration on January 18, 1989 (54 FR 1953). At that time, the public was invited to submit written comments on the proposed action. However, no comments were received. EPA is therefore approving the State's declaration that no emission limitations were affected by stack height credit above GEP or any other dispersion technique, except as the declaration applies to three sources identified below.

On January 22, 1988, the U.S. Court of Appeals for the District of Columbia issued its decision in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988), regarding the Environmental Protection Agency's (EPA's) stack height regulations (50 FR 27892, July 8, 1985); the court upheld most of the rules, but certain provisions were remanded to the EPA for further consideration. Accordingly, EPA is not acting on three sources (Public Service Authority—Winyah, South Carolina Electric and Gas Company (SCE & G)—Bowater, and SCE & G—Williams) because they currently receive credit under one of the provisions remanded to the EPA. South Carolina and EPA will review these sources for compliance with any revised requirements when EPA completes rulemaking to respond to the *NRDC* remand.

#### EPA Review

EPA has reviewed South Carolina's submittal and concurs with the conclusion that no revisions to South Carolina's existing source emission limitations are necessary as a result of EPA's revised stack height regulations. South Carolina has therefore met its obligations under Section 406 of Pub. L. 95-95 for existing source emission

limitations. (EPA approved South Carolina's stack height rules for new sources on May 28, 1987 (52 FR 19858)).

#### Final Action

EPA approves the declaration by South Carolina that recent revisions to EPA's stack height regulations do not necessitate SIP revisions for specific sources in this State. EPA proposed to approve the declaration on January 8, 1989 (54 FR 1953). The declaration does not apply to Public Service Authority—Winyah, SCE & G—Bowater, and SCE & G—Williams.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 12, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2))

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

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

Air pollution control, Intergovernmental relations, Particulate matter, Sulfur oxides.

Dated: April 3, 1989.

Joe R. Franzmathes,  
Acting Regional Administrator.

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

#### PART 52—[AMENDED]

##### Subpart PP—South Carolina

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.2130 is added to read as follows:

**§ 52.2130 Control strategy: Sulfur oxides and particulate matter.**

In letters dated May 7, and December 2, 1986, the South Carolina Department of Health and Environmental Control certified that no emission limits in the State's plan are based on dispersion techniques not permitted by EPA's stack height rules. This certification does not apply to Public Service Authority—Winyah, SCE & G—Bowater, and SCE & G—Williams.

[FR Doc. 89-8626 Filed 4-11-89; 8:45 am]

BILLING CODE 6560-50-M

**GENERAL SERVICES  
ADMINISTRATION**

**41 CFR Chapter 101**

[FPMR Temp. Reg. A-34]

**Limiting Travel Advances to Manage  
Cash More Effectively**

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Temporary regulation.

**SUMMARY:** This regulation implements Office of Management and Budget (OMB) Bulletin 88-17, July 22, 1988, "Limiting Travel Advances to Manage Cash More Effectively."

**DATES:**

*Effective date:* April 30, 1989.

*Expiration date:* December 31, 1989.

**FOR FURTHER INFORMATION CONTACT:**

Larry Tucker or other Travel and Transportation Regulations Staff members (FBR), Washington, DC 20406, telephone FTS 557-1253 or commercial, (703) 557-1253.

**SUPPLEMENTARY INFORMATION:** The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

By the Administrator's authority, sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Executive Order 11609, July 22, 1971; 5 U.S.C. 5707, the appendix at the end of Subchapter A in 41 CFR Chapter 101 is amended by adding FPMR Temporary Regulation A-34 to read as follows:

**Federal Property Management  
Regulations, Temporary Regulation A-  
34**

March 21, 1989.

To: Heads of Federal agencies  
Subject: Limiting travel advances to  
manage cash more effectively

1. *Purpose.* This regulation implements Office of Management and Budget (OMB) Bulletin 88-17, July 22, 1988, "Limiting Travel Advances to Manage Cash More Effectively."

2. *Effective date.* This regulation is effective April 30, 1989.

3. *Expiration date.* This regulation expires December 31, 1989, unless sooner superseded or incorporated into the permanent regulations of the General Services Administration (GSA).

4. *Background.*

a. A 1981 interagency study reported that Executive agencies had almost \$143 million in outstanding travel advances. This prompted OMB to issue Bulletins 82-11 and 83-6 which require the strengthening of travel advance procedures. GSA assisted in this effort by contracting with a financial services company to provide agencies with travel charge cards that employees can use to charge many of their travel expenses.

b. The OMB and GSA efforts have had limited success, however, and outstanding advances remain excessive. There also is evidence that inconsistent agency policies may be imposing hardships upon travelers in some instances. To alleviate the situation, OMB issued Bulletin 88-17 on July 22, 1988, providing Governmentwide policy to minimize travel advances without imposing financial burdens on travelers.

5. *Incorporation and amendment of pertinent Federal Travel Regulations (FTR) provisions.* Part 1-10 of the FTR, FPMR 101-7, is incorporated in this temporary regulation. The provisions of Part 1-10 continue in effect except as provided herein. Paragraphs 1-10.1 and 1-10.3 are superseded and the policies contained therein are modified as provided in paragraph 6, below.

6. Paragraphs 1-10.1 and 1-10.3 of the FTR are revised to read as follows:

**1-10.1 General policy.**

a. *Minimizing cash requirements.* As a general policy, employees traveling on official business are responsible for meeting their current travel expenses. However, Federal employees should not have to pay official travel expenses entirely from personal funds unless the employee has elected not to use alternative resources made available by the Government; i.e., contractor-issued charge cards or traveler's checks. To alleviate the need for employees to use personal funds, agencies may issue travel advances for certain expenses as authorized by FTR 1-10.3 (revised, 02/89). Agencies and travelers shall take all reasonable steps to minimize the cash burden on both the agency and the traveler. These steps shall include, but not be limited to, using Government contractor-issued charge cards. Where the use of Government charge cards is impractical for procuring common carrier transportation, agencies shall purchase required transportation tickets for employees using Government Transportation Requests (GTR's) as

provided in FTR 1-10.2, or centrally-billed airline charge accounts as provided in FPMR temporary Regulation A-31 or successor regulations.

b. *Managing financial resources.* To manage Federal financial resources more effectively for travel expense purposes, agencies shall:

(1) Hold to a minimum the amounts of cash advanced for travel purposes as provided in FTR 1-10.3 (revised, 02/89);

(2) Follow-up with travelers to assure that vouchers are submitted within established timeframes as provided in FTR 1-11.4a; and

(3) Process travel vouchers promptly to recover any excess travel advances or to provide payment to employees as provided in FTR 1-10.3e (revised, 02/89). Agencies must establish internal policies and procedures to ensure that travel vouchers are paid within 25 working days after the end of each trip or travel period for which a voucher is filed.

c. *Government contractor-issued charge cards.* Agencies shall offer Government contractor-issued charge cards to all employees who are expected to travel at least twice a year (frequent travelers), consistent with each agency's internal travel regulations. Upon request, agencies shall issue the card to any employee authorized to perform official travel. FPMR Temporary Regulation A-31 contains rules and procedures governing the issuance of Government charge cards. Travelers issued charge cards are encouraged to use them to pay for official travel expenses to the maximum extent possible.

\* \* \* \* \*

**1-10.3 Advance of funds.**

a. *Authority.* The head of each agency or his/her designated representative may provide, through proper disbursing officers, to persons entitled to per diem (for subsistence expenses) or mileage allowances, an advance of travel funds in an amount deemed advisable within the criteria stated in b and c, below, considering the character and probable duration of the travel to be performed. Agencies shall issue advances in the form of traveler's checks when that method is determined to be in the best interest of the Government.

b. *Limitation.* Except as provided in c, below, agencies shall limit the advance of travel funds to those estimated expenses that a traveler is expected to incur in connection with authorized travel (including travel incident to permanent change of station) which would normally be paid using cash ("cash transaction expenses" as defined

in (1), below). This limitation applies to advances issued for travel under single trip as well as open travel authorizations. However, for travel covered by an open travel authorization, advances shall be limited to the estimated cash transaction expenses for no more than a 45-day period.

(1) *Cash transaction expenses.* Cash transaction expenses are those travel expenses that as a general rule cannot be charged and must, therefore, be paid using cash, personal checks, or traveler's checks. It is assumed that travelers normally will be able to use a Government contractor-issued charge card to charge major expenses such as common carrier transportation fares, lodging costs, and rental of automobiles and airplanes. Therefore, expenses which will be considered cash transaction expenses are:

(a) Meals and incidental expenses (M&IE) covered by the per diem rate or actual subsistence expense allowance;

(b) Miscellaneous transportation expenses such as local transit system fares; taxi fares; parking fees; ferry fees; bridge, road, and tunnel fees; and airplane parking, landing, and tiedown fees;

(c) Gasoline and other variable expenses covered by the mileage allowance for advantageous use of a privately owned vehicle for official business; and

(d) Other authorized miscellaneous expenses which cannot be charged using a charge card and for which a cost reasonably can be estimated prior to travel.

(2) *Allowable amount for meals and incidental expenses (M&IE).* For travel within the continental United States (CONUS), the amount advanced for meals and incidental expenses shall not exceed the prescribed M&IE rate or other amount authorized by the agency under FTR Parts 1-7 or 1-8, as appropriate. For travel outside CONUS, the amount advanced for M&IE shall not exceed 50 percent of the per diem rate or actual expense rate authorized under FTR Parts 1-7 or 1-8, respectively.

c. *Exceptions to travel advance limitation.*

(1) *Authorized exceptions.* The limitation provided in b, above, does not apply to the following change of official station expenses: temporary quarters subsistence, transportation and temporary storage of household goods or employee's automobile, or transportation of mobile homes.

(2) *Agency discretion.* Agencies may, under the limited circumstances described in (a) through (c), below, increase the amount of the travel advance provided to the traveler.

(a) *Use of charge card precluded.* Travel circumstances are expected to preclude the use of a Government contractor-issued charge card to purchase transportation, lodging, car rental, or other travel expenses that normally would be chargeable.

(b) *Charge card issuance denied.* The agency determines that in certain situations an employee or group of employees should not be issued a Government contractor-issued charge card. The basis for this determination must be documented in the agency's internal travel regulations and might include infrequent travelers or travel circumstances where use of a charge card is nearly always impractical.

(c) *Official change of station.* The agency determines that the use of Government contractor-issued charge cards is not feasible for en route travel and househunting trip cash transaction expenses in connection with employees transferring between official stations, particularly those transferring between agencies.

(3) *Amount allowed.* Travel advances under this exception shall not exceed 80 percent of the estimated additional cash expenses permitted under either (1) or (2), above, and authorized on the travel authorization unless a determination is made that the 80 percent limitation will result in a financial hardship on the employee. In cases of financial hardship, the agency may advance up to 100 percent of these estimated expenses for an individual trip, or for an open travel authorization not to exceed a 45-day period.

(4) *Exception precluded.* This exception authority may not be exercised in situations where the employee has elected not to use alternative funding resources made available by the Government; i.e., Government contractor-issued charge cards or traveler's checks. This exception authority may not be exercised for travelers whose Government charge cards have been suspended or revoked because of delinquent payments.

d. *Funds chargeable.* Advances to travelers shall be chargeable to the appropriation or other funds available for the payment of the traveler's expenses.

e. *Control and recovery of advances.* Agencies shall establish internal financial controls for assuring that travelers with outstanding travel advances are notified of any delinquencies in filing vouchers and repaying outstanding advance balances, and that travelers are promptly paid amounts owed to them by the agency. These controls should include

procedures for reviewing outstanding travel advances and unpaid travel vouchers prior to an employee's separation, and for settling all outstanding amounts.

(1) *Deduction from vouchers.* It shall be the responsibility of the head of each agency or his/her designee to ensure that the amount previously advanced is deducted from the total expenses allowed or that it is otherwise recovered. In instances where the traveler is in a continuous travel status, or where periodic reimbursement vouchers are submitted on individual trip authorizations, the full amount of travel expenses allowed may be reimbursed to that traveler without any deduction of his/her advance until such time as the final voucher is submitted. If the amount advanced is less than the amount of the voucher on which the advance is deducted, the traveler shall be paid the net amount. In the event the advance exceeds the reimbursable amount, the traveler shall immediately refund the excess.

(2) *Direct refunds.* In the event of cancellation or indefinite postponement of authorized travel, the traveler shall promptly notify appropriate agency officials of such event and refund any monies advanced to him/her in connection with the authorized travel. In the event the traveler does not promptly refund the money, the head of the agency or his/her designee shall take immediate steps to secure the refund of any advances that may have been made.

(3) *Other means of recovery.* Outstanding advances which have not been recovered by deductions from reimbursement vouchers or voluntary refunds by the traveler shall be recovered promptly by a setoff of salary due or retirement credit or otherwise from the person to whom it was advanced, or his/her estate, by deduction from any amount due from the United States, or by any other legal method of recovery that may be necessary. Salary or other amounts due shall be considered before the retirement credit. In view of these protections, which are specifically included in the law, travelers shall not be required to furnish bonds in order to obtain travel advances. (See 31 U.S.C. 9302.)

f. *Accounting for advances.* Accounting for cash advances for travel purposes, recovery, and reimbursements shall be in accordance with procedures prescribed by the General Accounting Office (see General Accounting Office Policy and Procedures Manual for

Guidance of Federal Agencies, Title 7, Fiscal Procedures).

7. *Effect on other regulations.* The FTR are currently being established as a separate system of regulations to be codified in Title 41 of the Code of Federal Regulations (CFR) (41 CFR Chapters 301-304). Prior to expiration, the provisions of this temporary regulation, unless sooner revised or superseded, will be incorporated, as appropriate, in the FTR. Until incorporation and codification of this temporary regulation take place, the FTR provisions cited in paragraph 5 and its corresponding CFR codified version will continue to be part of this temporary regulation.

Richard G. Austin,

*Acting Administrator of General Services.*

[FR Doc. 89-8248 Filed 4-11-89; 8:45 am]

BILLING CODE 6820-24-M

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 208 and 252

#### Department of Defense Federal Acquisition Regulation Supplement; Antifriction Bearings

**AGENCY:** Department of Defense (DoD).

**ACTION:** Adoption of interim rule as final rule.

**SUMMARY:** The Department of Defense is issuing a final rule which revises the interim rule published at 53 FR 29332 dated August 4, 1988. This rule restricts DoD bearing procurements to domestic sources in most instances. This restriction is deemed necessary to protect and strengthen the domestic industrial base for an industry critical to National security.

**EFFECTIVE DATE:** July 11, 1989.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The interim rule solicited comments from interested parties. Comments were received from over 30 different foreign and domestic respondents. As a result of the comments received, the interim rule was extensively revised and includes the following changes:

(1) A definition for "bearing components" was added.

(2) A definition for "miniature and instrument ball bearings" was added.

(3) The definition of "commercial product" was revised.

(4) The exemption for "other authorized manufacturers" was removed.

(5) The exemption for some rod end and plain bearings was removed.

(6) The time to qualify a domestically manufactured bearing was increased to 24 months.

##### B. Regulatory Flexibility Act

The coverage at Subpart 208.79 will not have a significant impact on small businesses. It will impact only those small businesses that: (1) Manufacture antifriction bearings, or (2) use antifriction bearings in a subassembly, assembly, or end item sold to the DoD either directly or through a subcontract with a DoD contractor. Although there is no existing data to quantify the number of small businesses which may be impacted, it is estimated that only a small quantity will be affected. Further, because the restriction will be applied across the board giving the same advantages and disadvantages to all, and because commercial items are exempted from the restriction, any impact is expected to be minimal. An interim rule was published in the *Federal Register* at 52 FR 29332 dated August 4, 1988, and public comments were solicited. No public comments were received that addressed the Regulatory Flexibility Act Statement.

##### C. Paperwork Reduction Act

A paperwork burden clearance for OMB Control Number 0704-0205 was approved by OMB on November 28, 1988. This clearance reflects an increase of 439,383 hours.

##### List of Subjects in 48 CFR Parts 208 and 252

Government procurement.

Charles W. Lloyd,

*Executive Secretary, Defense Acquisition Regulatory Council.*

Therefore, 48 CFR Parts 208 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 208 and 252 continues to read as follows:

**Authority:** 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

##### PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. The interim rule published at 53 FR 29332 (August 4, 1988) is adopted as final with the following changes.

3. Subpart 208.79 is revised to read as follows:

##### Subpart 208.79—Antifriction Bearings

Sec.

208.7900 Definitions.

208.7901 Applicability.

Sec.

208.7902 Policy.

208.7903 Waiver procedures for contracts of 12 months or less.

208.7904 Waiver procedures for contracts exceeding 12 months.

208.7905 Solicitation provision and contract clause.

##### Subpart 208.79—Antifriction Bearings

##### 208.7900 Definitions.

As used in this subpart:

"Bearings" means antifriction bearings.

"Bearing components" means bearing elements, retainers, inner races, or outer races.

"Commercial product" is as defined in FAR 11.001, except that for purposes of this subpart it does not include (1) items designed or developed under a government contract, or (2) bearings or bearing components.

"Custom/specialty Bearings" means those bearings having tolerances equivalent to super precision-bearings or greater, and those bearings which contain components or have assembly characteristics that meet or exceed ABEC/RBEC 5;

"Domestic manufacture" means wholly manufactured in the United States or Canada. When a bearing assembly is involved, all components of the assembly must be wholly manufactured in the United States or Canada. Unless otherwise specified, raw materials, such as performed bar, tube or rod stock and lubricants, need not be domestically mined or produced.

"Miniature and instrument ball Bearings" means rolling element ball bearings having a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less, irrespective of material, tolerance, performance, or quality characteristics (see DFARS 208.73).

"Super-precision Bearings" means bearings having a precision classification of ABEC/RBEC 5 or higher;

##### 208.7901 Applicability.

This subpart does not apply to:

(a) Commercial products as defined in this subpart;

(b) Miniature and instrument bearings restricted by Subpart 208.73;

(c) Bearings covered by the following Military Specifications, for contracts entered into prior to December 31, 1989.

MIL B 6039 Bearing, double row, ball, sealed rod end, antifriction, self-aligning

MIL B 7949 Bearing, ball, airframe, antifriction

MIL B 8952 Bearing, roller, rod end, antifriction self-aligning

MIL B 8976 Bearing, plain, self-aligning, all metal

#### 208.7902 Policy.

The United States bearing industry has eroded during the last decade. Failure to halt this erosion will result in an industry unable to meet industrial surge and mobilization requirements for bearings. In view of the national security significance of bearings, the DoD has determined that, except as provided in 208.7901, all bearings, bearing components, or bearings contained in items, whether procured directly or installed in defense end items and subassemblies shall be of domestic manufacture. This restriction shall remain in effect for contracts awarded through September 30, 1991. The restriction may be extended an additional two years if conditions warrant.

#### 208.7903 Waiver procedures for contracts of 12 months or less.

(a) The Head of the Contracting Activity, without delegation, may waive the domestic bearings requirements of this subpart by making a determination that there is no domestic bearing manufacturer that meets the requirement or that it is not in the best interest of the United States to qualify a domestic bearing to replace a qualified nondomestic bearing. This determination must be based on a finding that the qualification of a domestically manufactured bearing would cause unreasonable costs or delays.

(b) The finding of unreasonableness should be made in consideration of the DoD policy to assist the United States industrial mobilization base by awarding more contracts to domestic bearing manufacturers, thereby increasing their capability to reinvest and to become more competitive.

#### 208.7904 Waiver procedures for contracts exceeding 12 months.

The procedures described in 208.7903 shall apply also to contracts exceeding 12 months; however, before a waiver is granted for a multiyear contract or contract that may exceed 12 months, the contracting officer shall require offerors to submit a written plan for transitioning from the use of nondomestic to domestically manufactured bearings. The plan shall be reviewed to determine whether a domestically manufactured bearing can be qualified at a reasonable cost, and used in lieu of the foreign bearing during the course of the contract

period. If acceptable, the plan shall be incorporated in the contract and shall:

(a) Identify the bearings that are not domestically manufactured, the application, and source of supply;

(b) Describe the transition, including cost and timetable, for providing a domestically manufactured bearing. The timetable for completing the transition should normally not exceed 24 months from the date the waiver is granted.

#### 208.7905 Solicitation provision and contract clause.

(a) Except as provided in (b) below the clause set forth at 252.208-7006, Required Sources for Antifriction Bearings, shall be inserted in all solicitations and contracts.

(b) The requirements of (a) above shall not apply when:

(1) The contracting officer knows that the item being procured does not contain bearings;

(2) Purchasing foreign manufactured bearings, bearing components, or foreign manufactured products containing bearings overseas for use overseas;

(3) Purchasing bearings, bearing components, or items containing bearings for use in a cooperative or co-production project under an international agreement;

(4) Using small purchase procedures, other than in purchases of bearings as the end item.

#### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. The interim rule published at 53 FR 29332 (August 4, 1988) is adopted as final with the following changes.

5. Section 252.208-7006 is revised to read as follows:

#### 252.208-7006 Required sources for antifriction bearings.

As prescribed in 208.7905 insert the following provision in solicitations and contracts:

#### Required Sources for Antifriction Bearings (Apr 1989)

(a) For the purpose of this clause: "Bearings" means antifriction bearings. "Bearing components" means the bearing element, retainer, inner race, or outer race. "Commercial product" means a product, such as an item, material, component, subsystem, or system sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices (see FAR 15.804-3(c) for an explanation of terms). It does not include items designed or developed under a government contract or bearings and bearing components.

"Custom/speciality Bearings" means those bearings having tolerance equivalent to super precision-bearings or greater, and those

bearings which contain components or have assembly characteristics that meet or exceed ABEC/RBEC 5.

"Domestic manufacture" means wholly manufactured in the United States or Canada. When a bearing assembly is involved, all components of the assembly must be wholly manufactured in the United States or Canada. Unless otherwise specified, raw materials, such as preformed bar, tube or rod stock and lubricants, need not be domestically mined or produced.

"Miniature and instrument ball Bearings" means rolling element ball bearings having a basic diameter (exclusive of flange diameters) of 30 millimeters or less, irrespective of material tolerance, performance, or quality characteristics (see DFARS Subpart 208.73).

"Super-precision Bearings" means bearings having a precision classification of ABEC/RBEC 5 or higher;

(b) Bearings, bearing components, or bearings installed in defense end items, subassemblies or components, supplied under the contract, shall be of domestic manufacture.

(c) The Contractor shall certify to the Contracting Officer in writing upon delivery of the bearings, bearing components, or defense end items or subassemblies containing bearings, that to the best of its knowledge and belief, such bearings or bearing components are of domestic manufacture.

(d) The government may waive the requirements in paragraphs (b) and (c) above, in whole or in part. However, before a waiver may be considered for a multiyear contract or one that may exceed 12 months, the Contractor shall submit a written plan for the transition from bearings that are not domestically manufactured to bearings of domestic manufacture. The plan shall identify all bearings currently in use that are not of domestic manufacture, their application and source of manufacture, a plan for the transition to domestically manufactured bearings, the costs associated with the transition, and a timetable for transition. If acceptable to the Government, the plan will be incorporated into the contract.

(e) Paragraphs (b), (c), and (d) do not apply to—

(1) End items, subassemblies and components that are commercial products;

(2) Miniature and instrument bearings which are restricted by DFARS Subpart 208.73; and

(3) Bearings covered in the following Military Specifications, for contracts entered into prior to December 31, 1989:

MIL B 6039 Bearing, double row, ball, sealed rod end, antifriction, self-aligning

MIL B 7949 Bearing, ball, airframe, antifriction

MIL B 8952 Bearing, roller, rod end, antifriction self-aligning

MIL B 8976 Bearing, plain, self-aligning, all metal

(f) The Contractor agrees that the terms of this clause, appropriately modified to reflect the identity of the parties, including this paragraph, will be inserted in every subcontract and purchase order issued in

performance of this contract, unless any of the exceptions listed in DFARS 208.7905(b) exist.

(End of clause)

[FR Doc. 89-8774 Filed 4-11-89; 8:45 am]

BILLING CODE 3810-01-M

# Proposed Rules

Federal Register

Vol. 54, No. 69

Wednesday, April 12, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 88-NM-212-AD]

#### Airworthiness Directives; Boeing Model 737-300 and -400 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 737-300 and -400 series airplanes, which would require revision of the engine operation procedures in icing conditions. This proposal is prompted by reports of an ice ingestion incident involving a Model 737-300 that resulted in a marked increase in the vibration levels of both engines. This condition, if not corrected, could jeopardize continued safe flight and landing.

**DATES:** Comments must be received no later than May 30, 1989.

**ADDRESSES:** Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-212-AD, 17900 Pacific Highway South, C-68866, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard N. Simonson, Propulsion Branch, ANM-140S; telephone (206) 431-

1965. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68866, Seattle, Washington 98168.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

##### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-212-AD, 17900 Pacific Highway South, C-68866, Seattle, Washington 98168.

##### Discussion

The FAA has been informed of an incident in which ice was ingested into both engines of a Boeing Model 737-300 series airplane, resulting in a marked increase in the vibration levels of both engines. Upon landing, inspection of the airplane revealed evidence of shingling of numerous fan blades in both engines, and severe damage to the acoustic liners of both engines. Ice accumulations of 1-2 inches were found on both spinners.

Approximately 1 inch of ice was observed on the unprotected surfaces of the airplane. It is anticipated that as much as 3 inches of ice could accumulate during a 45 minute holding operation, so it is concluded that the engines were not exposed to the maximum icing anticipated in service. If

the engines were to be exposed to an actual accumulation of three inches, the results, while unknown specifically, could cause extensive engine damage that would result in power loss in both engines.

The origin of the ice ingested in this incident is unknown at this time. Although the ability of the engine to produce rated thrust was apparently not compromised by this incident, the potential exists that an incident of this type could severely compromise engine performance. In addition, a flightcrew believing that both engines had suffered damage, could take subsequent action that would jeopardize continued safe flight and landing.

Boeing Model 737-400 series airplanes are equipped with the same type of engines as the Model 737-300 and, therefore, would also be subject to this same unsafe condition.

The FAA has reviewed and approved Boeing Operations Manual Bulletins 737-300 89-1 (for Model 737-300 series airplanes) and 737-400 89-1 (for Model 737-400 series airplanes), dated February 14, 1988, which describe operational procedures to be employed to minimize the potential for damage to the engines from ice.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require incorporation of the operation procedures previously described in the appropriate operating manual for the airplane.

There are approximately 600 Model 737-300 and -400 series airplanes in the worldwide fleet. It is estimated that 175 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$7,000.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any Model 737-300 and -400 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

#### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

#### PART 39—[AMENDED]

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

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.88.

2. By adding the following new airworthiness directive:

#### § 39.13 [Amended]

**Boeing:** Applies to Model 737-300 and -400 series airplanes, certificated in any category. Compliance required within 10 days after the effective date of this AD, unless previously accomplished.

To reduce the risk of jeopardizing continued safe flight and landing due to engine ice ingestion, accomplish the following:

A. Incorporate Boeing Operations Manual Bulletin 737-300 89-1 or 737-400 89-1, both dated February 14, 1989, as appropriate, into the Airplane Operations Manual.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

**Note:** The request should be forwarded through an FAA Principal Operations Inspector (POI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial

Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 30, 1989.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-8556 Filed 4-11-89; 8:45 am]

**BILLING CODE 4910-13-M**

#### 14 CFR Part 39

[Docket No. 89-NM-23-AD]

#### Airworthiness Directives; McDonnell Douglas Model DC-9 and C-9 (Military) Series Airplanes, Including Model DC-9-80 Series Airplanes and Model MD-88 Airplanes, Equipped With a Ventral Aft Pressure Bulkhead

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rule making (NPRM).

**SUMMARY:** This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9 and C-9 (Military) series, including Model DC-9-80 series and Model MD-88 airplanes, which currently requires optically aided visual inspections, and repair or replacement, as necessary, of the aft pressure bulkhead tee cap. This action would revise the current optically aided visual inspection program for airplanes equipped with a ventral aft pressure bulkhead to require a repetitive high frequency eddy current inspection of the entire periphery of the attach tee from the aft side of the bulkhead, and would delete the option for low frequency eddy current inspection from the forward side of the aft pressure bulkhead. This proposal is prompted by a recent report of a crack in the aft pressure bulkhead attach tee. If this condition is not corrected, bulkhead attach tee cracks may develop, which could result in rapid depressurization of the fuselage in flight and cause severe structural damage to the airplane.

**DATES:** Comments must be received no later than May 30, 1989.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention:

Airworthiness Rules Docket No. 89-NM-23-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, CI-LOO (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael N. Asahara, DC9/MD80 Program Manager, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach California 90806-2425; telephone (213) 988-5321.

#### SUPPLEMENTARY INFORMATION:

#### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

#### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-23-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

#### Discussion

On May 31, 1988, the FAA issued AD 88-13-09, Amendment 39-5954 (53 FR 21411; June 8, 1988), to require either optically aided visual or low frequency eddy current inspections of the aft pressure bulkhead from the forward side of the bulkhead of all McDonnell Douglas Model DC-9 series airplanes.

That AD was prompted by reports of cracks in the aft pressure bulkhead tee cap. Such cracking, if not detected and corrected, could eventually result in rapid depressurization of the fuselage, causing structural damage and possible loss of adjacent structure.

Since issuance of AD 88-13-09, an operator of a Model DC-9 series airplane reported finding a 24-inch crack in the non-ventral aft pressure bulkhead tee while performing an unscheduled heavy maintenance inspection. Preliminary analysis of the tee revealed that the cracks initiated at multiple sites on the forward surface of the upstanding leg of the tee as the result of metal fatigue due to bending and preloads. The crack was detected on a non-ventral aft pressure bulkhead airplane having logged 36,079 landings, with 40,336 total hours on the fuselage. Fractographic analysis revealed that the crack had initiated at approximately 12,000 landings prior to its discovery.

In light of this new report of cracking, the FAA has issued AD 89-06-04, Amendment 39-6152 (54 FR 11167; March 17, 1989), to reduce the threshold and repetitive inspection interval on all non-ventral bulkheads in order to adequately detect cracking in a timely manner. Review of the aft pressure bulkhead analysis substantiates, however, that the sequence of fatigue cracking is different between the non-ventral and ventral bulkheads. Therefore, the FAA is proposing this separate AD action to address only airplanes equipped with ventral aft pressure bulkheads.

The FAA canvassed the affected airline operators through the Air Transport Association (ATA) of America and McDonnell Douglas to ascertain their experience with the low frequency eddy current inspection from the forward side of the bulkhead, defined as an option in AD 88-13-09. From information supplied by those groups, the FAA has determined that, due to the complexity and difficulty in performing that type of inspection, the results may not be reliable and, therefore, the inspection may not be effective. The FAA has determined that a high frequency eddy current inspection of the part number 5910163-51, -53, and -54 attach tees from the aft side of the bulkhead, coupled with an optically aided visual inspection, will more adequately detect cracking in the attach tee area. In addition, the FAA has determined that sealant must be removed from the inspection area prior to inspection.

The FAA has determined that, due to the multiple-site nature of the reported cracking, continued operation of

airplanes with cracks is unacceptable. Accordingly, this proposed action would not permit the interim repair for certain cracks as described in paragraph C.2.a. of AD 88-13-09.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A53-231, dated February 24, 1989, which describes procedures for high frequency eddy current inspections of the attach tee area, and repair or replacement, if necessary.

Since this unsafe condition may exist or develop on other airplanes of the same type design equipped with a ventral aft pressure bulkhead, an AD is proposed which would supersede AD 88-13-09 and require repetitive high frequency eddy current and optically aided visual inspections of the entire periphery of the attach tee from the aft side of the bulkhead, and repair or replacement, if necessary. Subsequent inspections would also be required after any repair or replacement. Additionally, affected operators would be required to remove sealant from the inspection area prior to inspection.

There are approximately 1,400 Model DC-9 series airplanes in the worldwide fleet. It is estimated that 740 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$592,000.

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

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, McDonnell Douglas Model DC-9 and C-9 (Military) series, including Model DC-9-80 series and Model MD-88 airplanes, are operated by small

entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

#### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

#### PART 39—[AMENDED]

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

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

2. By superseding AD 88-13-09, Amendment 39-5954 (53 FR 21411; June 8, 1988), with the following new airworthiness directive:

#### § 39.13 [Amended]

**McDonnell Douglas:** Applies to Model DC-9 series airplanes, including Model DC-9-80 series airplanes and Model MD-88 airplanes, and C-9 (Military) airplanes, equipped with a ventral aft pressure bulkhead, certificated in any category. Compliance is required as indicated, unless previously accomplished within the last 3,500 landings.

To prevent cracks which could result in structural failure of the ventral aft pressure bulkhead, accomplish the following:

A. Prior to the accumulation of the number of landings indicated in the table below, and thereafter at intervals not to exceed 3,500 landings, inspect the ventral aft pressure bulkhead attach tee section around the entire periphery of the fuselage, in accordance with the procedures outlined in paragraphs A.1., A.2., and A.3. below.

TABLE

Accumulated Landings as of September 6, 1985	Initial Inspection Prior to Accumulation of the Following Landings After Effective Date of AD
35,000-49,999.....	1,500 landings.
50,000-59,999.....	1,000 landings.
60,000 or more.....	300 landings.

For airplanes with less than 35,000 landings as of September 6, 1985, conduct the initial inspection before the accumulation of 36,500 landings.

1. Remove any sealant from the inspection area of the tee section that might hinder optically aided and high eddy current inspections. Clean dirt, grease, and all foreign materials from the inspection area using lint-free wipers and 1,1,1 trichloroethane solvent or equivalent; and

2. Using an optically aided visual inspection technique, inspect the 5910163-47, -55, and -56 attach tees from the aft side of the bulkhead, in accordance with McDonnell Douglas Alert Service Bulletin A53-231, dated February 24, 1989 (hereinafter referred to as ASB53-231); and

3. Using a high frequency eddy current inspection technique, in accordance with ASB53-231, inspect the 5910163-51, -53, and -54 attach tees from the aft side of the bulkhead.

B. If cracks are found, prior to further flight, replace cracked tee cap or repair by splicing in a section of tee cap with a new, like or improved part, in accordance with McDonnell Douglas Service Rework Drawings SR09530001, Revision C, dated August 18, 1987, and SR09530001, Revision "Advance D", dated October 29, 1987. Prior to the accumulation of 35,000 landings after the repair or replacement resume the repetitive inspections in accordance with paragraph A. above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, CI-LOO (54-60). These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on March 30, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-8554 Filed 4-11-89; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 39

[Docket No. 79-ANE-18]

**Airworthiness Directives; Pratt & Whitney (PW) JT8D-1, -1A, -1B, -7, -7A, -7B, -9, -9A, -11, -15, and -17 Turbofan Engines.**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to amend Airworthiness Directive (AD) 87-14-01, which requires repetitive ultrasonic inspections of second stage fan blades. The proposed amendment would require an additional inspection of the second stage fan blade root attachment straps. The proposed amendment is needed to improve the effectiveness of the current inspection program by detecting cracks which have been found by operators in areas of the strap not covered by ultrasonic inspections. The proposed AD is needed to detect cracks in the second stage fan blade root attachment straps which could result in fracture of the blade and subsequent cowl penetration, fire, and aircraft damage.

**DATE:** Comments must be received on or before May 23, 1989.

**ADDRESSES:** Comments on the proposal may be mailed in duplicate to:

Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 79-ANE-18, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311, at the above address.

Comments delivered must be marked: Docket Number 79-ANE-18.

Comments may be inspected at the New England Region, Office of the Assistant Chief Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable alert service bulletin (ASB) may be obtained from Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457, or may be examined in the Regional Rules Docket.

**FOR FURTHER INFORMATION CONTACT:** Thomas Boudreau, Engine Certification Branch, ANE-141, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7121.

### SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be

considered by the FAA before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket Number 79-ANE-18. The postcard will be date/time stamped and returned to the commenter.

AD 87-14-01, Amendment 39-5641, was issued June 2, 1987, superseding AD 80-11-03 RI, Amendment 39-3773, as amended by Amendment 39-4148 (46 FR 33228; June 29, 1981). Airworthiness Directive 87-14-01 expanded the requirements of AD 80-11-03 RI to include second stage fan blades of higher rated engine models, and to require initial and repetitive inspections with improved ultrasonic inspection equipment.

Since issuing AD 87-14-01, review of field inspection data indicates that fan blade root attachment strap cracks are being detected at the six o'clock (inboard) position on the inside diameter (ID) of the pin hole. The FAA has received reports of over 211 blades found cracked at that location. These cracks were detected by using a fluorescent penetrant inspection (FPI) and certain eddy current inspection techniques which are not a part of AD 87-14-01. The immersion ultrasonic inspection method as required by the AD was not designed to detect cracks at the six o'clock ID pin hole location.

The FAA has determined that AD 87-14-01 should be amended to require dual inspection of second stage fan blade root attachment straps. The proposed dual inspection requirement will include both the immersion ultrasonic and FPI. Certain eddy current inspection procedures approved by the Manager of the Engine Certification Office may be used as an alternative or equivalent method to the ultrasonic/FPI dual inspection. Since this condition is likely to exist or develop in other engines of the same type design, the proposed AD would amend AD 87-14-01, Amendment

39-5641 (52 FR 24138; June 29, 1987), to require dual initial and repetitive inspections of the second stage fan blades on certain PW JT8D engines in accordance with PW ASB 5729, Revision 2, dated July 8, 1988.

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

The FAA has determined that this proposed regulation involves approximately 4,100 engines (domestic fleet) with a maximum annual cost increase of three hundred thousand dollars beyond the current AD 87-14-01 inspection cost. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the proposed rule affects only operators using aircraft in which JT8D engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

#### List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

#### PART 39—[AMENDED]

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

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

2. Section 39.13 is amended by amending Amendment 39-5641 (52 FR 24138; June 29, 1987), Airworthiness

Directive (AD) 87-14-01. The AD is restated in its entirety for clarity as follows:

#### § 39.13 [Amended]

**Pratt & Whitney:** Applies to Pratt & Whitney (PW) JT8D-1, -1A, -1B, -7, -7A, -7B, -9, -9A, -11, -15, and -17 turbofan engines.

Compliance is required as indicated, unless already accomplished. To prevent uncontained second stage fan blade failure, ultrasonically inspect and fluorescent penetrant inspect (FPI) for cracks, and remove as required, second stage fan blades, Part Numbers (P/N) 433802, 645902, 759902, 695932, 678102, and 746402, in accordance with PW Alert Service Bulletin (ASB) 5729, Revision 2, dated July 8, 1988, as follows:

(a) Inspect at the first engine shop visit after July 27, 1987.

(b) Reinspect at each second stage fan rotor disassembly from the low pressure compressor (LPC) after accumulation of 3,000 cycles in service since last inspection (SLI), but not to exceed 10,000 cycles in service SLI.

(c) Remove from service, prior to further flight, second stage fan blades that exhibit crack indications beyond the requirements of PW ASB 5729, Revision 2, dated July 8, 1988, and replace with serviceable blades.

(d) Report the following information in writing, if a blade is found to be cracked, within 30 days of the inspection to the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; Telex Number 949301 Faane Burl:

(1) Engine Serial Number (S/N)  
(2) Inspection date  
(3) Blade P/N and S/N  
(4) Blade total time and cycles (if estimate, so note)

(5) Blade time and cycles SLI  
(6) Crack location and size

Information collection requirements contained in this regulation (Section 39.13) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2120-0056.

**Notes:** (1) Shop visit is defined as the input of an engine to a repair shop with LPC rotor overhaul capability where the subsequent engine maintenance entails the following:

(a) Separation of a major engine flange (lettered or numbered) other than flanges mating with major sections of the nacelle or reverser. Separation of flanges purely for purposes of shipment, without subsequent internal maintenance, is not a "shop visit."

(b) Removal of a disk, hub, or spool.

(2) The ultrasonic inspections accomplished in accordance with AD 87-14-01, Amendment 39-5641, and PW ASB 5729, dated January 29, 1987, at the last inspection prior to the effective date of this AD, are considered to be in compliance with the dual inspection requirements of this AD. However, after the effective date of this AD, an FPI must be performed in addition to the ultrasonic inspection, unless otherwise approved by the FAA as stated below.

(e) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(f) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD, may be approved by the Manager, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on March 30, 1989.

**Jack A. Sain,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 89-8555 Filed 4-11-89; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 71

[Airspace Docket No. 88-ANM-20]

#### Proposed Amendment, Cut Bank Control Zone, Cut Bank, MT

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Cut Bank Control Zone, Cut Bank, Montana, from full-time to part-time. A reduction in personnel staffing of the Cut Bank Flight Service Station has resulted in weather observations not being available 24-hours a day. This action will bring publications up-to-date giving continuous accurate information to the aviation public.

**DATE:** Comments must be received on or before May 31, 1989.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 88-ANM-20, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Art Corwin, ANM-537, Federal Aviation Administration, Docket No. 88-ANM-20, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2576.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ANM-20". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 which describes the application procedure.

#### The Proposal

The FAA proposes an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Cut Bank Control Zone, Cut Bank, Montana, from full-time to part-time. A reduction in personnel staffing of the Cut Bank Flight Service Station has resulted in weather observations not being available 24-hours a day, and therefore, full-time control zone services will not be available. The amendment will allow for changes in the hours of effectiveness by issuances of Notices to Airmen when minor variations in time of designation are anticipated.

Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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

#### List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

#### The Proposed Amendment

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

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

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

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

#### § 71.171 [Amended]

2. Section 71.171 is amended as follows:

#### Cut Bank Montana Control Zone (Amended)

Add "The Control Zone shall be effective during the specified dates and times established in advance by a Notice to Airmen. The effective date and time will therefore be continuously published in the Airport/Facility Directory."

Issued in Seattle, Washington, on March 10, 1989.

**Temple H. Johnson, Jr.,**  
Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 89-8597 Filed 4-11-89; 8:45 am]

BILLING CODE 4910-13-M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 436

#### Trade Regulation Rule; Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

**AGENCY:** Federal Trade Commission.

**ACTION:** Extension of time for public comment on advance notice of proposed rulemaking.

**SUMMARY:** The Federal Trade Commission has granted all interested parties a 60-day extension, until June 16, 1989, of the time for filing public comments on an Advance Notice of Proposed Rulemaking for possible amendments to its trade regulation rule concerning franchises and business opportunity ventures (16 CFR Part 436). The Advance Notice, published on February 16, 1989 (54 FR 7041), had provided a 60-day period for submitting written comments ending on April 17, 1989.

**DATES:** Written comments will now be accepted until June 16, 1989.

**ADDRESS:** Written comments should be addressed to the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. All comments should be captioned: "Comment on Advance Notice of Proposed Rulemaking-Franchise Rule-Earnings Claim Disclosures, FTC File No. R51103."

**FOR FURTHER INFORMATION CONTACT:** Craig Tregillus, Franchise Rule Coordinator, PC-H-238, Federal Trade Commission, Washington, DC 20580. (202) 326-2970.

**SUPPLEMENTARY INFORMATION:** On March 23, 1989, the International Franchise Association ("IFA") filed a request for an extension of the public comment period on possible amendments to the Commission's trade regulation rule concerning franchises and business opportunity ventures ("Franchise Rule") (16 CFR Part 436). In an Advance Notice of Proposed Rulemaking ("ANPR") published on February 16, 1989, the Commission had requested written public comment on possible amendments to the Franchise Rule's earnings claim and preemption provisions during a 60-day comment period ending on April 17, 1989 (54 FR 7041).

The IFA is the only national trade association representing franchisors. It has more than 650 members directly affected by the Franchise Rule, and wishes to comment on the ANPR on their behalf. IFA's request seeks an

extension of from 60-90 days beyond April 17 for submission of its comments to allow adequate time to complete its consultations with its membership. The request proposes an extension for "all interested parties or, if appropriate, specifically for purposes of IFA's submission."

Having considered the request, the complexity of the issues raised by the ANPR, and the desirability of obtaining comments from all interested parties that fully reflect their individual or combined views and experience, the Commission has determined that a 60-day extension of time should be granted to all who wish to comment. Accordingly, the Commission has extended the deadline for filing public comments on the ANPR to June 16, 1989.

#### List of Subjects in 16 CFR Part 436

Franchising, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-8616 Filed 4-11-89; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 163

[Docket No. 86P-0297/CP]

#### Cacao Products; Proposal To Amend the Standards of Identity; Reopening and Extension of Comment Period

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice; reopening of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is reopening and extending the period for submitting comments on the proposal to amend the standards of identity for certain cacao products. This action is based upon requests from the American Dairy Products Institute (ADPI) and the Chocolate Manufacturers Association (CMA).

**DATE:** Comments by June 12, 1989.

**ADDRESS:** Written comments, data, or other information to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:**

Arthur R. Johnson, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFF-414), 200 C St. SW., Washington, DC 20204; 202-485-0112.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of January 25, 1989 (54 FR 3615), FDA published a proposal to amend the standards of identity for cacao products in 21 CFR Part 163. FDA requests commented by March 27, 1989.

ADPI has requested a 60-day extension of the comment period. ADPI stated that because of the significance of the proposed amendments to all dry milk manufacturers, additional time was necessary to complete study of the amendments and to develop a proper response on behalf of member dry milk producers and users. ADPI also stated its belief that an extension of the comment period will promote the best interests of dry milk suppliers, chocolate manufacturers, and consumers by allowing time for full evaluation of the proposed amendments to the cacao standards of identity.

CMA has requested an extension of less than 30 days to allow time for its members to fully evaluate the proposal.

FDA concludes that ADPI and CMA have provided adequate grounds in support of extending the time to comment. Therefore, FDA is reopening and extending the comment period for an additional 60 days to June 12, 1989.

Interested persons may, on or before June 12, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen at the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 6, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-8531 Filed 4-11-89; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 100

[CGD 05-89-17]

#### Special Local Regulations for Marine Events; Defenders' Day Celebration; Patapsco River, Fort McHenry, Baltimore, MD

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish permanent special local

regulations for the Defenders' Day Celebration held annually on the Patapsco River in the vicinity of Fort McHenry, Baltimore, Maryland. The regulations are necessary to restrict general navigation in the regulated area. These regulations are needed to provide for the safety of life and property on the navigable waters during the event.

**DATE:** Comments must be received on or before May 30, 1989.

**ADDRESSES:** Comments should be mailed or hand carried to Commander (bb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments will be available for inspection and copying at Room 209 of this address. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:**

Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5005 (804) 398-6204.

**SUPPLEMENTARY INFORMATION:**

Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 05-89-17) and the specific section of the proposal to which their comments apply. Reasons should be given for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on the proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

*Drafting Information:* The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

*Discussion of Proposed Regulation:* The Defenders' Day Celebration has been held annually for the past twenty years, but it has not been regulated in the past. The celebration includes a fireworks display launched from a barge anchored in the Patapsco River approximately 180 yards south of Fort McHenry Channel Range Front Light. A

portion of the river will be closed to waterborne traffic during the display. If adopted, this proposal will apply to the fireworks portion of the 175th Defenders' Day Celebration, scheduled from 6:30 p.m. to 8:30 p.m. on September 10, 1989.

**Economic Assessment and Certification:** These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because closure of the waterway is not anticipated for any extended period, commercial marine traffic will be inconvenienced only slightly. The economic impact of this proposal is expected to be so minimal, that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that if adopted, it will not have a significant economic impact on a substantial number of small entities.

**Federalism Assessment:** This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12812, and it has been determined that the proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

#### List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

#### Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

#### PART 100—[AMENDED]

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

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

2. A new § 100.515 is added to read as follows:

#### § 100.515 Patapsco River, Baltimore, Maryland.

(a) **Definitions:** (1) *Regulated area.* The waters of the Patapsco River bounded by the arc of a circle with a radius of 1,000 feet and with the center located at latitude 39°15'44.5" North, longitude 76°34'40.0" West.

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

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

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

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

(ii) Proceed as directed by any commissioned, warrant, or petty officer.

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

(c) *Effective period.* The Commander, Fifth Coast Guard District publishes a notice in the *Federal Register* and the Fifth Coast Guard District Local Notice to Mariners that announces the times and dates that this section is in effect.

Dated: March 31, 1989.

A.D. Breed,

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

[FR Doc. 89-8571 Filed 4-11-89; 8:45 am]

BILLING CODE 4910-14-M

#### 33 CFR Part 100

[CGD 05-89-14]

#### Special Local Regulations for Marine Events; Oxford Triathlon; Tred Avon River, Talbot County, MD

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish permanent special local regulations for the swim portion of the Oxford Triathlon held annually on the Tred Avon River, between Bachelor Point and the Oxford-Bellevue Ferry Dock at Bellevue in Talbot County, Maryland. The regulations are necessary to restrict general navigation in the regulated area. These regulations are needed to provide for the safety of life and property of the navigable waters during the event.

**DATE:** Comments must be received on or before May 12, 1989.

**ADDRESS:** Comments should be mailed or hand carried to Commander (bb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments will be available for inspection and copying at Room 209 of this address. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 05-89-14) and the specific section of the proposal to which their comments apply. Reasons should be given for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on the proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

**Drafting Information:** The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

**Discussion of Proposed Regulation:** The Oxford Triathlon has been an annual event for the past eight years, but has not been regulated in the past. The swim portion of the triathlon will consist of approximately 300 swimmers racing across the Tred Avon River. The swimmers will start from the sandy beach east of Bachelor Point and swim one mile in a northwesterly direction and then northerly to the Oxford-Bellevue Ferry Dock at Bellevue. It is necessary to close a portion of the Tred Avon River to all traffic except participants for the safety of those competing in the swim and their attending personnel. If adopted, this proposal will apply to the swim portion of the Ninth Oxford Triathlon,

scheduled from 8:00 a.m. to 9:30 a.m. on June 3, 1989.

**Economic Assessment and Certification:** These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because closure of the waterway is not anticipated for any extended period, commercial marine traffic will be inconvenienced only slightly. The economic impact of this proposal is expected to be so minimal, that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that if adopted, it will not have a significant economic impact on a substantial number of small entities.

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

**Environmental Impact:** This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with

section 2.B.2.c of Commandant Instruction (COMDTINST) M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

#### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

#### Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

#### PART 100—[AMENDED]

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

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

2. A new Section 100.512 is added to read as follows:

#### § 100.512. Oxford Triathalon; Tred Avon River, Talbot County, Maryland

(a) **Definitions**—(1) *Regulated area.* The waters of the Tred Avon River enclosed by a line drawn from Bachelor Point, at latitude 38°40'31.0" North, longitude 76°10'39.0" West, to the western shore, at latitude 38°41'22.0" North, longitude 76°11'22.0" West, and a line drawn from the Oxford-Bellevue Ferry Dock at latitude 38°42'09.5" North, longitude 76°10'50.0" West, to the eastern shore, at latitude 38°41'35.0" North, longitude 76°10'35.0" West.

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

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

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

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

(ii) Proceed as directed by any commissioned, warrant, or petty officer.

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

(c) *Effective period.* The Commander, Fifth Coast Guard District publishes a notice in the *Federal Register* and the Fifth Coast Guard District Local Notice to Mariners that announces the times and dates that this section is in effect.

Dated: March 31, 1989.

A.D. Breed,

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

[FR Doc. 89-8570 filed 4-11-89; 8:45 am]

BILLING CODE 4910-14-M

# Notices

Federal Register

Vol. 54, No. 69

Wednesday, April 12, 1989

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.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Committee on Rulemaking, Committee on Administration and Committee on Regulation; Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of meetings of the Committee on Rulemaking, the Committee on Administration, and the Committee on Regulation of the Administrative Conference of the United States.

#### Committee on Rulemaking

*Date:* Thursday, April 27, 1989

*Time:* 2:00 p.m.

*Location:* Administrative Conference of the U.S., 2120 L Street, NW., Suite 500, Washington, DC (Library)

*Agenda:* The Committee will meet to discuss possible recommendations on the subject of asylum adjudication.

*Contact:* Kevin L. Jessar, 202-254-7020

#### Committee on Administration

*Date:* Thursday, May 4, 1989

*Time:* 1:30 p.m.

*Location:* Administrative Conference of the U.S., 2120 L Street, NW., Suite 500, Washington, DC (Library)

*Agenda:* The committee will discuss: (1) Richard Bednar's revised report and proposed recommendation on potential uses for ADR by contracting officers in federal procurement cases, and (2) Professor Frank Bloch's draft study on the use of medically-trained decisionmakers in federal disability programs.

*Contact:* Charles Pou, Jr. 202-254-7020

#### Committee on Regulation

*Date:* Monday, May 8, 1989

*Time:* 1:00 p.m.

*Location:* Steptoe and Johnson, 1330 Connecticut Avenue, NW., Conference Room 4A, (4th Floor), Washington, DC

*Agenda:* The committee will discuss: (1) A study by Professor Sidney A.

Shapiro, University of Kansas School of Law, on regulation of biotechnology, and (2) a study by Professor Michael Baram, Boston University School of Law, on disclosure of risk information as regulatory technique.

*Contact:* David M. Pritzker, 202-254-7065

### Public Participation

Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairmen may permit members of the public to present oral statements at meetings. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meetings will be available on request to the contact persons. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

Jeffrey S. Lubbers,

*Research Director.*

April 10, 1989.

[FR Doc. 89-8875 Filed 4-10-89; 3:53 pm]

BILLING CODE 6110-01-M

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

April 7, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and

telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

### Extension

- Agricultural Stabilization and Conservation Service  
7 CFR Part 752, Water Bank Program Regulations  
ASCS-691, ASCS-817  
On occasion  
Individuals or households; Farms; 6000 responses; 1217 hours; not applicable under 3504(h)  
Millie Crabtree (202) 447-4053
- Agricultural Marketing Service  
Olives Grown in California, Marketing Order No. 982  
Recordkeeping; On occasion; Weekly; Monthly; Annually  
Farms; Businesses or other for-profit; 23,698 responses; 6,656 hours; not applicable under 3504(h)  
Virginia M. Olson (202) 475-3930
- Agricultural Marketing Service  
Regulations for Inspection and Certification of Quality of Agricultural and Vegetable Seeds under the Agricultural Marketing Act of 1946  
LS-375  
On occasion  
Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 1,761 responses; 440 hours; not applicable under 3504(h)  
James P. Triplitt (202) 447-9340
- Reinstatement
  - Food and Nutrition Service  
Participation by Charitable Institutions  
FNS Instruction 706-1  
Semi-annually  
State or local governments; 57 responses; 171 hours; not applicable under 3504(h)  
Diane Berger (703) 756-3660
  - Agricultural Stabilization and Conservation Service  
Tobacco Marketing Quota Regulations—  
7 CFR 723, 724, 725, 726, MQ-76,-76-1,-77,-78,-79,-79 supplemental, 79-2A,-99,-92,-80,-82,-117,-72-2,-25,-32,-

38,-71,-53,-108,-108-1; ASCS-378,-364,-375,-807

On occasion; Weekly; annually  
Individuals or households; Farms; Small businesses or organizations; 1,438,799 responses; 177,559 hours  
Sarah Matthews (202) 475-5012

#### New Collection

• National Agricultural Statistics Service  
Federal Crop Insurance Use Survey  
None

#### One-time Survey

Farms; 2,450 responses; 612 hours; not applicable under 3504(h)

Larry Gambrell (202) 447-7737

• Food and Nutrition Service  
Pilot Test of Alternative Systems for Measuring Negative Action Error in the Food Stamp Program

#### One time only

Individuals or households; State or local governments; Federal agencies or employees; 6,005 responses; 796 hours; not applicable under 3504(h)

Steven Carlson (703) 756-3133

Donald Hulcher,

*Acting Departmental Clearance Officer.*

[FR Doc. 89-8636 Filed 4-11-89; 8:45 am]

BILLING CODE 3410-01-M

#### Agricultural Stabilization and Conservation Service

##### Feed Grain Donations for the Rosebud Indian Reservation in South Dakota

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Rosebud Indian Reservation in South Dakota has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Rosebud Indian Reservation for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the Tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the Tribe to be acute distress areas and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the

Interior, to be needy members of the Tribe utilizing such lands. These donations by the CCC may commence upon April 10, 1989, and shall be made available through May 15, 1989, or such other date as may be stated in a notice issued by the USDA.

Signed at Washington, DC on April 6, 1989.

Vern Neppl,

*Acting Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc. 89-8567 Filed 4-11-89; 8:45 am]

BILLING CODE 3410-05-M

#### Office of International Cooperation and Development

##### USDA Agribusiness Promotion Council; Meeting

Notice is hereby given that the executive committee of the USDA Agribusiness Promotion Council, Advisory Committee to the Secretary of Agriculture on the Caribbean Basin Initiative (CBI), will meet on April 20 from 9:00 a.m. to 12:00 noon in Room 224-W in the Administrative Building of the U.S. Department of Agriculture. The committee agenda includes: Discussion of current Council activities and recommendations on the future direction of the Council. The meeting is open to the public. To the extent limited by time, public participation will be allowed.

Comments may be submitted to Dr. Joan S. Wallace, Administrator, Office of International Cooperation and Development, before or after the meeting. Further information may be obtained by calling the Private Sector Relations Division, Office of International Cooperation and Development, (202) 653-7873.

Joan S. Wallace,

*Administrator, Office of International Cooperation and Development.*

[FR Doc. 89-8641 Filed 4-11-89; 8:45 am]

BILLING CODE 3410-43-M

#### COMMISSION ON CIVIL RIGHTS

##### Georgia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Georgia Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 1:00 p.m. on April 29, 1989, at the Marriott-Marquis Hotel, 265 Peachtree Center Avenue, Atlanta, Georgia. The purpose of the meeting is to receive a briefing from community leaders on civil rights progress and/or problems in the

state and to make future plans for a program project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Rose Strong (404/563-0006) or Bobby Doctor, CCR staff at (202/376-8552). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Mr. Doctor at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 3, 1989.

Melvin L. Jenkins,

*Acting Staff Director.*

[FR Doc. 89-8600 Filed 4-11-89; 8:45 am]

BILLING CODE 6335-01-M

#### DEPARTMENT OF COMMERCE

##### Bureau of Export Administration

[OEE-1-89]

##### Export Privileges; Franciscus B. Govaerts et al.

In the Matter of: FRANCISCUS B. GOVAERTS, individually and doing business as PRINTLAS EUROPA Torenakker 8-5731 CC Mierlo, Netherlands and GORIS CHRISTIAAN GRANDIA, individually and doing business as GRANDIA PROJECT SERVICES with addresses at Laurierstraat 59 1016 PH Amsterdam, Netherlands and Gudrunstrasse 121 A 1100 Vienna, Austria and MARCEL SANDERS, individually and doing business as BELGIUM TRADING COMPANY LOKEREN S.A. Sijpstraat 6 9101 Lokeren, Belgium and ROGER VAN ALPHEN Populieresloantje 8 Huizen, Netherlands, Respondents.

##### Order Temporarily Denying Export Privileges

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), pursuant to the provisions of § 788.19 of the Export Administration Regulations (15 CFR Parts 768-799) (the Regulations),<sup>1</sup> issued pursuant to the

<sup>1</sup> Effective October 1, 1988, the Regulations were redesignated as 15 CFR 768-799 (53 FR 37751, September 28, 1988). The transfer merely changed the first number of each Part from a "3" to a "7". Until such time as the Code of Federal Regulations is republished, the Regulations can be found at 15 CFR Parts 368-399 (1988).

Export Administration Act of 1979 (50 U.S.C. app. 2401-2420 (1982 and Supp. III 1985), as amended by Pub. L. 100-418, 102 Stat. 1107 (August 23, 1988)) (the Act), has asked the Assistant Secretary for Export Enforcement to issue an order temporarily denying all United States export privileges to Franciscus B. Govaerts (Govaerts), individually and doing business as Printlas Europa (Printlas Europa); Goris Christiaan Grandia (Grandia), individually and doing business as Grandia Project Services; Marcel Sanders (Sanders), individually and doing business as Belgium Trading Company Lokeren S.A. (Belgium Trading), and Roger Van Alphen (Van Alphen) (collectively referred to as respondents).

As a result of an investigation conducted by the Department and the U.S. Customs Service (Customs), the Department has reason to believe that from a date unknown to on or about December 9, 1988, Govaerts, Grandia, Sanders and Van Alphen, while doing business under the names of their respective companies, sought to obtain U.S.-origin equipment, controlled for reasons of national security, and to export that equipment from the United States to Bulgaria, knowing that the Department would not likely authorize the export of the equipment to Bulgaria.

The investigation has revealed that, on or about December 9, 1988, Govaerts, with the aid of Grandia, Sanders and Van Alphen, in fact attempted to export the equipment from the United States through the Netherlands to Bulgaria, by falsely declaring that the country of ultimate destination was the Netherlands and that the equipment could be exported under general license G-DEST. Each of those individuals has been indicted for his respective role in this matter.

The investigation also has given the Department reason to believe that Govaerts, Grandia, Sanders and Van Alphen have access to large sums of money and that, given the opportunity, they would use that money in the near future to acquire U.S.-origin equipment similar to that which Govaerts attempted to export in December 1988, and export that equipment to Bulgaria. Moreover, the Department has reason to believe that, if necessary, Govaerts, Grandia, Sanders and Van Alphen would use Belgian contacts to effect the export of that equipment to Bulgaria.

The Department believes that, viewed as a whole, the past activities of Govaerts, individually and doing business as Printlas Europa; Grandia, individually and doing business as Grandia Project Services; Sanders, individually and doing business as

Belgium Trading, and Van Alphen demonstrate that they are involved in a scheme to obtain controlled U.S.-origin commodities, and to export that equipment from the United States to Bulgaria.

Therefore, based on the showing made by the Department, I find that an order temporarily denying export privileges to Franciscus B. Govaerts, individually and doing business as Printlas Europa; Goris Christiaan Grandia, individually and doing business as Grandia Project Services; Marcel Sanders, individually and doing business as Belgium Trading Company Lokeren S.A., and Roger Van Alphen is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations. This order is issued on an *ex parte* basis without a hearing based on the Department's showing that expedited action is required.

Accordingly, it is hereby *Ordered*

I. All outstanding validated export licenses in which Franciscus B. Govaerts, individually and doing business as Printlas Europa; Goris Christiaan Grandia, individually and doing business as Grandia Project Services; Marcel Sanders, individually and doing business as Belgium Trading Company Lokeren S.A., and Roger Van Alphen appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Respondents Franciscus B. Govaerts, individually and doing business as Printlas Europa; Goris Christiaan Grandia, individually and doing business as Grandia Project Services; Marcel Sanders, individually and doing business as Belgium Trading Company Lokeren S.A., and Roger Van Alphen, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part, or that are

otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which Govaerts, Grandia, Sanders, Van Alphen or any of their respective companies is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport,

finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States and subject to the Art and the Regulations.

V. In accordance with the provisions of § 788.19(e) of the Regulations, respondents may, at any time, appeal this temporary denial order by filing with the Office of Administrative Law Judges, U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order is effective immediately and shall remain in effect for 180 days.

VII. In accordance with the provisions of § 788.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose a request to renew this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven day before the expiration date of this order.

A copy of this order and of Parts 787 and 788 of the Regulations shall be served on each respondent and this order shall be published in the Federal Register.

Date: April 6, 1989.

William V. Skidmore,

*Assistant Secretary for Export Enforcement.*

[FR Doc. 89-8640 Filed 4-11-89; 8:45 am]

BILLING CODE 3510-DT-M

#### Semiconductor Technical Advisory Committee; Closed Meeting

A meeting of the Semiconductor Technical Advisory Committee will be held April 28, 1989, at 9:00 a.m., Herbert C. Hoover Building, Room 1617-F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to Semiconductor equipment or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal

Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 522b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information call Ruth D. Fitts at 202-377-2583.

Date: April 5, 1989.

Betty A. Ferrell,

*Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.*

[FR Doc. 89-8606 Filed 4-11-89; 8:45 am]

BILLING CODE 3510-DT-M

#### International Trade Administration

[A-122-806]

##### Preliminary Determination of Sales at Less Than Fair Value: Generic Cephalixin Capsules From Canada

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We preliminarily determine that generic cephalixin capsules from Canada are being, or are likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances do not exist with respect to imports of generic cephalixin capsules from Canada. We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to suspend liquidation of all entries of generic cephalixin capsules from Canada as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by June 19, 1989.

**EFFECTIVE DATE:** April 12, 1989.

**FOR FURTHER INFORMATION:** Contact Loc Nguyen or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230;

telephone: (202) 377-3530 (Nguyen), (202) 377-1769 (Apple).

#### SUPPLEMENTARY INFORMATION:

##### Preliminary Determination

We preliminarily determine that generic cephalixin capsules from Canada are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances do not exist with respect to generic cephalixin capsules from Canada.

##### Case History

Since the notice of initiation (53 FR 47563, November 23, 1988), the following events have occurred: On December 12, 1988, the ITC determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Canada of generic cephalixin capsules (USITC Pub. No. 2143, December 1988).

On December 7, 1988, the Department's questionnaire was presented to Novopharm, Ltd. (Novopharm), which accounts for a substantial portion of exports of the subject merchandise to the United States during the period of investigation.

We received replies to the questionnaire from Novopharm on December 28, 1988, and on January 24, 1989.

On February 2, 1989, under the "waiver of verification" provision, section 733(b)(2) of the Act, the petitioner requested that an official of the Department be designated by the Secretary to review the information received during the first 60 days of the investigation to determine if there appeared to be sufficient information available upon which the preliminary determination could reasonably be based. Petitioner further requested, if there appeared to be sufficient information available, that the Department disclose the information to the petitioner. On February 6, 1989, the designated official concluded that there did not appear to be sufficient information available upon which the preliminary determination could be reasonably based. Therefore, the Department declined to disclose to petitioner all available information, other than that already available to petitioner under the existing administrative protective order.

On February 10, 1989, the Department sent a deficiency letter and responses were received by the Department on February 23, and on March 6, 1989. On April 4, 1989, the Department sent an additional deficiency letter to respondent.

#### Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule (HTS)*, as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS subheading(s). The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The products covered by this investigation are generic cephalixin capsules from Canada. Generic cephalixin capsules are cephalixin monohydrate in capsule form. Cephalixin monohydrate is a semi-synthetic cephalosporin antibiotic intended for oral administration. Its chemical formula is C<sub>16</sub>H<sub>17</sub>N<sub>3</sub>O<sub>4</sub>S.H<sub>2</sub>O. Generic cephalixin capsules contain not less than 90 percent and not more than 120 percent of the labelled amount of cephalixin monohydrate. The capsule is made of a water soluble gelatin, designed to facilitate swallowing and a phased release of the drug into the user's digestive system.

Prior to January 1, 1989, such merchandise was classifiable under item 411.7600 of the *Tariff Schedules of the United States Annotated (TSUSA)*. This merchandise is currently classifiable under HTS subheading 3004.20.00.

#### Period of Investigation

The period of investigation is May 1, 1988, through October 31, 1988.

#### Fair Value Comparisons

To determine whether sales of generic cephalixin capsules from Canada to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

#### United States Price

We based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act, since the first sale to an unrelated

customer was made after importation. To calculate exporter's sales price, we used the packed, ex-warehouse or delivered, duty-paid prices to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, U.S. inland freight, U.S. and foreign brokerage and handling charges, insurance, and U.S. duty, in accordance with section 772(d)(2) of the Act. We made further deductions, where appropriate, for discounts, rebates, and price protection.

In accordance with section 772(e) (1) and (2), we made additional deductions, where appropriate, for U.S. credit, advertising, royalties, commissions to unrelated parties and indirect selling expenses, including pre-sale warehousing, inventory carrying cost, and commissions to related parties. The total of the U.S. indirect selling expenses formed the cap for the allowable home market indirect selling expenses offset under § 353.15(c) of our regulations.

Pursuant to section 772(d)(1)(B) of the Act, we added duty drawback paid by the Canadian government to respondent as a rebate of duties paid on imports of raw cephalixin.

For the purposes of this preliminary determination, we used the information provided by the respondent concerning date of sale. However, we have asked respondent for additional information and clarification regarding the date of sale methodology used in the response.

#### Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on the packed, ex-warehouse or delivered home market prices to unrelated purchasers. We made deductions from the home market price, where appropriate, for inland freight, inland insurance, discounts, credit expenses, royalties, and commissions to unrelated parties. We also deducted indirect selling expenses incurred on home market sales up to the amount of indirect selling expenses incurred on sales in the U.S. market, in accordance with § 353.15(c) of our regulations. We included advertising expenses as an indirect expense because respondent did not provide sufficient information to determine if the advertising was directed at the customer's customers. We did not deduct home market warranty expenses because it is unclear whether the respondent used a reasonable method for quantifying the expense. We will review the calculation of this expense at verification.

In order to adjust for differences in packing between the two markets, we deducted Canadian home market

packing costs from foreign market value and added U.S. packing costs.

Pursuant to section 773(a)(4)(C) of the Act, we made further adjustments to the home market price to account for differences in merchandise. In calculating the difference in merchandise adjustment, respondent included a difference in the cost for quality control. Respondent claimed that the expenses for quality control, testing and inspection for cephalixin capsule products sold in the Canadian market differ slightly from those expenses incurred with respect to the U.S. product. Since differences in this expense do not arise from differences in the physical characteristics of the merchandise, the difference in quality control expenses was not included in the difference in merchandise adjustment.

Respondent claimed that Canadian provincial taxes are paid at the point of sale, but not by respondent. We have requested additional information on the imposition of these taxes.

#### Currency Conversion

We used the official exchange rates in effect on the dates of sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank of New York.

#### Verification

As provided in section 776(b) of the Act, we will verify all information used in reaching the final determination in this investigation.

#### Critical Circumstances

Petitioner alleged in the petition that "critical circumstances" exist with respect to imports of the subject merchandise from Canada. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that:

(A) (i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

We generally consider the following factors in determining whether imports have been massive over a relatively

short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we used specific data on shipments of the subject merchandise as the most appropriate basis for our determinations of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation.

Based on our analysis of the monthly shipment data submitted by the respondent, we have found that imports of the subject merchandise have been massive over a relatively short period of time. Therefore, we find that the requirements of section 733(e)(1)(B) are met.

We have examined antidumping measures undertaken by foreign countries as reported through the GATT Committee on Antidumping Practices. We found no record of antidumping orders on cephalixin from Canada. Therefore, we find that the requirements of section 733(e)(1)(A)(i) are not met. As for section 733(e)(1)(A)(ii), it is our standard practice to impute knowledge of dumping when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise.

The estimated margins found in this determination are not sufficiently high to impute knowledge of dumping. Therefore, despite the existence of massive imports, we conclude that critical circumstances do not exist with respect to imports of generic cephalixin capsules from Canada.

#### Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of generic cephalixin capsules from Canada, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Canada exceeds the United States price as shown below. This suspension of liquidation will remain in effect until

further notice. The weighted-average margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Novopharm, Ltd. ....	9.43
All others .....	9.43

#### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the U.S. industries before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, if affirmative.

#### Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:30 a.m. on May 26, 1989, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least ten copies must be submitted to the Assistant Secretary by May 19, 1989. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Timothy N. Bergan,  
Acting Assistant Secretary for Import Administration.

April 5, 1989.

[FR Doc. 89-8551 Filed 4-11-89; 8:45 am]  
BILLING CODE 3510-DS-M

#### [C-535-001]

#### Cotton Shop Towels From Pakistan; Final Results of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Commerce

**ACTION:** Notice of final results of countervailing duty administrative review.

**SUMMARY:** On September 6, 1988, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on cotton shop towels from Pakistan. We have now completed that review and determine the net subsidy to be 15.06 percent *ad valorem* for the period April 1, 1984 through December 31, 1984, and 16.61 percent *ad valorem* for the period January 1, 1985 through December 31, 1985.

**EFFECTIVE DATE:** April 12, 1989.

**FOR FURTHER INFORMATION CONTACT:** Christopher Beach or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

#### SUPPLEMENTARY INFORMATION:

##### Background

On September 6, 1988, the Department of Commerce ("the Department") published in the *Federal Register* (53 FR 34340) the preliminary results of its administrative review of the countervailing duty order on cotton shop towels from Pakistan (49 FR 8974; March 9, 1984). The Department has now completed that administrative review in accordance with section 751(a) of the Tariff Act of 1930 ("the Tariff Act").

##### Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All

merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of Pakistani cotton shop towels. During the review period, such merchandise was classifiable under item number 366.2840 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item number 6307.10.20. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period April 1, 1984 through December 31, 1985 and six programs: (1) Export Financing Scheme; (2) Compensatory Rebate Scheme; (3) Excise Tax, Sales Tax and Customs Duty Rebate programs; (4) Income Tax Reductions for Exports; (5) Import Duty Rebate; and (6) Export Credit Guarantee Scheme.

#### Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from counsel for the exporters of shop towels from Pakistan.

*Comment 1:* The exporters contend that, in calculating the benefit from the export financing scheme, the Department failed to take into account a 100 rupee stamp tax charged on all export loans. The 100 rupee tax, which is not charged on the commercial loans used to establish the benchmark, amounts to an additional cost to the exporter and reduces the benefit from this program determined by the Department in the preliminary results.

*Department's Position:* We agree. We have revised our calculations accordingly and determine the benefit from this program to be 1.40 percent *ad valorem* for the 1984 period and 2.33 percent *ad valorem* for 1985.

*Comment 2:* The exporters contest the Department's determination that the Government of Pakistan failed to provide any documentation linking the amount of the excise tax, sales tax, and customs duty rebates to actual indirect taxes borne by shop towels. The exporters argue that the verification report, and calculations based on a 1980 survey that were submitted in the questionnaire response, indicate that linkage does exist between taxes paid and taxes refunded and that the tax incidence was calculated with precision. Finally, the exporters claim that the questionnaire response and statements made during verification are the best information available, and the

Department should accept the calculations that were submitted and find the refunds to be non-excessive rebates of indirect taxes.

*Department's Position:* We disagree. In deciding whether a tax rebate program provides a countervailable benefit, the Department asks two questions. First, does the requisite linkage between the payment and the indirect tax incidence exist? Second, is the payment less than, equal to, or greater than the indirect tax on the exported product? See *Certain Apparel from Argentina; Final Results of Countervailing Duty Administrative Review* (53 FR 1053; January 15, 1988).

In its questionnaire response, the Government of Pakistan provided a complete and extensive response to questions concerning this program. At verification, we were provided with a lengthy verbal explanation of the program and the process by which the government establishes the various tax rebate rates. However, the Pakistani government did not provide any of the supporting documentation to the 1980 survey that we requested in order to verify the cost structure and cost matrices used to derive the various tax rebate rates. Due to disturbances in Karachi during verification, which created logistical problems for providing documentation, we allowed the Pakistani government additional time to submit the requested documentation after verification and prior to publication of the preliminary results. However, no documentation was submitted. Without this documentation, we were unable to verify the requisite linkage and determine whether the rebates during this review period were less than, equal to, or greater than the indirect tax incidence on shop towels. Therefore, the Department determines the full amount of the three rebates to be countervailable.

*Comment 3:* The exporters argue that, with respect to the income tax reductions for exports, the Department incorrectly used the highest benefit reported by any one company in the questionnaire response and applied that rate, as the best information available ("BIA"), to all other companies. They contend that use of the highest benefit reported to obtain a BIA rate is excessively punitive and is not in accordance with section 776 of the Tariff Act of 1930, as amended ("the Tariff Act"), (19 U.S.C. 1677e). The exporters state that the Department applied section 776(c), which is an "exception to the general rule" articulated in section 776(b) and which allows the Department to disregard information in the

questionnaire response in the event that the respondent significantly impedes the investigation. Events in Karachi at the time of verification, which were outside the control of the Pakistani government and the companies under review, prevented the collection and verification of information pertinent to this program. The verified companies cooperated to the fullest extent possible under the circumstances. Furthermore, the other data submitted by the exporters subject to verification were verified as correct. Therefore, the use of section 776(c), which should be used to penalize uncooperative respondents, is inappropriate. The fact that one number out of many could not be "proved" should not be a reason to penalize all companies by resorting to information from one company and applying it to all others. The Department should use the income tax reductions reported for each company in the questionnaire response.

*Department's Position:* We disagree. In our final affirmative countervailing duty determination, we stated that, even after verification, we were unable to obtain complete information on this program. Therefore, we used the best information available, which consisted of information from the petition. See *Cotton Shop Towels from Pakistan; Final Affirmative Countervailing Duty Determination* (49 FR 1408, January 11, 1984). In the first administrative review of this countervailing duty order, the Pakistani government submitted an incomplete response to the questionnaire. Once again, the Department relied on the best information available for this program which consisted of the results in our final determination. See *Cotton Shop Towels from Pakistan; Final Results of Administrative Review of Countervailing Duty Order* (51 FR 5219, February 12, 1986). Faced with an explanation of the operation of this program which could not be tied to verifiable information from companies with whom we were able to conduct verifications, we had no choice but to use again the best information available.

Contrary to the exporters' belief, section 776(c) of the Tariff Act is not an "exception" to the best information available rule. Subsections (b) and (c) of section 776 simply identify two different kinds of tests for verification failure, yet they bring about an identical response from the Department, the use of the best information available. Furthermore, the Department makes no differentiation between these two types of tests in the Commerce Regulations on verification, but combines the language in both (19

CFR 353.51(b)) (See also, 355.37 of the Commerce Regulations published in the *Federal Register* on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22)). In addition, the Court of Appeals for the Federal Circuit has frequently recognized the Department's broad discretion in the use of the best information available. See *Atlantic Sugar, Ltd. v. United States*, 744 F. 2d 1556 (Fed. Cir. 1984).

In accordance with the statute, we applied the highest income tax reduction benefit reported by any one company as the best information available for the benefit from this program.

#### Final Results of Review

After considering all comments received, we determine the net subsidy to be 15.06 percent *ad valorem* for the period April 1, 1984 through December 31, 1984, and 16.61 percent *ad valorem* for the period January 1, 1985 through December 31, 1985.

The Department will instruct the Customs Service to assess countervailing duties of 15.06 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after April 1, 1984 and on or before December 31, 1984. The Department will also instruct the Customs Service to assess countervailing duties of 16.61 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1985 and on or before December 31, 1985.

Further, due to the termination of the Compensatory Rebate Scheme, the Department will instruct the Customs Service to collect cash deposits of estimated countervailing duties of 8.49 percent of f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Commerce Regulations published in the *Federal Register* on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22).

Timothy N. Bergan,

*Acting Assistant Secretary for Import Administration.*

April 6, 1989.

[FR Doc. 89-8550 Filed 4-11-89; 8:45 am]

BILLING CODE 3510-DS-M

#### Short-Supply Review on Certain Continuous-Cast Steel Slabs; Request for Comments

**AGENCY:** Import Administration/ International Trade Administration, Commerce.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-Australia, U.S.-Austria, U.S.-Brazil, U.S.-EC, U.S.-Hungary, U.S.-Korea, U.S.-Poland, U.S.-Spain, and U.S.-Trinidad & Tobago Arrangements Concerning Trade in Certain Steel Products, Article 7 of the U.S.-Romania and U.S.-Venezuela Arrangements Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Mexico and U.S.-Finland Understandings Concerning Trade in Certain Steel Products, and paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to certain continuous-cast steel slabs for use in the manufacture of hot-rolled coils and cut-to-length plate.

**DATE:** Comments must be submitted no later than April 24, 1989.

**ADDRESS:** Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** Article 8 of the U.S.-Australia, U.S.-Austria, U.S.-Brazil, U.S.-EC, U.S.-Hungary, U.S.-Korea, U.S.-Poland, U.S.-Spain, and U.S.-Trinidad & Tobago Arrangements Concerning Trade in Certain Steel Products, Article 7 of the U.S.-Romania and U.S.-Venezuela Arrangements Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Mexico and U.S.-Finland Understandings Concerning Trade in Certain Steel Products, and paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provide that if the U.S. determines that, because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the United States for a particular product, (including substantial objective evidence such as

allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for certain continuous-cast steel slabs, 8 inches to 10 inches in thickness, 60 inches to 100 inches in width, and 240 inches to 384 inches in length, for use in the manufacture of hot-rolled coils and cut-to-length plate.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than April 24, 1989. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address.

Timothy N. Bergan,

*Acting Assistant Secretary for Import Administration.*

April 5, 1989.

[FR Doc. 89-8553 Filed 4-11-89; 8:45 am]

BILLING CODE 3510-DS-M

#### Carnegie-Mellon University et al; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number: 88-048R. Applicant: Carnegie-Mellon University, Pittsburgh, PA 15213. Instrument: Crystal Growth Furnace. Manufacturer: Crystalox, Ltd., United Kingdom. Intended Use: See notice at 53 FR 30083, August 10, 1988. Reasons for This Decision: The foreign article is a cold crucible system with a high voltage (7000V) RF generator. The crucible permits the levitation of material being melted free of contamination or reaction with foreign substances.*

*Docket Number: 88-289. Applicant: Purdue University, West Lafayette, IN*

47907. *Instrument:* Electron Microprobe, Model CAMEBAX SX50. *Manufacturer:* Cameca Instruments Inc., France.

*Intended Use:* See notice at 53 FR 43463, October 27, 1988. *Reasons for This Decision:* The foreign instrument is capable of automated image analysis combining x-ray, electron and cathodoluminescence signals.

*Docket Number:* 88-292. *Applicant:* University of California, Santa Cruz, CA 95064. *Instrument:* Mass Spectrometer, Model VG Sector. *Manufacturer:* VG Isotopes, United Kingdom. *Intended Use:* See notice at 53 FR 43463, October 27, 1988. *Reasons for This Decision:* The foreign article provides an automated multiple collector with an external precision (static mode) for Nd of  $\pm 0.005\%$  on a 20ng sample.

*Docket Number:* 88-294. *Applicant:* Northeastern University, Boston, MA 02115. *Instrument:* Low Temperature Kinetic Spectrofluorimeter, Model SF41. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* See notice at 53 FR 43464, October 27, 1988. *Reasons for This Decision:* The instrument provides a precision thermostating system over a temperature range of  $-100$  to  $+100$  °C.

*Docket Number:* 88-296. *Applicant:* U.S. Department of the Interior, U.S. Geological Survey, Ithaca, NY 14850. *Instrument:* Drill-Hole Pipe Assembly and Data Acquisition Monitors. *Manufacturer:* Westbay Instruments Ltd., Canada. *Intended Use:* See notice at 53 FR 43464, October 27, 1988. *Reasons for This Decision:* The foreign apparatus is capable of providing: (1) water pressure measurements, (2) uncontaminated groundwater samples, and (3) permeability tests.

*Docket Number:* 88-306. *Applicant:* Texas A&M University, College Station, TX 77843. *Instrument:* Jet Engine Test Set, Model GT117-2. *Manufacturer:* Gilbert Gilkes & Gordon Ltd., United Kingdom. *Intended Use:* See notice at 53 FR 43465, October 27, 1988. *Reasons for This Decision:* The foreign article provides detailed data on various parameters of jet engine performance and its component parts.

*Docket Number:* 89-001. *Applicant:* University of Texas at Austin, Austin, TX 78712. *Instrument:* Mass Spectrometer, Model VG ZAB-2E. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* See notice at 53 FR 46106, November 16, 1988. *Reasons for This Decision:* The foreign instrument is a high resolution (100 000 10% valley definition) MS with a mass range to 10 000 amu at 8kv scan speeds to 0.1 to 1000 sec/decade.

*Comments:* None received. *Decision:*

Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,  
Director, Statutory Import Programs Staff.  
[FR Doc. 89-8552 Filed 4-11-89; 8:45 am]

BILLING CODE 3510-DS-M

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Establishment of the National Defense University Transition Planning Committee

**AGENCY:** Department of Defense, Office of the Secretary.

**ACTION:** Establishment of the National Defense University Transition Planning Committee.

**SUMMARY:** Under the provisions of Pub. L. 92-463, "Federal Advisory Committee Act," notice is hereby given that the National Defense University Transition Planning Committee (hereinafter termed the Long Committee) has been determined to be in the public interest and has been established.

The Long Committee, to be chaired by Admiral Robert L.J. Long, USN (Ret.), will be a multidisciplinary body of military and civilian members who will study the need for, the feasibility of, and the mission and purpose of, a National Center for Strategic Studies (NCSS). The efforts will include making recommendations regarding: Issues involved in establishing an NCSS if one is ultimately recommended; reviewing the mission and purpose of the National Defense University with respect to its role vis a' vis an NCSS; reviewing the mission and purpose of the National War College and the Industrial College of the Armed Forces in the same light; and developing a report of recommendations to be submitted to the Chairman of the Joint Chiefs of Staff.

A diligent effort has been made to ensure that the membership of the Long Committee is well balanced in terms of the functions to be performed and the societal sectors to be affected, in keeping with the nature and objectives of the Committee. Membership will be composed of distinguished experts from

the national security, industrial and academic communities who, by their performance and achievements in their respective professions, have demonstrated a comprehensive understanding of the manner in which the elements of national power are brought together at the policy-making level in the pursuit of military and national strategic goals.

Linda M. Bynum,  
Alternate OSD Federal Register Liaison  
Officer, Department of Defense.

April 10, 1989.

[FR Doc. 89-8804 Filed 4-11-89; 8:45 am]

BILLING CODE 3810-01-M

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## DEPARTMENT OF EDUCATION

[CFDA No. 84.159]

#### Handicapped Special Studies Program; Extension of Closing Date for Transmittal of Applications for New Awards Under the Handicapped Special Studies Program for Fiscal Year 1989

*Deadline for Transmittal of Applications:* The closing date for applications is extended from April 19, 1989 to May 3, 1989.

On March 8, 1989, a notice was published that established the closing date for transmittal of applications for the fiscal year 1989 State Agency/Federal Evaluation Studies Projects competition under the Handicapped Special Studies Program (54 FR 9977). Detailed information concerning this competition was included in that notice. The purpose of this notice is to extend the closing date for transmittal of applications to allow potential applicants additional time to develop their proposals.

*For Applications or Further Information Contact:* Linda Glidewell, U.S. Department of Education, Office of Special Education Programs, Division of Innovation and Development, 400 Maryland Avenue, SW., (Switzer Building, Room 3094/MES 2313-2641), Washington, DC 20202. Telephone: (202) 732-1099.

*Program Authority:* 20 U.S.C. 1418.

Dated: April 7, 1989.

Patricia McGill Smith,  
Acting Assistant Secretary, Office of Special  
Education and Rehabilitative Services.

[FR Doc. 89-8648 Filed 4-11-89; 8:45 am]

BILLING CODE 4000-01-M

**National Advisory Council on Educational Research and Improvement; Meeting**

**AGENCY:** National Advisory Council on Educational Research and Improvement.

**ACTION:** Full council meeting of the National Advisory Council on Educational Research and Improvement.

**SUMMARY:** This notice sets forth the schedule and agenda of a forthcoming meeting of the National Advisory Council on Educational Research and Improvement. This notice also describes the functions of the Council. Notice of this meeting is required under section 10 (a) (2) of the Federal Advisory Committee Act.

**DATE:** May 4 and 5, 1989.

**ADDRESS:** The Council will meet on May 4 from 1:00 to 5:00 p.m. at the Office of Educational Research and Improvement, Room 326, 555 New Jersey Avenue, NW. The Council will continue its meeting in the same location from 9:00 a.m. to 4:00 p.m. on May 5.

**FOR FURTHER INFORMATION CONTACT:** Mary Grace Lucier, Executive Director, National Advisory Council on Educational Research and Improvement, 330 C Street, SW., Room 4076, Washington, DC 20202-7579, (202) 732-1205.

**SUPPLEMENTARY INFORMATION:** The Council is authorized by Section 405 of the 1972 Education Amendments, Pub. L. 92-318, as amended by the Higher Education Amendments of 1986 (Pub. L. 99-498, 20 U.S.C. 1221e. The Education advisers the President, the Secretary of Education, and the Congress on policies and activities carried out by the Office of Educational Research and Improvement.

Meetings of the Council are open to the public. The agenda for May 4 includes briefings by OERI program directors on current projects and the recompetition of the regional educational laboratories and research and development centers. On May 5, reports will be delivered on literacy activities, drug-free schools, and dropout prevention.

Records are kept of all Council Proceedings and are available for public inspection at the Office of the National Advisory Council on Educational Research and Improvement, 330 C Street, SW., Room 4076, Washington, DC 20202-7579, from 9:00 a.m. to 5:00 p.m. Monday through Friday.

Dated: April 7, 1989.

Mary Grace Lucier,  
Executive Director.

[FR Doc. 89-8607 Filed 4-11-89; 8:45 am]

BILLING CODE 4000-01-M

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Project No. 2534-005—Maine]

**Bangor Hydro-Electric Co.; Establishing Procedures for Relicensing and a Deadline for Resubmission of Final Amendments**

April 6, 1989.

The license for the Milford Project No. 2534 located on the Penobscot and Stillwater Rivers in Penobscot County, Maine expires on December 31, 1990. The statutory deadline for filing applications for new license was December 31, 1988. An application for new license has been filed as follows:

Project No.	Applicant	Contact
P-2534 .....	Bangor Hydro-Electric Company, 33 State Street, Bangor, ME 04401.	Ms. Kathy Billings.

Pursuant to section 15(c)(1) of the Federal Power Act the deadline for applicant to file final amendments, if any, to its application is June 30, 1989.

The following is an approximate schedule and procedures that will be followed in processing the application(s).

Date	Action
Mar. 31, 1989.....	Commission notifies Bangor Hydro-Electric Company that its application has been accepted. The notification of acceptance will specify the need for additional information, if any, and the date information is due.
Apr. 15, 1989 .....	Commission issues public notice that application has been accepted describing proposals and establishing dates for filing motions to intervene, comments, protests, and agency recommendations.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Robert W. Bell at (202) 376-9237.

Lois D. Cashell,  
Secretary.

[FR Doc. 89-8575 Filed 4-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ89-1-46-005 and RP86-166-005]

**Kentucky West Virginia Gas Co.; Compliance Filing**

April 5, 1989

Take notice that on March 30, 1989, Kentucky West Virginia Gas Company (Kentucky West) tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective March 15, 1989:

Refiled Original Sheet No. 8A  
Refiled Original Sheet No. 8B  
Refiled Original Sheet No. 10A  
Refiled Original Sheet No. 10B

Kentucky West states that the foregoing tariff sheets are filed in compliance with the Commission's "Order Rejecting Compliance Filing" issued in the referenced proceedings on March 15, 1989, and in accordance with the mandate of the United States Court of Appeals of the Fifth Circuit, issued in *Kentucky West Virginia Gas Com v. FERC*, 780 F.2d 1231 (5th Cir. 1986).

Kentucky West states that in compliance with the Commission's order, under such tariff sheets, it will bill its customers directly for the difference between (1) the amounts each such customer paid during the period in which Kentucky West was required to price certain of its company production at cost of service rather than Natural Gas Policy Act (NGPA) rates; and (2) the amounts each such customer would have paid if Kentucky West, during such time period, had not been denied the right to price its pipeline production at NGPA prices, plus interest calculated in accordance with the Commission's regulations. Kentucky West states that it has adjusted the total amounts due from each customer to reflect treatment of deferred income tax reserves.

Kentucky West states that its customers are given the option of paying the direct billing amounts either: (1) By a lump-sum payment to be made by May 1, 1989; (2) in monthly installments of direct billing amounts, plus interest, to be paid over a period not to exceed eighty-four months; or (3) by a lump-sum payment during the installment period.

Kentucky West states that a copy of its filing has been served upon its purchasers and interested State Commissions and upon each party on the service lists in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with section 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 89-8581 Filed 4-11-89; 8:45 am]  
BILLING CODE 6717-01-M

Date	Action
March 9, 1989.	The Commission notified the applicant that its application had been accepted.
March 20, 1989.	The Commission issued public notice of application that had been accepted describing project and established May 22, 1989, as the date for filing motions to intervene, comments, protests, and agency recommendations.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Steven H. Rossi at (202) 376-9814.

Lois D. Cashell,  
Secretary.

[FR Doc. 89-8576 Filed 4-11-89; 8:45 am]  
BILLING CODE 6717-01-M

Date	Action
March 8, 1989.	The Commission notified the applicant that its application had been accepted.
March 20, 1989.	The Commission issued public notice of application that had been accepted describing project and established May 22, 1989, as the date for filing motions to intervene, comments, protests, and agency recommendations.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Steven H. Rossi at (202) 376-9814.

Lois D. Cashell,  
Secretary.

[FR Doc. 89-8577 Filed 4-11-89; 8:45 am]  
BILLING CODE 6717-01-M

[Project No. 2770-002-Massachusetts]

**Linweave, Inc.; Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments**

April 6, 1989.

The license for the Crocker Mill C Wheel Project No. 2770 located on the Second Level Canal of the Holyoke Canal System off of the Connecticut River in Hampden County, Massachusetts, expires on February 28, 1991. The statutory deadline for filing applications for new license was February 28, 1989. An application for new license has been filed as follows:

Project No.	Applicant	Contact
2770-002	Linweave, Inc., 10 Linweave Drive, Holyoke, MA 01040.	Mr. Robert Belsky, Linweave, Inc., 10 Linweave Drive, Holyoke, MA 01040.

Pursuant to section 15(c)(1) of the Federal Power Act, the deadline for the applicant to file final amendments, if any, to its application is May 22, 1989.

The following is the schedule and procedures that will be followed in processing the application.

[Project No. 2771-002-Massachusetts]

**Linweave, Inc.; Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments**

April 6, 1989.

The license for the Nonotuck Mill Project No. 2771 located on the Second Level Canal of the Holyoke Canal System off of the Connecticut River in Hampden County, Massachusetts, expires on February 28, 1991. The statutory deadline for filing applications for new license was February 18, 1989. An application for new license has been filed as follows:

Project No.	Applicant	Contact
2771-002	Linweave, Inc., 10 Linweave Drive, Holyoke, MA 01040.	Mr. Robert Belsky, Linweave, Inc., 10 Linweave Drive, Holyoke, MA 01040.

Pursuant to section 15(c)(1) of the Federal Power Act, the deadline for the applicant to file final amendments, if any, to its application is May 22, 1989.

The following is the schedule and procedures that will be followed in processing the application.

[Project No. 2758-003-Massachusetts]

**Linweave, Inc.; Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments**

April 6, 1989.

The license for the Crocker Mill A and B Wheels Project No. 2758 located on the Second Level Canal of the Holyoke Canal System off of the Connecticut River in Hampden County, Massachusetts, expires on February 28, 1991. The statutory deadline for filing applications for new license was February 28, 1989. An application for new license has been filed as follows:

Project No.	Applicant	Contact
2758-003	Linweave, Inc., 10 Linweave Drive, Holyoke, MA 01040.	Mr. Robert Belsky, Linweave, Inc., 10 Linweave Drive, Holyoke, MA 01040.

Pursuant to section 15(c)(1) of the Federal Power Act, the deadline for the applicant to file final amendments, if any, to its application is May 22, 1989.

The following is the schedule and procedures that will be followed in processing the application.

Date	Action
March 8, 1989.	The Commission notified the applicant that its application had been accepted.
March 20, 1989.	The Commission issued public notice of application that had been accepted describing project and established May 22, 1989, as the date for filing motions to intervene, comments, protests, and agency recommendations.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Steven H. Rossi at (202) 376-9814.

Lois D. Cashell,  
*Secretary.*

[FR Doc. 89-8578 Filed 4-11-89; 8:45 am]  
BILLING CODE 6717-01-M

[Project No. 2390 Wisconsin]

**Northern States Power Co.; Intent To File an Application for a New License**

April 6, 1989.

Take notice that on December 27, 1988, Northern States Power Company, the existing licensee for the Big Falls Hydroelectric Project No. 2390, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2390 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Flambeau River in Rusk County, Wisconsin. The principal works of the Big Falls Project include a 2,196-foot-long earthfill dam with reinforced concrete core walls and spillway having eight floodgates, each 14 feet high and 35 feet long; a reservoir of about 380 acres; a powerhouse with an installed capacity of 7,780 kW; transformers and transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol

Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 100 N. Barstow Street, Post Office Box 8, Eau Claire, WI 54702.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,  
*Secretary.*

[FR Doc. 89-8579 Filed 4-11-89; 8:45 am]  
BILLING CODE 6717-01-M

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-3553-8]

**National Drinking Water Advisory Council; Open Meeting**

Under section (10)(a)(2) of Pub. L. 92-423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (Pub. L. 99-339), will be held at 9:00 a.m. on April 27, 1989, and at 8:30 a.m. on April 28, 1989, at the U.S. Environmental Protection Agency, Region 5 Office, 230 South Dearborn Street, Chicago, Illinois 60604, in the Lakeview Conference Room, 16th Floor. Council Subcommittees will hold their meetings on April 24 and 25, 1989.

The main purpose of this meeting is to update the Council on the status of major regulatory packages which will include the: Proposed Primary Enforcement Responsibility Regulation, Proposed Lead and Copper Regulation, Synthetic Organic Chemicals and Inorganic Chemicals (Phase II) Regulation and the Surface Water Treatment Rule. A status report on the Radionuclides Regulation, Phase V Regulation (25 Chemicals) and Disinfection/Disinfection By-Products Regulation will be given. The Council will also hear a panel discussion on financing for small water supply systems.

The meeting will be open to the public. The Council encourages the hearing of outside statements and will allocate a portion of its meeting time for public participation. Oral statements will be limited to ten minutes. It is preferred that there be one presenter for each statement. Any outside parties interested in presenting an oral statement should petition the Council by

telephone at (202) 382-2285. The petition should include the topic of the proposed statement, the petitioner's telephone number and should be received by the Council before April 21, 1989.

Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to the members before any final discussion or vote is completed. Statements received after a meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Any member of the public wishing to attend the Council meeting, present an oral statement, or submit a written statement should contact Ms. Charlene E. Shaw, Designated Federal Official, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Drinking Water (W1-550A), 401 M Street, SW., Washington, DC 20460.

The telephone number is: Area Code 202/382-2285.

Date: April 5, 1989.  
William A. Whittington,  
*Acting Assistant Administrator for Water.*  
[FR Doc. 89-8628 Filed 4-11-89; 8:45 am]  
BILLING CODE 6560-50-M

[FRL-3554-6]

**Science Advisory Board; Clean Air Scientific Advisory Committee; Joint Study Group on Lead**

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given of a public meeting of the Science Advisory Board's (SAB) Clean Air Scientific Advisory Committee (CASAC). This group also includes members from the SAB/CASAC Joint Study Group on Lead. The meeting will be held from 9:00 a.m. to 5:00 p.m. on April 27-28, 1989 in the U.S. Environmental Protection Agency, Environmental Research Center, Main Auditorium, Route 54 and Alexander Drive, Research Triangle Park, North Carolina.

**Purpose**

The purpose of the meeting is to perform a broad spectrum review of lead-related health effects and exposure issues which cut across EPA organizational lines. The Group will assess the scientific information concerning lead now available to the Agency, and determine if it is being applied in a sound and consistent manner to standard setting and other

regulatory decisions throughout the Agency. The SAB/CASAS Joint Study Group met on March 30, 1989 to discuss the weight of evidence classification of lead and lead compounds as carcinogens, as discussed in the EPA Draft Document "Evaluation of the Potential Carcinogenicity of Lead and Lead Compounds" (See 54 FR 11275, March 17, 1989 for further details).

On April 27, 1989, this Group will review information contained in the draft documents: (1) Draft Supplement to the EPA Air Quality Criteria for Lead, Volume I, Addendum (Pages A1-A67); (2) Review of the National Ambient Air Quality Standards for Lead: Assessment of Scientific and Technical Information—AOQPS Draft Staff Paper. On April 28, 1989, the Group will discuss the results of the meeting held on March 30, 1989, and will also receive briefings from EPA program offices on their lead related activities. Following the meeting, the Group will issue its report which will include a closure memorandum concerning the Lead NAAQS, and advice concerning the Agency's application of scientific information on lead throughout its programs.

#### Written Comments

Written comments concerning these draft documents will be accepted through May 29, 1989.

*Document (1) (Draft Supplement to the EPA Air Quality Criteria for Lead, Volume I, Addendum*

Comments may be submitted to the Lead Project Officer, U.S. EPA, Environmental Criteria and Assessment Office (MD-52), Research Triangle Park, NC 27711., (919) 541-4161, (FTS) 629-4161. Copies of this draft may be obtained by writing or calling the Office of Research and Development Publications Center, CERL-FRN, U.S. EPA, 26 Martin Luther King Drive, Cincinnati, Ohio 45268, (513) 569-7562. Please ask for the document by name ("Draft Supplement to the EPA Air Quality Criteria for Lead, Volume I, Addendum") and report number, EPA/600/8-83/049A.

*Document (2) (Draft OAQPS Staff Paper)*

Comments may be submitted to Mr. Jeff Cohen, U.S. EPA, Office of Air Quality Planning and Standards (MD-12), Research Triangle Park, NC 27711, (919) 541-5282, (FTS) 629-5282. Copies of this draft may be obtained from Mr. Cohen at the above address.

#### FOR FURTHER INFORMATION:

The meeting is open to the public. Any member of the public wishing further information concerning the meeting

should contact Mr. Robert Flaak, Executive Secretary, Clean Air Scientific Advisory Committee, Science Advisory Board (A-101F), U.S. EPA, Washington, DC 20460, (202) 382-2552, (FTS) 382-2552, (FAX) (202) 475-9693. Seating at the meeting will be on a first come basis. Persons wishing to make a brief presentation at the meeting must contact Mr. Flaak no later than April 21, 1989 to reserve space on the agenda. It is requested that 25 copies of a written statement for the record be submitted to Mr. Flaak at the time of the meeting for distribution to the members of the Subcommittee. Oral presentations should supplement the written statement.

Dated: April 7, 1989.

Kathleen Conway,

Acting.

[FR Doc. 89-8818 Filed 4-11-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3551-9]

#### Proposed Settlement Under 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed administrative settlement and request for public comment.

**SUMMARY:** The U.S. Environmental Protection Agency is proposing to enter into an administrative settlement to resolve claims under Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.* Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve the past administrative or civil liabilities of two parties for costs incurred by EPA at Burns Hill Road Superfund Site in Hudson, New Hampshire.

**DATE:** Comments must be provided on or before May 12, 1989.

**ADDRESS:** Comments should be addressed to the Regional Administrator, U.S. Environmental Protection Agency, Region I, J.F.K. Federal Building, Boston, Massachusetts, 02203, and should refer to: In the Matter of: Burns Hill Road Site, Hudson, New Hampshire, U.S. EPA Docket No. I-89-1023.

**FOR FURTHER INFORMATION CONTACT:** Jeremy M. Firestone, U.S. Environmental Protection Agency, Office of Regional Counsel, RRC-2203, J.F.K. Federal

Building, Room 2203, Boston, Massachusetts 02203, (617) 565-3334.

#### SUPPLEMENTARY INFORMATION:

##### Notice of Administrative Settlement

In accordance with section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Burns Hill Road Superfund Site in Hudson, New Hampshire. Section 122(h) of CERCLA provides EPA with authority to consider, compromise and settle a claim for costs incurred by the United States if the claim has not been referred to the Department of Justice. Because the United States has incurred costs of less than \$500,000 at the Burns Hill Road Site, EPA may settle the claim without prior written approval of the Attorney General. This Notice pertains to the settlement of a claim that has not been referred to the Department of Justice. Below are listed the parties who have executed signature pages committing them to participate in this settlement.

*W.R. Grace and Company; and  
Browning-Ferris Industries of  
Massachusetts*

These Settling Parties will jointly and severally pay a \$155,000 under this agreement. In exchange for the settlement payment, EPA will covenant not to sue the Settling Parties for past civil liabilities under CERCLA in connection with the Site. EPA estimates that to date, it has incurred costs, including interest, totalling \$213,000. EPA believes that the settlement is fair and in the public interest. EPA will receive written comments relating to this agreement for thirty (30) days from the date of publication of this notice.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from EPA's Region I Office of Regional Counsel, J.F.K. Federal Building, Boston, Massachusetts 02203. Additional background information relating to the settlement is available for review at the EPA's Region I Office of Regional Counsel.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 89-8629 Filed 4-11-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3553-9]

#### Underground Injection Control Program; Water-in-Annulus Mechanical Integrity Test Approval

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of alternate method.

**SUMMARY:** Notice is given today that the Director of the Office of Drinking Water, EPA, is granting approval for use of an alternative to the tests specified in 40 CFR 146.8(b) to test the mechanical integrity of a well's tubular goods. This mechanical integrity test (MIT), known as the water-in-annulus test, is approved only for existing Class II enhanced recovery wells in specific counties in the States of New York and Pennsylvania. EPA is also requesting comments and any additional data on the viability of this alternative.

**DATES:** Written comments and any referenced data must be submitted on or before May 12, 1989. If significant comments are received, EPA will publish a subsequent notice. If no significant comments are received, this approval will become final on June 12, 1989.

**ADDRESSES:** Comments should be addressed to Bruce J. Kobelski, Office of Drinking Water (WH-550E), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A copy of the comments and supporting documents will be available for review during normal business hours at the EPA, Room 1013C, East Tower, 401 M Street, SW., Washington, DC 20460 and at the EPA Region III office in Philadelphia at the address indicated below.

**FOR FURTHER INFORMATION CONTACT:** Bruce J. Kobelski, Office of Drinking Water (WH-550) U.S. EPA, Washington, DC 20460 at: (202) 382-5508 or S. Stephen Platt, UIC Section (3WM43) U.S. EPA, 814 Chestnut Bldg. Philadelphia, PA 19107 at: (215) 597-2537.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Safe Drinking Water Act (SDWA) (42 U.S.C. 300th, *et seq.*) protects underground sources of drinking water (USDW) from contamination by injection wells. One of the cornerstones of the Underground Injection Control (UIC) program is the mechanical integrity of the wells. The regulations for the UIC program define mechanical integrity as the absence of significant leaks in the casing, tubing or packer and the absence of significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection wellbore. Acceptable methods of evaluating mechanical integrity for programs administered by EPA are specified in 40 CFR 146.8. In order to be approved, tests must "reliably demonstrate the mechanical integrity" of wells for which their use is proposed.

The regulations also provide that approved alternative methods shall be published in the *Federal Register* and may be used in all States unless their use is restricted at the time of approval. The Director of the Office of Drinking Water has been delegated the authority to approve alternative tests.

On July 20, 1984, interim approval was granted for two years for the alternative mechanical integrity test known as the water-in-annulus test for the following counties of New York and Pennsylvania: Allegheny, Cattaraugus, and Steuben Counties in New York, and Elk, Forest, McKean, Potter, Venango, Warren, and Washington Counties in Pennsylvania (49 FR 29375). An extension of this interim approval was granted on July 14, 1987 (52 FR 26342) so that new testing procedures to conduct the test could be adopted for greater operator consistency and to allow additional information to be collected under these new procedures to further analyze test results. In its review of information collected under these new procedures, EPA determined that more data was necessary to analyze the test's reliability and sensitivity. Therefore, on September 26, 1988 (53 FR 37296) EPA again extended the interim approval for the water-in-annulus test until March 27, 1989, during which time the test's effectiveness, sensitivity, and reliability would be determined further by comparing the water-in-annulus test with the existing approved MIT pressure test.

**II. Description of the Test**

Historically, Class II injection wells in certain areas of Pennsylvania and New York were commonly constructed without any casing extending all the way from the top of the well to the injection zone at the bottom. During drilling, the water sands down to about 500 feet were first cased off, usually with 7-inch outer diameter casing. This casing was later removed from many wells after completion. For wells in which casing remained, cement placed behind the casing ranged from none in older wells, to complete fill-up in newer wells. Drilling then proceeded through intervening formations to total depth. When the target injection zone was penetrated, injection tubing (usually 2 in. O.D.) was run in with a packer on bottom and set against the formation just above the injection zone. Usually 10 sacks (about 50 ft.) of cement are placed above the packer. Typically, to save expense, cement bond logs were not run in either casing or tubing. Final completion consisted of stimulating the injection zone by acidizing and/or fracturing before water injection

commenced, and then typically, 25-50 barrels per day (BPD) were injected.

The water-in-annulus test, which measures the rate of change of the water level in the annulus, was based on operators' observations (and later confirmed through contractor study and EPA Region II and III UIC staff observations) that in the majority of these wells, the annulus will retain a static water level (near the surface) for days. This reflects the fact that the exposed formations (uncased) below the surface casing are so impermeable, their rate of water absorption is almost negligible.

To conduct the test, the operator fills the annulus of the wells with water and observes the change in water level which occurs over a one-hour period; first with no injection pressure applied to the tubing and next with pressure applied. If there is no change in water level in either case, it is clear that:

- (a) There is no water absorption into exposed formations nor leak(s) in surface pipe to permeable beds; and
- (b) There is no leak in tubing, in the packer/cement combination or in the formation immediately behind cement.

If there is no change in water level without injection pressure, but a rise in water level with injection pressure applied, then:

- (a) There is no leak into exposed formations and no leak in the surface pipe; but
- (b) There is a leak in either the tubing/packer/cement combination or in the formation behind cement.

Under these conditions a leak of only 1 BPD would cause the water level to rise at the rate of 1.3 feet/hour (for 2 3/4 in. outer diameter tubing in 6 1/4 in. inner diameter casing). A leak as small as 0.2 BPD, corresponding to a water level rise of 3 in./hr., would be detectable. Consequently, the test is very sensitive.

If there is a drop in annular water level without tubing pressure applied, and a similar drop with injection pressure applied, then:

- (a) There is a small leak-off into exposed formation(s); or
- (b) A leak in surface casing; but
- (c) There is no leak in tubing packer-cement combination or formation behind cement.

Distinguishing a leak in surface casing from a leak-off into an exposed formation is a difficult, but not unsolvable, problem. The use of a liner, seated between the casing and tubing, whose annulus then is filled with water, can provide information as to whether the surface casing is leading or the fluid decline is due to a leak-off into thief zones. Under static conditions, if the test

should document a decline in the fluid level due to a hole in the surface casing, the consequence would be minimal since there would not be a continuous flow of water into the annulus and out the hole in the surface casing (water was in the annulus only for testing). Once the decline in water level reaches equilibrium it will remain static.

### III. Basis for Approval

EPA initially approved this test after reviewing the findings of study prepared by Dewan in 1983 for EPA Regions II and III that recommended this test be used, after taking into account the following factors concerning the well construction and geologic characteristics common to the counties for which the test is being proposed:

(1) The past industry-wide use of two-inch injection tubing and other technical constraints have severely limited the availability of down-hole instruments for either the emplacement of temporary plugs for pressure testing or well logging;

(2) In the shales below the lowermost underground sources of drinking water, fractures are not apparent and experience has shown that these intervening shales are competent to support themselves in open-hole wells without long string casing down to the oil-producing sandstones. The past industry-wide practice of completing enhanced oil recovery wells without long string casing has precluded the use of annulus pressure monitoring or testing because there is no cased annulus; and

(3) Monitoring records, which would establish a historic baseline of the pressure-flow rate relationship, rarely exist.

The test was initially approved on July 20, 1984 for a period of two years because theoretical analysis indicated that it had the necessary sensitivity for leak detection, and because exposed formations were so impermeable that they allowed a well to maintain a static water level sufficiently long to perform the test. This interim approval was extended for an additional year, on July 14, 1987, in order for additional data to be collected and analyzed under newly revised testing procedures developed to assure better testing consistency and to compare the results of this test with those of other established tests.

EPA extended the interim approval on September 26, 1988, for an additional six months, in order to complete collection of comparative testing data to further establish the test's reliability and effectiveness.

Review of the records of the water-in-annulus test over these past three years,

plus the review of recently completed technical documents generated through research conducted at EPA Robert S. Kerr Laboratory in Ada, Oklahoma, and the comparative testing conducted on existing wells in the Pennsylvania and New York oil fields, supports the conclusion that the water-in-annulus test can successfully demonstrate mechanical integrity. The comparative testing showed that the proposed alternative water-in-annulus alternate MIT consistently yields the same result (either pass or fail) as the conventional pressure test. The effectiveness of this test in determining a well's mechanical integrity was demonstrated under the conditions and locations indicated in Technical Document No. 12.

A complete listing of the technical documents used to assist in making the final determination for this test follow:

(1) Technical Document Number 1: Region II Water-in-Annulus MIT results from the period October, 1987 through March, 1988.

(2) Technical Document Number 2: Region III Water-in-Annulus MIT results from the period June, 1987 through March, 1988.

(3) Technical Document Number 3: Breakout of test failures and their respective percentages in Regions II and III during the period June, 1987 through March, 1988.

(4) Technical Document Number 4: Breakout of inconclusive test results by rates of water level decline during the period June, 1987 through March, 1988.

(5) Technical Document Number 5: Interim report on the Water-in-Annulus MIT results (June, 1984–December, 1985).

(6) Technical Document Number 6: Volumetric calculations of annular fluid contained within specified lengths of casing.

(7) Technical Document Number 7: Calculation estimating size of hole in casing given pressures from varying hydrostatic head values in the annulus.

(8) Technical Document Number 8: Report on leak detection analysis from Bradford, Pennsylvania research.

(9) Technical Document Number 9: Report on leak detection analysis from Ada, Oklahoma research.

(10) Technical Document Number 10: "Mechanical Integrity Tests—Class II Wells—Review and Recommendations", John T. DeWan, December, 1983.

(11) Technical Document Number 11: RSKERL Leak Test Well—Test #8, J.T. Thornhill, February, 1988.

(12) Technical Document Number 12: "Comparison of Water-in-Annulus Test Versus Conventional Pressure Test", January, 1989.

### IV. Special Conditions

#### A. Limitations on the use of the Water-in-Annulus Mechanical Integrity Test

Use of the water-in-annulus test is limited to existing Class II enhanced recovery injection wells (existing wells are those wells which were in operation prior to June 25, 1984) located in Allegheny, Cattaraugus, and Steuben Counties in New York and Elk, Forest, McKean, Potter, Venango, Warren, and Washington Counties in Pennsylvania which:

(1) Inject through a tubing string the size of which severely restricts the placement of temporary plugs for pressure testing or logging;

(2) Are constructed without long string casing due to the competent nature of the rock in the uncased interval;

(3) Are constructed with surface casing set through the lowermost underground source of drinking water;

(4) Can demonstrate the absence of any obstruction in the surface casing which could interfere with the test; and

(5) Are constructed with tubing and packer cemented into the hole immediately above the injection zone.

#### B. Procedures for Conducting the Water-in-Annulus Mechanical Integrity Test

The water-in-annulus test, must be run according to the following procedures:

(1) Determine with a verifiable procedure, such as using a sinker bar, that there are no obstructions in the annulus to at least the depth of the surface casing seat;

(2) Shut the well in;

(3) Fill the annulus between the injection tubing and surface casing to the top of the casing with water;

(4) Relieve pressure on the injection tubing until reservoir pressure is obtained;

(5) Measure the injection tubing pressure and the existing water level in the annulus and record the values;

(6) Measure and record the water level every 10 minutes for a period of one-half hour;

(7) Begin injection into the well and wait for the pressure to stabilize before beginning the second half of the test, and record the stabilized pressure;

(8) Repeat steps (3) and (6);

(9) Compare the rate of water level change between shut-in and operating conditions.

#### C. Interpretation

After taking into consideration the test results during the period of interim approval, the Agency has determined

that more definitive criteria be used for assessing the pass/fail standard for this final approval. In conjunction with these changes, the inconclusive category indicated in the July 14, 1987, notice (52 FR26344) has been deleted.

Therefore, the following pass/fail criteria have been established:

(1) A well has failed to demonstrate mechanical integrity pursuant to 40 CFR 146.8(b) if:

(a) The water level rises with the well cooperating, but does not change with the well shut-in;

(b) The water level declines by greater than 10 feet/one-half hour during either the shut-in or operating portion of the test or if the rate of change between the shut-in and operating portions of the test exceeds 2 feet/one-half hour;

(c) The annulus of the well cannot be filled to the surface to perform the test; or

(d) An obstruction is encountered in a well's annulus and that obstruction prevents obtaining conclusive test results.

(2) Wells which fail the static portion of the water-in-annulus mechanical integrity test, due to the water level falling greater than 10 feet, may use one of the following options to demonstrate the integrity of the surface casing.

Option 1. Insert a liner pipe on a packer, between the surface casing and the injection tubing, below the surface casing seat and test the annulus between the liner and the surface casing. The well passes mechanical integrity if the water level does not decline by more than 10 feet. If the surface casing is defective, then the liner must remain in the well.

Option 2. Cement the surface casing/injection tubing annulus to the surface. Mechanical integrity will then be determined by conducting a pressure test on the well's tubing.

Option 3. Demonstrate mechanical integrity by one of the other methods outlined in 40 CFR 146.8.

Date: April 7, 1989.

Michael B. Cook,  
Director, Office of Drinking Water.  
[FR Doc. 89-8630 Filed 4-11-89; 8:45 am]  
BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1774]

### Petitions for Reconsideration of Actions in Rulemaking Proceedings

April 7, 1989.

Petitions for reconsideration have been filed in the Commission rule

making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing any copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed within 15 days of the date of public notice of the petitions in the Federal Register. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

*Subject:* Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (St. James and Blue Earth, Minnesota) (MM Docket No. 86-491, RM's 5557, 5396 & 6538) Number of petitions received: 1

*Subject:* Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Austin, Yoakum, and Hallettsville, Texas) (MM Docket 88-33, RM's 6156 & 6428) Number of petitions received: 1

*Subject:* Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Pearl and Magee, Mississippi) (MM Docket No. 88-312, RM's 6127 & 6135) Number of petitions received: 1

Federal Communications Commission.

Donna R. Searcy,  
Secretary.  
[FR Doc. 89-8543 Filed 4-11-89; 8:45 am]  
BILLING CODE 6712-01-M

[MM Docket No. 89-66 et al.]

### Applications for Consolidated Hearing; Corrections

AGENCY: Federal Communications Commission.

ACTION: Notice; corrections.

**SUMMARY:** The Commission is correcting errors appearing in a Hearing Designation Order, 54 FR 13104, March 30, 1989.

**FOR FURTHER INFORMATION CONTACT:** Gayle Shifflett, Publications Branch, Office of the Secretary, (202) 632-4178.

In FR Doc. 89-7548, published in the Federal Register of Thursday, March 30, 1989 on page 13104, Column 2, Table III, "MM Docket No. 89-204" is corrected to read "MM Docket No. 89-57"; Column 2, Table IV, "MM Docket No. 89-199" is corrected to read "MM Docket No. 89-58" and Column 3, Table V, "MM Docket No. 89-235" is corrected to read "MM Docket No. 89-59".

Federal Communications Commission.

Donna R. Searcy,  
Secretary.  
[FR Doc. 89-8544 Filed 4-11-89; 8:45 am]  
BILLING CODE 6712-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

[Program Announcement Number 928]

### Applied Methods in Injury Surveillance; Availability of Funds for Fiscal Year 1989

#### Introduction

The Centers for Disease Control (CDC) announces that grant applications are to be accepted for Applied Methods in Injury Surveillance.

#### Authority

This program is authorized under section 301 of the Public Health Services Act, (42 U.S.C. 341), as amended. Program regulations are set forth in Title 42, Code of Federal Regulations, Part 52.

#### Eligible Applicants

Eligible applicants are the official public health agencies of States, the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of Marshall Islands, and the Republic of Palau. Additionally, official public health agencies of county or city governments with jurisdictional populations greater than 1,000,000 are eligible.

#### Availability of Funds

Approximately \$750,000 is available in Fiscal Year 1989 to fund approximately 5-7 awards. It is expected that the average award will be \$150,000, ranging from \$75,000 to \$200,000. It is expected that the awards will begin on or about August 1, 1989, and will be made for a 12 month budget period within a project period of up to 2 years. Funding estimates vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

#### Continued Funding

Continuation awards made after FY 1989, but within the project period, will be made on the basis of the availability of funds and the following criteria:

1. The accomplishments of the current budget period show that the applicant is meeting its objectives;

2. The objectives for the new budget period are realistic, specific, and measurable;

3. The methods described will clearly lead to achievement of these objectives;

4. The evaluation plan will allow management to monitor whether the methods are effective; and

5. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of grant funds.

#### Purpose

The purpose of these awards is to develop and evaluate or to evaluate existing methods and techniques used in injury surveillance by public health agencies. These methods and techniques can be incorporated as significant elements in state-wide injury surveillance systems and should be replicable in other public health surveillance systems for injuries.

#### Evaluation Criteria

The review of applications will be in accordance with PHS Grants Administration Manual, Part 134, Objective Review of Grant Applications. An *ad hoc* committee will be convened to determine the technical and scientific merit of the application. Applications meeting the program requirements as outlined in this announcement will be evaluated and ranked for funding. Factors to be considered will include:

1. The degree to which the applicant possesses the requirements described as follows: (15%)

a. A Director who has specific authority and responsibility to carry out the project.

b. A plan to develop and evaluate or to evaluate an existing injury surveillance system or system component focused on a priority injury (or injuries).

c. Demonstrated experience in successfully conducting and evaluating studies of public health methods.

d. Effective well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.

e. Mechanisms for linking the surveillance findings to public health decision-making and to other injury prevention and control efforts.

2. The merit, significance, and originality from a scientific and technical standpoint of the goals of the proposed research, including the replicability and potential usefulness of the proposed surveillance system. (25%)

3. The experience of the project's principal investigator and staff in conducting epidemiologic and surveillance research. (10%)

4. Evidence of familiarity with relevant injury research and surveillance literature. (5%)

5. The adequacy of the project design including the extent to which the evaluation plan can be used to effectively measure progress toward the stated objectives. (40%)

6. Adequacy of existing and proposed facilities and resources. (5%)

7. The reasonableness of the proposed budget to the proposed project. (Not Scored)

#### E.O. 12372 Review

Applications are not subject to review as governed by Executive Order 12372, entitled Intergovernmental Review of Federal Programs, (Ref: 45 CFR 100).

#### CFDA Number

The Catalog of Federal Domestic Assistance Number is 13.136.

#### Applications Submission and Deadline

##### 1. Applications

Applications should be submitted on Form PHS-5161-1 (Revised 11/88) and should carefully adhere to the instruction sheet and page limitations noted. The original and two copies must be submitted on or before June 15, 1989, to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305.

##### 2. Deadlines

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

##### 3. Late Applications

Applications which do not meet the criteria in 2.a. or 2.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

#### Where to Obtain Additional Information

A complete description, information on application procedures and

application package may be obtained from Nealean Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, (404) 842-6575 or FTS 236-6575.

Please refer to Announcement Number 928 when requesting information and submitting any application.

Technical assistance may be obtained from Philip L. Graitcer, D.M.D., M.P.H., Division of Injury Epidemiology and Control, Centers for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F-36, Atlanta, Georgia 30333, (404) 488-4662 or FTS 236-4662.

Dated: April 6, 1989.

Robert L. Foster,

Acting Director, Office of Program Support,  
Centers for Disease Control.

[FR Doc. 89-8589 Filed 4-11-89; 8:45 am]

BILLING CODE 4160-18-M

#### [Program Announcement Number 927]

### State and Community-Based Injury Control Programs; Availability of Funds for Fiscal Year 1989

#### Introduction

The Centers for Disease Control (CDC) announces that grant applications are being accepted for State and Community-based Injury Control Programs.

#### Authority

This program is authorized under sections 301, 317 and 392 of the Public Health Service Act (42 U.S.C. 241, 247b and 280b-1), as amended. Program regulations are set forth in Title 42, Code of Federal Regulations, Part 52.

#### Eligible Applicants

Eligible applicants are the official public health agencies of States, the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, and the Republic of Palau. Additionally, official public health agencies of county and city governments with jurisdictional populations greater than 1,000,000 are eligible.

#### Availability of Funds

Approximately \$4,000,000 will be available in Fiscal Year 1989 to fund approximately 15 injury control projects.

It is expected that the average award will be \$260,000, the range being \$200,000 to \$300,000. It is expected that awards will begin on or about September 1, 1989, and will be made for a 12 month budget period within a project period not to exceed 5 years.

Federal funds cannot be used to supplant current sources of funding for injury prevention and control activities. Continuation grants after the first year will be based upon: (1) Satisfactory progress in achieving program goals and objectives, and (2) the availability of funds.

#### Purpose

The purpose of these awards is to enable State health agencies and city/county health agencies serving populations of over 1,000,000 to develop, expand, or improve injury control programs to reduce morbidity, mortality, severity, disability, and cost from injuries.

#### Program Requirements

The focus of the grant awards should reflect the broadly-based need to control injury morbidity, mortality, severity, disability, and medical costs. These should reflect broad national priorities, local priorities, and established guidelines (e.g., the *Surgeon General's 1990 Injury Prevention Objectives for the Nation and Model Standards: A Guide for Community Preventive Health Services*—Second Edition, the American Public Health Association).

Note: Eligible applicants may enter into contracts, including consortia agreements as necessary to meet the requirements of the program and strengthen the overall application. Some essential requirements for Injury Control Projects are:

1. A full-time director/coordinator who has authority and responsibility to carry out the project.
2. Established capacity to analyze data to define the magnitude of the injury problem, the population(s) at risk, and the causes of injury, using existing data sources.
3. Demonstrated experience in successfully conducting and evaluating public health programs.
4. Effective well-defined working relationships within and outside the health agency at national, State, and community levels (e.g., highway safety, criminal justice, acute care and rehabilitation providers, academicians, including schools of public health and medical schools, other organizations and institutions, voluntary groups, etc.) to insure the implementation and coordination of proposed activities. This includes the establishment of working

relationships with other government agencies at the State, and community levels, academic institutions, voluntary organizations, and others who can be important contributors to the development, implementation, and evaluation of the program.

5. Ability to translate program findings to State and local public health and policy decision-makers and to others seeking to strengthen or develop other injury prevention and control efforts.

6. Plan to address intentional injuries.

7. The Project Director should be prepared to visit CDC at least once during each budget period to report on project progress.

Note: For awards directed to State health agencies, there must be a demonstrated commitment to provide technical, analytical, and program assistance to local health agencies interested in developing or strengthening injury prevention and control programs. This may include the transfer of resources.

#### Evaluation Criteria

The review of applications will be in accordance with PHS Grants Administration Manual, Part 134, Objective Review of Grant Applications. An *ad hoc* committee will be convened to determine the technical and scientific merit of the application. The major factors to be considered in the evaluation of responsive applications are:

1. *Understanding the Problem* (10%).
2. *Program Personnel* (20%).
3. *Technical Approach* (30%).
4. *The Public Health Importance of Injuries to be Addressed* (5%).
5. *Collaboration with Political Subdivisions of States or City/County in Developing Injury Control Programs* (5%).
6. *Collaboration with Other Injury/Injury-related Entities* (25%).
7. *Plans to become self-sustaining should be described which includes identifying other sources of support during the project period* (5%).
8. *Budget and Justification (Not Scored)*.

#### E.O. 12372 Review

Applications are not subject to review under Executive Order 12372, Intergovernmental Review of Federal Programs.

#### CFDA Number

The Catalog of Federal Domestic Assistance number is 13.136.

#### Applications Submission and Deadline

Applicants should follow the guidance provided in PHS form 5161-1 (Revised 11/88) in preparing grant applications. The original and two copies must be submitted on or before June 15, 1989, to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305.

##### 1. Deadlines

Applications shall be considered as meeting the deadline if they are either:

- a. Received on or before the deadline date, or
- b. Sent on or before the deadline date and received in time for submission for the dual review process. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legally date receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

##### 2. Late Applications

Applications which do not meet the criteria in Deadlines above, are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

#### Where to Obtain Additional Information

A complete program description, information on application procedures and application package may be obtained from Donna Rushin, Grants Management Specialist, Grants Management Branch, Procurements and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Mailstop E-14, Atlanta, Georgia 30305, (404) 842-6575 or FTS 236-6775.

Please refer to Announcement Number 927 when requesting information and submitting any application.

Technical assistance may be obtained from Jerry M. Hershovitz, Division of Injury Epidemiology and Control, Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F-36, Atlanta, Georgia 30333, (404) 488-4662 or FTS 236-4662.

Dated: April 6, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89-8590 Filed 4-11-89; 8:45 am]

BILLING CODE 4160-18-M

### Revision of Vessel Sanitation Program; Operations Manual

**AGENCY:** Centers for Disease Control (CDC), Public Health Service, HHS.

**ACTION:** Request for public comment on proposed revisions in the *Vessel Sanitation Program Operations Manual*.

**SUMMARY:** The Centers for Disease Control (CDC) has drafted a revision of the *Vessel Sanitation Program Operations Manual* based on comments and suggestions received from members of the cruise ship industry and other interested parties.

**DATE:** Comments on the proposed revisions must be received on or before June 12, 1989.

**ADDRESS:** Comments should be mailed to Director, Center for Environmental Health and Injury Control (F29), CDC, 1600 Clifton Road, NE., Atlanta, Georgia, 30333. Telephone: FTS: 236-4595. Commercial: (404) 488-4595.

#### SUPPLEMENTARY INFORMATION:

##### Purpose and Background

The Centers for Disease Control (CDC) solicited nominations from the cruise ship industry, State health officers, academia and others for individuals to assist CDC in a review of the *Vessel Sanitation Program Operations Manual*. Nine professionals were selected, including four representatives from the cruise ship industry, and met in Atlanta, Georgia, on Monday, January 30, 1989, to provide CDC their individual comments and suggestions regarding the manual.

As a result of careful deliberation of both oral comments from the session on January 30 and the written comments received, the *Operations Manual* has been revised. The draft revision of the *Operations Manual* is available for distribution to interested parties. A 60-day comment period will be allowed for review and comment of the proposed revisions. All comments received within the 60-day period will be considered.

Copies of the *Operation Manual* may be obtained by writing to: Linda Anderson, Chief, Special Programs Group, Center for Environmental Health and Injury Control (F29), CDC, 1600 Clifton Road NE., Atlanta, Georgia, 30333.

Dated: April 6, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89-8591 Filed 4-11-89; 8:45 am]

BILLING CODE 4160-18-M

### Food and Drug Administration

[Docket No. 89E-0097]

#### Determination of Regulatory Review Period for Purposes of Patent Extension; Ifex

**AGENCY:** Food and Drug Administration.  
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for Ifex (ifosfamide) and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESS:** Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

#### FOR FURTHER INFORMATION CONTACT:

I. David Wolfson, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was

issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Ifex (ifosamide). Ifex, when used in combination with certain other approved antineoplastic agents, is indicated for third line chemotherapy of germ cell testicular cancer. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Ifex<sup>®</sup> (U.S. Patent No. 3,732,340) from Asta Pharma AG, and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated March 22, 1989, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period. The letter also stated that the active ingredient, ifosfamide, represented the first permitted commercial marketing or use. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period of the Ifex is 5, 246 days. Of this time, 4,859 days occurred during the testing phase of the regulatory review period, while 387 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* August 22, 1974, FDA has verified the applicant's claim that the investigational new drug application (IND) for Ifex became effective on August 22, 1974.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* December 10, 1987. The applicant claims December 9, 1987, as the date that the new drug application (NDA) was initially submitted to FDA. However, FDA records indicate that NDA 19-763 was initially submitted to FDA on December 10, 1987.

3. *The date was application was approved:* December 30, 1988. FDA verified the applicant's claim that NDA 19-763 was approved on December 30, 1988.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension.

In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 12, 1989, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 10, 1989, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.)

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Docket Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 5, 1989.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 89-8602 Filed 4-11-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89E-0096]

#### Determination of Regulatory Review Period for Purposes of Patent Extension; Mesnex™

**AGENCY:** Food and Drug Administration.  
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) had determined the regulatory review period for Mesnex™ (mesna) and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESS:** Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** I. David Wolfson, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemptions to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Mesnex™ (mesna). Mesnex™ has been shown to be effective as a prophylactic agent in reducing the incidence of ifosfamide-induced hemorrhagic cystitis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Mesnex™ (U.S. Patent No. 4,220,660) from Asta Pharma AG, and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated March 22, 1989, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period. The letter also stated that the active ingredient, mesna, represented the first permitted commercial marketing or use. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Mesnex™ is 1,463 days. Of this time, 1,285 days occurred during the testing

phase of the regulatory review period, while 178 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(j) of the Federal Food, Drug, and Cosmetic Act became effective:* December 30, 1984. The applicant claims December 31, 1984, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND became effective on December 30, 1984.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* July 6, 1988. The applicant claims July 6, 1988, as the date that the new drug application (NDA) was initially submitted to FDA. FDA has verified the applicant's claim that the new drug application, NDA 19-884, was initially submitted to FDA on July 6, 1988.

3. *The date the application was approved:* December 30, 1988. FDA verified the applicant's claim that NDA 19-884 was approved on December 30, 1988.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 12, 1989, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 10, 1989, for determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 5, 1989.  
 Stuart L. Nightingale,  
 Associate Commissioner for Health Affairs.  
 [FR Doc. 89-8603 Filed 4-11-89; 8:45 am]  
 BILLING CODE 4160-01-M

[Docket No. 89E-0104]

**Determination of Regulatory Review Period for Purposes of Patent Extension; Nimotop™**

**AGENCY:** Food and Drug Administration.  
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for Nimotop™ (nimodipine) and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESS:** Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** I. David Wolfson, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the

actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Nimotop™ (nimodipine). Nimotop™ is indicated for the improvement of neurological deficits due to spasm following subarachnoid hemorrhage from ruptured congenital intracranial aneurysms in patients who are in good neurological condition post-ictus (e.g. Hunt and Hess Grades I-III). Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Nimotop™ (U.S. Patent No. 4,406,906) from Bayer A.G., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated March 22, 1989, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period. The letter also stated that the active ingredient, nimodipine, represented the first permitted commercial marketing or use. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Nimotop™ is 3,403 days. Of this time, 1,108 days occurred during the testing phase of the regulatory review period, while 2,295 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* September 6, 1979. The applicant claims June 29, 1979, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND became effective on September 6, 1979.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* September 17, 1982. The applicant claims September 16, 1982, as the date that the new drug application (NDA) was initially submitted to FDA. However, FDA records indicate that NDA 19-869 was initially submitted to FDA on September 17, 1982.

3. *The date the application was approved:* December 28, 1988. FDA

verified the applicant's claim that NDA 19-869 was approved on December 28, 1988.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 12, 1989, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 10, 1989, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 5, 1989.  
 Stuart L. Nightingale,  
 Associate Commissioner for Health Affairs.  
 [FR Doc. 89-8604 Filed 4-11-89; 8:45 am]  
 BILLING CODE 4160-01-M

[Docket No. 89N-0066]

**Tracking of NDA and ANDA Reformulations for Solid, Oral, Immediate Release Drug Products**

**AGENCY:** Food and Drug Administration.  
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the implementation of a system to improve its monitoring of the bioequivalence of drug products approved under new drug applications (NDA's) and abbreviated new drug applications (ANDA's). Specifically, the new system will help FDA determine whether bioequivalence studies are needed when an applicant proposes to reformulate its drug product. The purpose of the tracking system is to

alert FDA reviewers to the potential development of a bioinequivalence problem resulting from a series of minor reformulations of the product. To establish the new system, FDA is requesting that any applicant proposing to reformulate its product provide FDA with a history of previous reformulations and dates of previous bioequivalence studies. The agency also solicits comments on the kinds of product formulation changes that have created actual bioavailability problems.

**DATE:** Written comments by July 11, 1989.

**ADDRESS:** Comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Adele S. Seifried, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

**SUPPLEMENTARY INFORMATION:**

**Background**

It is FDA's policy to take all steps necessary to maintain the quality and therapeutic equivalence of multisource drug products for human use. After the passage of the Drug Price Competition and Patent Term Restoration Act of 1984, which provided for the approval of large numbers of generic copies of approved drug products, FDA sponsored a public bioequivalence hearing from September 29 to October 1, 1986, to provide a forum for all interested persons to express their views on issues relating to the bioequivalence of solid oral dosage forms.

Participants at the bioequivalence hearing expressed concern that a drug product could undergo a series of minor reformulations, none of which individually justified a new bioequivalence study, but which could cumulatively result in a major change from the original formulation that should be supported by a new in vivo bioequivalence study. At present, reformulations are generally compared to currently marketed formulations only.

The agency established a task force to evaluate concerns expressed at the hearing, including concerns about the reformulation of drug products. In its report released in January 1988, the task force recommended that FDA solicit information and comment to allow discussion of questions regarding reformulation changes, including how particular changes in formulation may affect the bioavailability of a drug product. This notice offers an

opportunity for comment regarding these reformulation issues.

**Major Versus Minor Reformulations**

According to 21 CFR 320.22(d), FDA may waive the requirement for submission of evidence of in vivo bioavailability under certain conditions for solid oral dosage forms. Generally, a waiver is granted for a "minor" change in formulation (e.g., change in color) that would not be expected to affect the bioavailability of the drug.

Examples of reformulation changes that are generally considered to be "minor" include a change in: the size or shape of a tablet; the flavor or preservative; the coating procedure (film/sugar); the source of the inactive ingredients; the source of the active ingredient (providing adequate chemical/physical tests are presented); and an addition of a lower or higher strength tablet/capsule where the ratio of ingredients is the same as the dosage form on which the bioequivalence study was conducted. Examples of reformulations that may be considered to be "major" include a change in: certain inactive ingredients; the order of mixing ingredients; the amount of certain inactive ingredients; batch size; and most changes in controlled-release dosage forms.

FDA's draft guidance, "Waiver Policy for Change in Formulation and Proportionality of Formulation," describes in general terms the basis for distinguishing between major and minor reformulations. A copy of the draft waiver policy may be obtained from the Division of Bioequivalence (HFD-250), Office of Drug Standards, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. While FDA has provided general guidance on distinguishing between major and minor reformulations, the dividing line is not always clear. FDA is offering an opportunity for comment to help it refine the distinction between minor and major reformulations.

**Tracking**

Under past agency policy FDA reviewers determined whether a proposed minor reformulation of an approved product must be supported by a new bioavailability study by comparing the proposed reformulation to the latest approved product formulation. Because, in general, reviewers did not compare the proposed reformulation with the formulation on which the last bioavailability study had been performed, it was at least theoretically possible for the bioavailability of a proposed

reformulated product to vary from the approved formulation's without the agency being aware of the degree, or even the existence of, that variation.

The agency is adopting procedures under the new policy announced in this notice to prevent such untested differences in bioavailability from developing. When the agency reviews the bioavailability of a proposed new formulation, it will compare the bioavailability of the new formulation to the bioavailability of the last formulation for which an in vivo bioequivalence study was conducted. However, implementation of this new procedure is hampered by problems encountered by FDA reviewers in reviewing the formulation history of products. A manual search of previous submissions to an application (some of which may be stored at the Federal Records Center) is necessary in many instances before an application or supplements can be reviewed. To help FDA implement the new policy, the agency is requesting that each supplement to an approved marketing application that covers a new formulation contain additional information on the formulation history of the drug product. Specifically, FDA is asking any applicant who proposes to reformulate its product to list all previous reformulations of the product, giving the date of each previous bioequivalence study. The submission of such data on previous reformulations, while not required, will help to avoid significant delays in agency processing of applications for new formulations. The agency is establishing a computerized database to help reviewers track submissions. FDA will enter the information into the new system as supplements are submitted. The database should ultimately permit FDA to retrieve reformulation data without the continued need for the submission of previous reformulation information with each proposed reformulation change.

**Scope**

FDA's new policy applies to all supplements for proposed drug product reformulations of solid oral dosage forms, including supplements to full applications (NDA's) and abbreviated applications (ANDA's).

**Submission of Data**

To help the agency identify the kind of "major" formulation changes that should be supported by bioavailability data, the agency is also interested in receiving manufacturers' views on what types of product changes have created actual

bioavailability problems. The submission of data on bioavailability problems that manufacturers have found as a result of different types of reformulations would be particularly useful to the agency.

Interested persons may, on or before July 11, 1989, submit written comments on this notice to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 31, 1989.

Alan L. Hoeting,

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 89-8530 Filed 4-11-89; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistance Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-1917; FR 2606]

#### Notice of Unutilized and Underutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities To Assist the Homeless

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

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

**DATE:** April 12, 1989.

**ADDRESS:** For further information, contact Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988, court order in *National Coalition for the Homeless v. Veterans Administration*, D.C.D.C. No. 88-2503-OG, HUD publishes a Notice, on a weekly basis,

identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: April 15, 1989.

James E. Schoenberger,

*General Deputy Assistance Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 89-8537 Filed 4-11-89; 8:45 am]

BILLING CODE 4210-27-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ID-943-09-4212-11; I-12544]

#### Termination of Recreation and Public Purpose Classification; Idaho

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

**ACTION:** Classification termination.

**SUMMARY:** This order terminates a Bureau of Land Management classification affecting 594.85 acres of public land near McCammon, Idaho.

**EFFECTIVE DATE:** April 12, 1989.

#### FOR FURTHER INFORMATION CONTACT:

Nancy Bloyer, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1471.

By virtue of the authority vested in the Secretary of the Interior by the Recreation and Public Purposes Act of June 14, 1926, as amended; 43 U.S.C. 869; 869-4, it is ordered as follows:

1. Pursuant to the regulations in 43 CFR 2091.7-1(b)(1) and the authority delegated to me by BLM Manual section 1203 (48 FR 85), the classification decision of July 20, 1979, which classified 594.85 acres of public land as suitable for recreation and public purposes under the Act of June 14, 1926, as amended; 43 U.S.C. 869; 869-4, under serial number I-12544, is hereby revoked insofar as it affects the following-described lands:

Boise Meridian

T. 9 S., R. 37 E.

Sec. 3, lots 1, 2, 4, S½N½;

Sec. 4, lots 1, 2, 3, 4, S½N½.

The area described contains 594.85 acres in Bannock County.

2. At 9:00 a.m. on May 8, 1989, the lands described in paragraph one shall be opened to the operation of public land laws, generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable laws. All valid applications

received at or prior to 9:00 a.m. on May 8, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9:00 a.m. on May 8, 1989, the lands identified in paragraph one will be opened to location and entry under the United States mining laws. Appropriation of any of the lands described in paragraph one of this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: March 31, 1989.

Delmar D. Vail,

*State Director.*

[FR Doc. 89-8583 Filed 4-11-89; 8:45 am]

BILLING CODE 4310-GG-M

[ID-943-09-4214-12; I-1292]

#### Partial Termination of Classification for Multiple Use Management; Idaho

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

**ACTION:** Classification termination.

**SUMMARY:** This action partially terminates a classification order which segregated 1,424,300 acres from disposal under various land laws. The classification is no longer needed because the Resource Management Plan prepared for the area provides the necessary protection of the resources this classification sought to protect. In addition, many of the disposal laws for which the lands were segregated have since been repealed by the Federal Land Policy and Management Act of 1976. This action will open the lands specified to the agricultural land laws. They have been and continue to be open to the mining and mineral leasing laws and to all other public land laws.

**EFFECTIVE DATE:** April 12, 1989.

**FOR FURTHER INFORMATION CONTACT:** William E. Ireland, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1597.

1. Pursuant to authority delegated to me by BLM Manual, Section 1203 Delegation of Authority (48 FR 85), I

hereby terminate the Bureau of Land Management Multiple-Use Classification Order dated June 27, 1967, and published in the *Federal Register* July 4, 1967, Vol. 32, No. 128, Page 9718, insofar as it affected the lands described below:

#### Boise Meridian

T. 9 S., R. 3 W.  
Secs. 13 and 14;  
Secs. 23 to 26, inclusive;  
Secs. 35 and 36.

T. 10 S., R. 3 W.  
Secs. 1 to 4, inclusive;  
Secs. 9 to 16, inclusive;  
Secs. 21 to 28, inclusive;  
Secs. 33 to 36, inclusive.

T. 11 S., R. 3 W.  
Secs. 1 to 4, inclusive;  
Secs. 10 to 15, inclusive;  
Secs. 22 to 26, inclusive;  
Secs. 35 and 36.

T. 12 S., R. 3 W.  
Secs. 1 and 2;  
Secs. 11 to 14, inclusive;  
Secs. 24, 25 and 36.

T. 13 S., R. 3 W.  
Secs. 1, 12, 13, 24 and 25.

T. 9 S., R. 2 W.  
Secs. 13 to 36, inclusive.

Tps. 10, 11, 12 and 13 S., R. 2 W.

T. 14 S., R. 2 W.  
Secs. 1 to 5, inclusive;  
Secs. 9 to 13, inclusive;  
Secs. 24 and 25.

T. 6 S., R. 1 W.  
Sec. 1;  
Secs. 11 to 15, inclusive;  
Secs. 22 to 27, inclusive;  
Secs. 34 to 36, inclusive.

T. 7 S., R. 1 W.  
Secs. 1 to 3, inclusive;  
Secs. 9 to 16, inclusive;  
Secs. 19 to 36, inclusive.

Tps. 8, 9, 10, 11, 12, 13 and 14 S., R. 1 W.

T. 15 S., R. 1 W.  
Secs. 1 to 13, inclusive;  
Sec. 24.

T. 5 S., R. 1 E.  
Secs. 20 to 29, inclusive;  
Secs. 31 to 36, inclusive;

Tps. 6, 7, 8, 9, 10, 11, 12, 13 and 14 S., R. 1 E.

T. 5 S., R. 2 E.  
Secs. 19 to 21, inclusive;  
Secs. 28 to 33, inclusive;

T. 6 S., R. 2 E.  
Secs. 4 to 9, inclusive;  
Secs. 14 to 36, inclusive.

T. 7 S., R. 2 E.  
Secs. 1 to 11, inclusive;  
Sec. 13 S $\frac{1}{2}$ ;  
Secs. 14 to 36, inclusive.

Tps. 8, 9, 10, 11, 12, 13 and 14 S., R. 2 E.

T. 6 S., R. 3 E.  
Secs. 19, 30 and 31.

T. 7 S., R. 3 E.  
Secs. 6, W $\frac{1}{2}$ ;  
Secs. 13 to 17, inclusive;  
Sec. 18, E $\frac{1}{2}$ , SW $\frac{1}{4}$ ;  
Secs. 19 to 36, inclusive.

Tps. 8, 9, 10, 11, 12, 13 and 14 S., R. 3 E.

T. 7 S., R. 4 E.  
Secs. 17 to 20, inclusive;  
Secs. 29 to 33, inclusive.

T. 8, 9, 10, 11, 12, 13 and 14 S., R. 4 E.

T. 15 S., R. 4 E.

Secs. 1 to 3, inclusive;  
Sec. 4, lots 15 and 16;  
Sec. 9, lots 6, 7, and 8;  
Secs. 10 to 15, inclusive;  
Sec. 21, lots 5 and 7;  
Secs. 22 to 27, inclusive;  
Secs. 33, lots 6, 7 and 8;  
Secs. 34 to 36, inclusive.

T. 10 S., R. 4 E.  
Secs. 1 to 3, inclusive;  
Sec. 4, lots 5, 6, and 7;  
Secs. 10 to 15, inclusive;  
Secs. 22 to 27, inclusive.

T. 7 S., R. 5 E.  
Sec. 34 to 36, inclusive.

Tps. 8, 9, 10, 11, 12, 13, 14, 15 and 16 S., R. 5 E.

T. 7 S., R. 6 E.  
Secs. 31 to 35, inclusive.

T. 8, 9, 10, 11, 12, 13, 14, 15 and 16 S., R. 6 E.

T. 8 S., R. 7 E.  
Secs. 19, 30, 31 and 32.

T. 9 S., R. 7 E.  
Sec. 19;  
Secs. 29 to 32, inclusive.

T. 10 S., R. 7 E.  
Secs. 4 to 9, inclusive;  
Secs. 14 to 35, inclusive.

T. 11 S., R. 7 E.  
Secs. 2 to 11, inclusive;  
Secs. 14 to 23, inclusive;  
Secs. 26 to 34, inclusive.

T. 12 S., R. 7 E.  
Secs. 3 to 10, inclusive;  
Secs. 15 to 22, inclusive;  
Secs. 27 to 34, inclusive.

T. 13 S., R. 7 E.  
Secs. 3 to 9, inclusive;  
Secs. 16 to 20, inclusive;  
Secs. 30 and 31.

T. 14 S., R. 7 E.  
Secs. 6, 7, 18 and 19;  
Secs. 29 to 32, inclusive.

T. 15 S., R. 7 E.  
Secs. 5 to 8, inclusive;  
Secs. 17 to 20, inclusive;  
Secs. 29 to 33, inclusive;

T. 16 S., R. 7 E.  
Secs. 4 to 9, inclusive;  
Secs. 15 to 22, inclusive;  
Secs. 27 to 34, inclusive.

The areas described aggregate approximately 1,424,300 acres of public land in Owyhee County.

2. The following-described archeological, recreation and administrative sites remain segregated from appropriation under the general mining laws:

#### Boise Meridian, Idaho

##### Mud Flat Site

T. 9 S., R. 2 W.  
Sec. 35 W $\frac{1}{2}$ NW $\frac{1}{4}$ .

##### Camas Creek Site

T. 10 S., R. 2 W.  
Sec. 24, lot 4;  
Sec. 25, lots 1 and 2, S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ .

T. 10 S., R. 2 W.  
Sec. 30, lot 1.

##### Hole-in-Rock Site

T. 8 S., R. 4 E.  
Sec. 26, W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ .

##### Indian Bathub Site

T. 8 S., R. 6 E.  
Sec. 3, lot 3, SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ .

##### Deer Water Site

T. 8 S., R. 6 E.  
Sec. 29, SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
Sec. 30, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ .

##### Bruneau Canyon Overlook Site

T. 8 S., R. 7 E.  
Sec. 31, E $\frac{1}{2}$ NE $\frac{1}{4}$ ;  
Sec. 32, W $\frac{1}{2}$ NW $\frac{1}{4}$ .

##### Indian Hot Springs Site

T. 12 S., R. 7 E.  
Sec. 32, E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 33, NE $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ .

T. 13 S., R. 7 E.  
Sec. 5, lots 1 and 2.

The areas described aggregate approximately 1,168 acres in Owyhee County.

3. The segregative effect on the lands described in paragraph one will terminate upon publication of this notice in the *Federal Register* as provided by the regulations in 43 CFR 2091.7-1(b)(3).

4. At 9:00 a.m. on May 5, 1989, the lands described in paragraph one shall be open to the agricultural land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable laws. All valid applications received at or prior to 9:00 a.m. on May 5, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. The lands described in paragraph one have been and continue to be open to the mining and mineral leasing laws and to all other public land laws.

Delmar D. Vail,

State Director.

Dated: March 31, 1989.

[FR Doc. 89-8584 Filed 4-11-89; 8:45 am]

BILLING CODE 4310-GG-M

[ID-943-09-4212-11; I-13735]

#### Termination of Recreation and Public Purpose Classification; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification termination.

SUMMARY: This order terminates a Bureau of Land Management classification affecting 30.00 acres of public land near Kellogg, Idaho.

EFFECTIVE DATE: April 12, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Bloyer, BLM, Idaho State Office, 3380 Americana Terrace, Boise Idaho 83706, 208-334-1471.

By virtue of the authority vested in the Secretary of the Interior by the Recreation and Public Purposes Act of June 14, 1926, as amended; 43 U.S.C. 869; 869-4, it is ordered as follows:

1. Pursuant to the regulations in 43 CFR 2091.7-1(b)(1) and the authority delegated to me by BLM Manual Section 1203 (48 FR 85), the classification decision of July 19, 1979, which classified 30.00 acres of public land as suitable for recreation and public purposes under the Act of June 14, 1926, as amended; 43 U.S.C. 869; 869-4, under serial number I-13735, is hereby revoked insofar as it affects the following-described lands:

**Boise Meridian**

T. 49 N., R. 2 E.

Sec. 34, N½NW¼SW¼,

N½S½NW¼SW¼.

The area described contains 30.00 acres in Shoshone County.

2. At 9:00 a.m. on May 8, 1989, the lands described in paragraph one shall be opened to the operation of public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable laws. All valid applications received at or prior to 9:00 a.m. on May 8, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9:00 a.m. on May 8, 1989, the lands identified in paragraph one will be opened to location and entry under the United States mining laws. Appropriation of any of the lands described in paragraph one of this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

**Delmar D. Vail,**

*State Director.*

Dated: March 31, 1989.

[FR Doc. 89-8585 Filed 4-11-89; 8:45 am]

BILLING CODE 4310-GG-M

[ID-943-09-4212-11; I-9530]

**Termination of Recreation and Public Purpose Classification; Idaho**

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

**ACTION:** Classification termination.

**SUMMARY:** This order terminates a Bureau of Land Management classification affecting 24.55 acres of public land near Star, Idaho.

**EFFECTIVE DATE:** April 12, 1989.

**FOR FURTHER INFORMATION CONTACT:** Nancy Bloyer, BLM, Idaho State Office, 3380 American Terrace, Boise, Idaho 83706, 208-334-1471.

By virtue of the authority vested in the Secretary of the Interior by the Recreation and Public Purposes Act of June 14, 1926, as amended; 43 U.S.C. 869; 869-4, it is ordered as follows:

1. Pursuant to the regulations in 43 CFR 2091.7-1(b)(1) and the authority delegated to me by BLM Manual section 1203 (48 FR 85), the classification decision of March 22, 1976, which classified 24.55 acres of public land as suitable for recreation and public purposes under the Act of June 14, 1926, as amended; 43 U.S.C. 869; 869-4, under serial number I-9530, is hereby revoked insofar as it affects the following-described lands:

**Boise Meridian**

T. 4 N., R. 1 W.

Sec. 17, lot 7.

The area described contains 24.55 acres in Ada County.

2. At 9:00 a.m. on May 8, 1989, the lands described in paragraph one shall be opened to the operation of public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable laws. All valid applications received at or prior to 9:00 a.m. on May 8, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9:00 a.m. on May 8, 1989, the lands identified in paragraph one will be opened to location and entry under the United States mining laws. Appropriation of any of the lands described in paragraph one of this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of

possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

**Delmar D. Vail,**

*State Director.*

Dated: March 31, 1989.

[FR Doc. 89-8586 Filed 4-11-89; 8:45 am]

BILLING CODE 4310-GG-M

**New York Canyon Known Geothermal Resources Area; Designation**

February 28, 1989.

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

**ACTION:** Designation of the New York Canyon Known Geothermal Resources Area, Nevada.

**SUMMARY:** Pursuant to the authority vested in the Secretary of the Interior by section 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Departmental Manual 1.1k, Bureau of Land Management, the following lands are hereby designated as the New York Canyon Known Geothermal Resources Area.

**EFFECTIVE DATE:** February 1, 1989.

**New York Canyon Known Geothermal Resources Area**

**Mt. Diablo Meridian, Nevada**

T. 25 N., R. 35 E.,

Secs. 1-3, 10-12, 14, 15.

T. 25 N., R. 36 E.,

Sec. 6.

T. 26 N., R. 35 E.,

Sec. 36.

T. 26 N., R. 36 E.,

Secs. 31, 32.

The above area aggregates 7607.72 acres, more or less.

**Melvin R. Bunch,**

*Acting State Director, Nevada.*

[FR Doc. 89-8592 Filed 4-11-89; 8:45 am]

BILLING CODE 4310-HC-M

[ES-030-09-4212-20; ES-20066-009]

**Public Lands in Michigan Determined Eligible for Transfer to the State of Michigan Pursuant to Michigan Public Lands Improvement Act of 1988**

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

**ACTION:** Availability of list public lands to be transferred.

**SUMMARY:** Final notice is hereby given that certain public lands located in Michigan have been determined to be

eligible for transfer to the State of Michigan. Transfer will be pursuant to the Michigan Public Lands Improvement Act of 1988 (100 STAT 2711; Pub. L. 100-537) (Act) which grants certain specified unclaimed islands and uplands and certain other public lands to the State of Michigan for the purposes of public recreation, protection of fish, wildlife, and plants, and the protection of resources and values. The transfer will be Congressional grant and will be effective on April 26, 1989.

The purpose of this notice is to announce the availability of a list containing the legal descriptions and other information regarding the public lands that will be transferred to the State of Michigan.

**DATE:** The list will be available to the public on April 26, 1989.

**ADDRESS:** Requests for copies of the list should be sent to Bert Rodgers, District Manager, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201-0631.

**FOR FURTHER INFORMATION CONTACT:** Duane Marti, Archaeologist/Realty Specialist, Bureau of Land Management, P.O. Box 631, Milwaukee, WI 53201-0631; telephone No. (414) 291-4429 or (FTS) 362-4429.

**SUPPLEMENTARY INFORMATION:** The Act will transfer to the State of Michigan the surface estate of specified public lands in Michigan for the purposes of public recreation, protection of fish, wildlife, and plants, and the protection of resources and values. It also authorizes the Secretary of the Interior (Secretary) to resolve claims of ownership of non-mineral interests in certain other public lands in Michigan and to transfer such lands to claimants thereof on terms that recognize the equities of such claimants in such lands.

The Act also required the Secretary to notify the residents of Michigan as to the nature and location of the public lands to be granted to the State under the Act. That public notification was accomplished by the publication of a public notice in the *Federal Register* on February 10, 1989 (54 FR 6456) and legal notices in 17 daily or weekly newspapers located throughout Michigan during the period of February 15-19, 1989, and the issuance of press releases to 391 newspapers and radio stations located throughout Michigan. Additionally, books, containing the legal descriptions and maps showing the locations of the public lands eligible for transfer, were available for public inspection at each Country Clerk's office in the 83 counties in Michigan and at 56 Congressional offices located throughout Michigan. The purpose of the

public notification was twofold: (1) To notify residents of Michigan as to the location of public lands to be granted or otherwise transferred under the Act, and (2) To identify any person(s) who has a claim of ownership of the non-mineral interests in the identified public lands. Written claims of ownership were accepted until March 27, 1989.

Those parcels of public land that have been claimed by a person or persons will not be transferred to Michigan on April 26, 1989. Instead they will be retained as public lands pending resolution by the Secretary of the claim of ownership.

The transfer of the unclaimed public lands to the State and the resolution of the claims of ownership are subject to very specific requirements contained in the Act.

**Bert Rodgers,**  
*District Manager.*  
[FR Doc. 89-8594 Filed 4-11-89; 8:45 am]  
**BILLING CODE 4310-GJ-M**

[UT-020-09-4212-14; U-64768]

**Salt Lake District; Realty Action**

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

**ACTION:** Notice of realty action; exchange of public lands in Tooele County, Utah.

**SUMMARY:** The BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

The following public land is being considered for exchange pursuant to Section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

	Acres
<b>T. 1N., R. 11W., SLM, UT:</b>	
Sections 5-8, All .....	2,639
Sections 17-20, All .....	2,558
Sections 29-31, All .....	1,919
	7,116
<b>T. 1N., R. 12W., SLM, UT:</b>	
Section 1, All .....	662
Sections 3-15, All .....	8,481
Sections 17-31, All .....	9,590
Sections 33-35, All .....	1,920
	20,653
<b>T. 1S., R. 10W., SLM, UT:</b>	
Section 3, All .....	636
Section 4, S½, S½NE¼ .....	400
Section 5, S½SW¼, SE¼ .....	240
Sections 7-10, All .....	2,589
Sections 17-20, All .....	2,621
Sections 29-31, All .....	1,985
	8,471

	Acres
<b>T. 1S., R. 11W., SLM, UT:</b>	
Sections 5-8, All .....	2,560
Section 11, S½SE¼ .....	80
Section 12, S½, S½NE¼ .....	400
Sections 13-15, All .....	1,920
Sections 17-31, All .....	9,600
Sections 33-35, All .....	1,920
	16,480
<b>T. 1S., R. 12W., SLM, UT:</b>	
Section 1, All .....	640
Sections 3-15, All .....	8,320
Sections 17-31, All .....	9,600
Sections 33-35, All .....	1,920
	20,480
<b>Total .....</b>	<b>73,200.</b>

Final determination on exchange will await completion of an environmental analysis. In accordance with the regulations of 43 CFR 2201.1(b), publication of this notice will segregate the public lands, as described in this notice, from appropriation under the public land laws, including the mineral laws, but not the mineral leasing laws.

The segregation of the above described lands shall terminate upon issuance of a document conveying such lands or upon publication in the *Federal Register* of a Notice of Termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

This notice will cancel and replace the segregative effects of all previously published notices on the public lands described herein.

**Deane H. Zeller,**  
*Salt Lake District Manager.*  
[FR Doc. 89-8595 Filed 4-11-89; 8:45 am]  
**BILLING CODE 4310-DQ-M**

**National Park Service**

**National Register of Historic Places; Notification of Pending Nominations**

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 1, 1989. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by April 27, 1989.

**Carol D. Shull,**  
*Chief of Registration, National Register.*

**ARIZONA**

**Pima County**

*Los Robles Archeological District (Hohokam Platform Mound Communities of the Lower*

*Santa Cruz Basin c. A.D. 1050—1450 MPS), Address Restricted, Red Rock vicinity, 89000337*

#### Pinal County

*McClellan Wash Archeological District (Hohokam Platform Mound Communities of the Lower Santa Cruz Basin c. A.D. 1050—1450 MPS), Address Restricted, Picacho vicinity, 89000336*

#### ARKANSAS

##### Jefferson County

*Parkview Apartments, 300 W. 13th Ave., Pine Bluff, 89000335*

##### Sevier County

*Locke—Mall House, Off US 59/71 N of Lockesburg, Lockesburg vicinity, 89000340*

#### COLORADO

##### Douglas County

*Ruth Memorial Methodist Episcopal Church, 19670 E. Mainstreet, Parker, 89000332*

#### IDAHO

##### Bonner County

*Dover Church, Washington St., Dover, 89000339*

#### ILLINOIS

##### La Salle County

*Marseilles Hydro Plant, Commercial St., Marseilles, 89000343*

##### Sangamon County

*Graham, Cong. James M., House, 413 S. 7th St., Springfield, 89000342*  
*Power Farmstead, Co. Rd. 9.5 North, 0.5 mi. E of Cantrall, Cantrall vicinity, 89000341*

#### LOUISIANA

##### Avoyelles Parish

*St. Mary's Assumption Church, Front St., Cottonport, 89000330*

##### Terrebonne Parish

*St. Matthew's Episcopal Church, 243 Barrow St., Houma, 89000331*

#### MINNESOTA

##### Hennepin County

*Minneapolis Warehouse Historic District, Roughly bounded by 1st St. North, 1st Ave. North, 5th St. North, 5th Ave. North, 3rd St. North, and 10th Ave. North, Minneapolis, 89000338*

#### NEW MEXICO

##### Rio Arriba County

*Archeological Site No. AR-03-10-02-357 (Gallina Culture Developments in North Central New Mexico MPS), Address Restricted, Llaves vicinity, 89000345*  
*Gastles of the Chama (AR-03-10-01-216) (Gallina Culture Developments in North Central New Mexico MPS), Address Restricted, Llaves vicinity, 89000344*  
*Mogales Cliff House (AR-03-10-02-124) (Gallina Culture Developments in North Central New Mexico MPS), Address Restricted, Llaves vicinity, 89000346*

#### RHODE ISLAND

##### Providence County

*Olney Street—Alumni Avenue Historic District, Roughly bounded by Olney St., Arlington, Alumni Ave., and Hope St., Providence, 89000333*  
*Woonsocket Rubber Company Mill, 60—82 S. Main St., Woonsocket, 89000334*

The following properties are also being considered for listing in the National Register:

#### KENTUCKY

*Madison County, Dozier—Guess House, Madison County MRA, KY 388/Red House Rd., Richmond 88003343*

#### LOUISIANA

*Jefferson County, Barataria Unit of Jean Lafitte Historical Park Historic District, Roughly bounded by Bayou Coquilles, Bayou des Familles, Bayou Barataria, Bayou Villars, and Lake Salvador, Barataria vicinity 66000966.*

[FR Doc. 89-8612 Filed 4-11-89; 8:45 am]

BILLING CODE 4310-70-M

#### DEPARTMENT OF JUSTICE

##### Drug Enforcement Administration

##### Importation of Controlled Substances; Application; Minn-Dak Growers Ltd.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 23, 1989, Minn-Dak Growers Limited, Highway 81 North, P.O. Box 1276, Grand Forks, North Dakota 58206-1276, made application to the Drug Enforcement Administration to be registered as an importer of marihuana (7360), a basic controlled substance in Schedule I. This application is exclusively for the importation of marihuana seed which will be rendered non-viable and used as bird seed.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for

a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than May 12, 1989.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Gene R. Haislip,

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

Dated: March 30, 1989.

[FR Doc. 89-8533 Filed 4-11-89; 8:45 am]

BILLING CODE 4410-09-M

##### Manufacturer of Controlled Substances; Application; Syncates Associates, Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 6, 1989, Syncates Associates, Inc., 10863 Rockley Road, Houston, Texas 77099, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance pentobarbital (2270).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register

Representative (Room 1112), and must be filed no later than May 12, 1989.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

Dated: March 30, 1988.

[FR Doc. 89-8534 Filed 4-11-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-91]

**Murray J. Walker, Jr., M.D., Hilo, HI; Hearing**

Notice is hereby given that on August 23, 1988, the Drug Enforcement Administration, Department of Justice, issued to Murray J. Walker, Jr., M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AW1083384, and deny any pending applications.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, April 18, 1989, commencing at 9:30 a.m., at the United States District Court, Puna

Division's Courtroom, Old Ma Ma LaHoa Highway, Keaau, Hawaii.

Dated: April 4, 1989.

**John C. Lawn,**

*Administrator, Drug Enforcement Administration.*

[FR Doc. 89-8535 Filed 4-11-89; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II,

Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 24, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 24, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC this 27 day of March 1989.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance*

#### APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number No.	Articles produced
A.V. Well Service (Workers)	Olney, IL	3/27/89	3/8/89	22, 658	Oil and gas.
Animal Toys Inc. (workers)	Farmingdale, NY	3/27/89	2/1/89	22, 659	Toys.
Arbeit Brothers, Inc. (UFCW)	New York, NY	3/27/89	3/8/89	22, 660	Fur garments.
Apollo Drilling Inc. (Workers)	Gillette, WY	3/27/89	3/5/89	22, 661	Oil and gas.
D&R Tong Service (Workers)	Odessa, TX	3/27/89	3/6/89	22, 662	Do.
Damon Creations (Workers)	North Bergen, NJ	3/27/89	3/14/89	22, 663	Men's shirts.
Delicia Sportswear (Workers)	New York, NY	3/27/89	2/8/89	22, 664	Skirts and slacks.
Edmond Stern, Inc. (Workers)	do	3/27/89	2/15/89	22, 665	Knit cloth.
Fashion Craft Industries (Workers)	Henryetta, OK	3/27/89	3/8/89	22, 666	Drapes and bedspreads.
Fisher Scientific Co.	Indiana, PA	3/27/89	3/14/89	22, 667	Medical instruments and furniture.
H&E Pipe Service, Inc. (Workers)	Williston, ND	3/27/89	3/7/89	22, 668	Oil and gas.
Halliburton Services (Workers)	Henderson, KY	3/27/89	3/9/89	22, 669	Oil and gas.
Kuehne & Nage Inc. (Company)	New York, NY	3/27/89	2/8/89	22, 670	Air Freight and Customs brokerage service.
Lillian Vernon (Workers)	Portchester, NY	3/27/89	3/13/89	22, 671	Towels and robes.
Lillian Vernon (Workers)	New Rochelle, NY	3/27/89	3/13/89	22, 672	Towels and robes.
Longhorn Casing Crews (Workers)	Odessa, TX	3/27/89	3/6/89	22, 673	Oil and gas.
Lucky Star (ILGWU)	New York, NY	3/27/89	3/9/89	22, 674	Children's sleepwear.
M Goldsmith C. (Workers)	Brooklyn, NY	3/27/89	3/8/89	22, 675	Window display fixtures.
New Venture KTG Mill (Workers)	do	3/27/89	2/28/89	22, 676	Sweaters.
Osceola Shoe Co., Inc. (Workers)	Osceola, AR	3/27/89	2/24/89	22, 677	Shoes.
Pep Drilling Co. (Workers)	Mt. Vernon, IL	3/27/89	3/7/89	22, 678	Oil and gas.
Phentex, Inc. (Workers)	Plattsburg, NY	3/27/89	3/8/89	22, 679	Knitting yarn.
Schwerman Trucking Co. (Workers)	Maryneal, TX	3/27/89	3/21/89	22, 680	Trucking.
Shar-Alan Oil Co., (Workers)	Denver, CO	3/27/89	2/22/89	22, 681	Oil and gas.
Sola Barnes-Hind (Workers)	Phoenix, AZ	3/27/89	3/6/89	22, 682	Contact lenses.
Taylor's Casing Crews (Workers)	Odessa, TX	3/27/89	3/6/89	22, 683	Oil and gas.
Teledyne Merla (Workers)	Snyder, TX	3/27/89	3/10/89	22, 684	Do.
Weinmac Mfg. Corp. (ILGWU)	Brooklyn, NY	3/27/89	2/14/89	22, 685	Men's briefs.
BTA Oil Producers (Company)	Midland, TX	10/21/88	11/7/88	<sup>1</sup> 21,551	Oil.
Ray Holifield & Associates (Company)	Irving, TX	8/1/88	9/6/88	<sup>1</sup> 20,928	Oil and gas exploration.

<sup>1</sup> Investigation reopened.

[FR Doc. 89-8541 Filed 4-11-89; 8:45 am]

BILLING CODE 9510-30-M

[TA-W-22,151]

**Holmes & Narver Services, Inc., Anchorage, AK; Termination of Investigation; Correction**

This notice corrects our previous notice, published on March 3, 1989 at 54 FR 9096.

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1988 in response to a petition which was filed by Teamsters Local 959 on behalf of workers and former workers at Holmes & Narver Services, Incorporated, Anchorage, Alaska.

A negative determination applicable to the petitioning group of workers was issued on January 24, 1989 (TA-W-21,865). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 31st day of March 1989.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 89-8538 Filed 4-11-89; 8:45 am]

BILLING CODE 4510-30-M

Signed at NW., Washington, DC this 31st day of March 1989.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 89-8539 Filed 4-11-89; 8:45 am]

BILLING CODE 4610-30-M

[TA-W-22,260]

**Texaco, Inc., Central Exploration Division, Denver, CO; Dismissal of Application for Reconsideration**

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Texaco, Inc., Central Exploration Division, Denver, Colorado. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-22,260; Texco, Incorporated, Central Exploration Division, Denver, Colorado (March 29, 1989)

Signed at Washington, DC this 30th day of March 1989.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 89-8540 Filed 4-11-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,166]

**Northland Maintenance Company Prudhoe Bay, AK; Termination of Investigation; Correction**

This notice corrects our previous notice, published on March 3, 1989 at 54 FR 9096.

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1988 in response to a petition which was filed by Teamsters Local 959 on behalf of workers and former workers at Northland Maintenance Company, Prudhoe Bay, Alaska.

A negative determination applicable to the petitioning group of workers was issued on January 31, 1989 (TA-W-21,916). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

**Research, Evaluation, and Pilot and Demonstration Projects Program; Program Year 1988 Availability of Funds and Request for Applications—Expanding the Concept for Apprenticeship to Other Industries (SGA/DAA 102-89)**

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of availability of funds and of solicitation for grant applications.

**SUMMARY:** The Employment and Training Administration announces the availability of funds for exploring the feasibility of using the "apprenticeship concept" to determine its future role in meeting America's needs for a skilled work force.

**DATES:** The closing date for receipt of applications under this announcement is May 30, 1989. Applications must be received by 4:45 p.m. (Eastern Time) at the address below, on May 30, 1989. Any application not reaching the designated place and date of delivery will not be considered, unless mailed five days prior to closing date. Applications

submitted by mail must be postmarked no later than May 22, 1989. The term "postmark" means a printed, stamped or otherwise place impression (exclusive of postage meter machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employees of the U.S. Postal Services. Hand-delivered applications must be received by 4:45 p.m., Eastern time, on May 30, 1989. It is preferred that applications be mailed.

**ADDRESS:** Mail or hand deliver applications to: U.S. Department of Labor, Employment and Training Administration, Office of Financial and Administrative Management, Division of Acquisition and Assistance, Room C-4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Charlotte A. Adams, Reference: SGA/DAA 102-89.

**FOR FURTHER INFORMATION CONTACT:** Charlotte Adams, Division of Acquisition and Assistance, Telephone (202) 535-8702.

**SUPPLEMENTARY INFORMATION:** The Employment and Training Administration (ETA) of the Department of Labor (DOL) announces the availability of funds to explore in depth, in different locations throughout the country, an objective methodology for expansion of the apprenticeship concept of training. Emphasis will be given to identify the skill shortage occupations. A number of demonstration projects in selected industries, implementing adaptations to the traditional system and introducing a broadened work-place training concept will be developed and operated to ascertain the potential for successful expansion of the apprenticeship concept.

This grant competition is open to public and private organizations. It is anticipated that \$756,000 will be awarded to one grantee: Approximately \$56,000 for preliminary study and planning and \$175,000 each for the development and testing of at least four (4) innovative structured work-place training approaches for expansion to non-traditional and skill shortage occupations. It is expected that approximately 6 months will be devoted to preliminary study and planning, 6 months to developing and initiating demonstration programs, and then 12 months operating, testing, and refining of model system. The period of performance will be 24 months from date of grant award.

Anticipated project outcome will be successful approaches for expanding the concept of apprenticeship training to a wide range and level of work-place training, both occupations and industries, that have not traditionally utilized such a concept.

DOL anticipates that proven and accepted new approaches will be established throughout the country with technical assistance and monitoring provided by apprenticeship staff of the DOL and state apprenticeship agencies.

### 1. Introduction

The department has devoted substantial resources over the last two years to identifying changes in the work place that are likely to occur during the remaining year of this century and into the next. From this effort, ETA is focusing on issues relating to the American work force and its training needs.

In December 1987, the Department launched the Apprenticeship 200 initiative with the publication of an issue paper in the *Federal Register* at 52 FR 45904 on December 2, 1987. See also 53 FR 40326 (October 14, 1988); 53 FR 34250 (September 2, 1988); 53 FR 20836 (June 3, 1988); and 53 FR 961 (January 14, 1988). The purpose of this initiative is to review the apprenticeship concept to determine its future role in meeting the Nation's needs for a skilled work force.

The basic premise of the initiative is that scrutiny should be given to the apprenticeship concept of structured on-the-job training combined with related classroom instruction, and serious consideration given to increasing the role of apprenticeship in preparing workers for skilled jobs. This is a concept which holds potential for meeting both the needs of employers in industries facing skill shortages as well as the needs of targeted populations, such as workers who may periodically require retraining or upgrading, dislocated workers, or the at-risk youth population.

Two key components of this initiative are (1) a public dialogue and (2) a two-phased research program. The first phase consisted of short-term research papers; the second phase will involve longer-term projects.

The purpose of the first phase of the research program was to carefully analyze a number of key issues and to develop and support recommendations for the future direction of apprenticeship. These short-term projects were completed in October 1988 and will be used in preparing the report of findings and recommendations on the future role of apprenticeship.

The second phase of the research program, the longer-term projects, will

include demonstration projects and such features as testing the feasibility of expanding the apprenticeship concept of training to a broadened structured work-place training system that can address additional industries, testing alternative delivery systems, increasing the efficiency and quality of operations, and testing expansion to targeted groups.

This solicitation for grant application (SGA) represents one of the areas to be investigated further. It will provide a thorough consideration of adaptation of current apprenticeship to structured work-place training system policies and procedures.

### 2. Background

The general apprenticeship concept of structured work-place training appears ideally suited to address the training needs of the future U.S. economy. All the elements essential to an expanded effort to address demographic and technological training needs are found in the general apprenticeship concept. The apprenticeship concept already is widespread under different names. Viewed in the context of broad principles, a generic form of the apprenticeship concept already exists under a wide variety of terms in professional and technical areas. Foreign experience indicates potential for expansion. The European experience provides evidence that the apprenticeship concept can have wide application. In Germany many managers in banking, insurance, and retailing started as apprentices. Close to half of their apprentices are in the service industry. It would seem that the future U.S. economic environment will be more conducive to such structured work-place training concept due to renewed interest in emphasis on the need for high skills, formal recognition or accreditation, and the growth of small firms and the service sector.

### 3. Statement of Work

This grant will involve a thorough study and understanding of the current apprenticeship system, and a review of comments submitted by the public as part of the DOL Apprenticeship 2000 initiative. It will require the identification of industries and occupations where there is potential for expansion of structured work-place of training with particular emphasis on skill shortage occupations. Grantee will develop an objective methodology for identifying areas suitable for expansion of the general apprenticeship concept without restriction of the current traditional apprenticeship requirements but in accordance with general parameters to be provided by the project officer. Grantee will develop and operate at least four different alternative

approaches as models to ascertain the potential success for expansion of the structured work-place concept through implementation of adaptations to the traditional apprenticeship system. Work on this grant will be performed in two major parts:

#### Part I

Study will be made of the current traditional apprenticeship system and the issues/problems associated with its expansion. Review will be made of responses received from the public to the DOL Apprenticeship 2000 initiative as they pertain to expansion. Study will include DOL-developed focus papers and information to be provided regarding consideration of a structured work-place training approach outside the traditional system. Past apprenticeship expansion efforts will be reviewed and meetings and discussion will be conducted to gain pertinent information from current and potential apprenticeship program sponsors.

Upon completion of this background study grantee will summarize and analyze collected information and develop recommendations for development of varying models for the structured work-place concept of training.

Grantee will develop a comprehensive work plan for proceeding with development of demonstration programs.

#### Part II

Upon completion of Part I and approval by the project officer, at least four (4) demonstration programs will be developed and initiated to test the feasibility for replication of expansion models recommended by the grantee. The Department will probably propose some demonstration sites.

Four or more demonstration programs with varying approaches will be developed and operated for a twelve-month period in different localities throughout the country. Grantee will be responsible for all aspects of developing systems that test their approved recommendations for expanding the structured workplace concept of training. Grantee will work closely with the project officer and other DOL officials to incorporate unique characteristics and structure workplace training that are currently being considered within DOL and which will be provided to the grantee. System development activity will include such functions as program direction, on-the-job training and related theoretical instruction, credentialing/certification sub-system, record keeping and program monitoring. Demonstration models may

propose program monitoring. An evaluation component is expected for each demonstration program. Development of the program must include appropriate contact with local and state government, labor, management, and education officials. Long-term continuance of the test programs must be addressed and considered in the evaluation component. Demonstration programs should focus primarily in non-construction areas with emphasis on high tech and service industry occupations.

#### Synopsis

##### Part I 6 months

- Preliminary study
    - Develop understanding of current apprenticeship system and issues related to expansion
    - Review of comments/focus papers related to Apprenticeship 2000 initiative
    - Meetings/discussions with appropriate organizations/ individuals
- Summarize and analyze collected information

- Develop recommendations and comprehensive work plan

##### Part II 6 months (after completion of Part I)

- Develop and initiate demonstration programs
  - 12 months (after development/initiation)
- Operation/refining of demonstration projects
- Submission of report/evaluations/recommendations

#### 4. Deliverables

(1) Grantee shall attend a two-day meeting at the U.S. Department of Labor to receive orientation as to the overall intent and scope of this project.

(2) Written status reports will be provided to the project officer on a monthly basis beginning 30 days from the grant award date.

(3) Two copies of grantee draft report summarizing findings of preliminary studies as described in Part I above and making their detailed recommendations for demonstration projects along with a comprehensive work plan will be submitted by 5 months from grant execution date.

(4) Based upon recommendations and plan approved by project officer grantee will develop and initiate by 12 months

from grant execution date at least four demonstration projects to test the practicality and effectiveness of the recommended approaches.

(5) Grantee will operate and refine as necessary demonstration projects for a 12 month period and will provide project officer with a draft demonstration project evaluation report by 22 months from grant execution date and a final report by 24 months from grant execution date.

#### Application Process

##### A. Eligible Applicants

This solicitation is open to public, profit and nonprofit organizations. However, any award made as a result of this solicitation will be non-fee bearing.

##### B. Application Package

All instructions and forms required for submittal of applications are included in this announcement. An original and three (3) copies of the application shall be submitted. The application package shall consist of two (2) separate and distinct parts. Part A shall contain Standard Forms 424, A and B (Appendices 1, 2, and 3). Part B shall contain a detailed proposal which demonstrates the applicant's capability to provide the services as outlined in this announcement. Proposals should describe the proposed technical approach, including phasing of tasks, and scheduling of time and personnel. Part B should not include or make reference to cost or pricing data so that an independent evaluation may be made on the basis of technical merit.

##### C. Other Available Materials

The document published in the *Federal Register* at 52 FR 45904, December 2, 1987, and the *Report of Public Comments* are available upon request. To receive copies, send a self-addressed gummed label to Charlotte Adams at address listed for delivery of Applications. Telephone Requests will not be honored.

#### 5. Rating Criteria for Award

Prospective applicants are advised that the selection of grantee for award is to be made after careful evaluation of application by a panel of specialists within DOL/ETA. Each panelist will evaluate the applications for

acceptability with emphasis on the various factors enumerated below. The panel results are advisory in nature and not binding on the grant officer.

#### Technical Criteria

##### a. Program Design (45 points)

Applications will be evaluated on the degree to which they reflect sound program design and methods. Areas that will be examined include the following:

1. The applicants understanding of the basic aims and objectives of the project.
2. The appropriateness of the applicants' approaches and methods for information gathering and evaluation, problem identification and technical solutions, management and performance.

3. Innovative yet practical proposed demonstrations that reflect determined needs.

4. Knowledge of the apprenticeship system and concept of training.

##### b. Administrative Capability (15 points)

Applications will be evaluated in terms of the capability of the:

1. Applicant to manage such a technical and multi-phased project.
2. Applicant to perform within the time lines provided.

##### c. Staff Capability (15 points)

Applications will be evaluated in terms of the degree to which:

1. The duties outlined for key executive, managerial, and technical positions appear appropriate to the work that will be conducted under the award.

2. The qualifications of the persons designated for key executive, managerial, and technical positions appear to match the requirements of these positions.

##### d. Previous Experience (25 points)

The applications will be evaluated on the degree to which the applicant offeror demonstrates that it has successfully carried out programs or work of a similar nature in the past.

Signed at Washington, DC, on April 4, 1989.  
 Roberts T. Jones,  
*Assistant Secretary of Labor.*

BILLING CODE 4510-30-M

APPENDIX "1"

OMB Approval No. 0348-0043

**APPLICATION FOR FEDERAL ASSISTANCE**

<b>1. TYPE OF SUBMISSION:</b> Application <input type="checkbox"/> Construction <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction <input type="checkbox"/> Non-Construction		<b>2. DATE SUBMITTED</b>	Applicant Identifier
		<b>3. DATE RECEIVED BY STATE</b>	State Application Identifier
		<b>4. DATE RECEIVED BY FEDERAL AGENCY</b>	Federal Identifier
<b>5. APPLICANT INFORMATION</b>			
Legal Name:		Organizational Unit:	
Address (give city, county, state, and zip code):		Name and telephone number of the person to be contacted on matters involving this application (give area code)	
<b>6. EMPLOYER IDENTIFICATION NUMBER (EIN):</b> [ ] [ ] - [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]		<b>7. TYPE OF APPLICANT: (enter appropriate letter in box)</b> <input type="checkbox"/>	
<b>8. TYPE OF APPLICATION:</b> <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es) <input type="checkbox"/> <input type="checkbox"/> A Increase Award    B Decrease Award    C Increase Duration D Decrease Duration    Other (specify): _____		A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) _____	
		<b>9. NAME OF FEDERAL AGENCY:</b>	
<b>10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:</b> [ ] [ ] a [ ] [ ] [ ] [ ]		<b>11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:</b>	
TITLE:			
<b>12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):</b>			
<b>13. PROPOSED PROJECT</b>		<b>14. CONGRESSIONAL DISTRICTS OF:</b>	
Start Date	Ending Date	a Applicant	b Project
<b>15. ESTIMATED FUNDING:</b>		<b>16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?</b>	
a Federal	\$ .00	a YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____	
b Applicant	\$ .00	b NO <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372	
c State	\$ .00	<input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
d Local	\$ .00		
e Other	\$ .00		
f Program Income	\$ .00	<b>17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?</b>	
g TOTAL	\$ .00	<input type="checkbox"/> Yes If "Yes," attach an explanation. <input type="checkbox"/> No	
<b>18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED</b>			
a Typed Name of Authorized Representative		b Title	c Telephone number
d Signature of Authorized Representative		e Date Signed	

Previous Editions Not Usable

Standard Form 424 (REV. 4-88) Prescribed by OMB Circular A-102

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## INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry:   | Item: | Entry:   |
|-------|--|-------|--|
| 1.    | Self-explanatory.  | 12.   | List only the largest political entities affected (e.g., State, counties, cities).   |
| 2.    | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).  | 13.   | Self-explanatory.  |
| 3.    | State use only (if applicable).  | 14.   | List the applicant's Congressional District and any District(s) affected by the program or project.  |
| 4.    | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.  | 15.   | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5.    | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.   | 16.   | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.  |
| 6.    | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.  | 17.   | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.  |
| 7.    | Enter the appropriate letter in the space provided.  | 18.   | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)  |
| 8.    | Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br>— "New" means a new assistance award.<br>— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |       |  |
| 9.    | Name of Federal agency from which assistance is being requested with this application.   |       |  |
| 10.   | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.  |       |  |
| 11.   | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.  |       |  |

## APPENDIX "2"

## INSTRUCTIONS FOR THE SF-424A

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary  
Lines 1-4, Columns (a) and (b)**

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g.)**

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

**Lines 1-4, Columns (c) through (g.) (continued)**

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-l — Show the totals of Lines 6a to 6h in each column.

Line 6j — Show the amount of indirect cost.

Line 6k — Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

**INSTRUCTIONS FOR THE SF-424A (continued)**

**Line 7** - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal Resources**

**Lines 8-11** - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** - Enter the contribution to be made by the applicant.

**Column (c)** - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)** - Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** - Enter totals of Columns (b), (c), and (d).

**Line 12** - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

**Line 13** - Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14** - Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** - Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16 - 19** - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20** - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** - Provide any other explanations or comments deemed necessary.

## APPENDIX "3"

OMB Approval No. 0348-0040

**ASSURANCES — NON-CONSTRUCTION PROGRAMS**

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

**Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States; Special Procedures for Multistate Custom Combine Owner/Operators for 1989**

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The Employment and Training Administration (ETA), Department of Labor, has issued the following memorandum setting forth special procedures for administering the temporary alien agricultural labor certification ("H-2A") program as it pertains to the filing and processing of applications filed by employers seeking multistate certification under the H-2A program for custom combine crew members should those crew members not be U.S. workers.

The procedures are published below for the information of all interested parties. Certain forms used in the application process have been omitted in the reproduction below.

**DATE:** The procedures set forth below were effective beginning on February 27, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certifications, Employment and Training Administration, Suite N-4456, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-535-0165 (this is not a toll-free number).

Signed at Washington, DC, this 5th day of April, 1989.

Robert T. Jones,

*Assistant Secretary of Labor.*

February 27, 1989.

*Memorandum for:* Floyd E. Edwards, Regional Administrator, Dallas.

Grace A. Kilbane, Regional Administrator, Kansas, City.

Luis Sepulveda, Regional Administrator, Denver.

*From:* Donald J. Kulick, Administrator, Office of Regional Management.

*Subject:* H-2A Program; Special Procedures for Multistate, Custom Combine Owner/Operators for 1989.

The purpose of this memorandum is to provide you with the special procedures that will apply to the processing of H-2A applications from multistate custom combine owner/operators (including Canadians) in 1989. The H-2A regulations at 20 CFR 655.93 (c) permit the continuation and necessary revision of previously established procedures for these employers.

The attachment of this memorandum restates certain past policies and

procedures which will continue in effect and updates some of these procedures. Except where special procedures as noted in the attachment permit deviations from regular operations, the regulations at 20 CFR Part 655, Subpart B apply to applications submitted by multistate custom combine owner/operators, and the employers are expected to comply with the requirements of those regulations.

*Attachment*

**Special Procedures For Processing H-2A Applications Filed By Multistate Custom Combine Owner/Operators 1989**

*1. Employer's Status*

Multistate custom combine owner/operators, (including Canadian residents), who desire to employ one or more nonimmigrant aliens as crew members in their custom combining crews in the United States must apply to the Department of Labor for a temporary labor certification under the H-2A temporary alien agricultural labor certification program. For application-filing purposes, the individual custom combine owner/operator must be listed as the "employer of record." A Canadian custom combiner who wishes to enter the United States to harvest grain may apply directly to any Immigration and Naturalization Service U.S. Port of Entry for a B-1 (Visitor for Business) visa waiver for himself/herself. H-2A labor certifications are needed for the jobs to be performed by crew members employed by the custom combiner should these crew members not be U.S. workers.

*2. Regional Office Certification Responsibility*

The Regional Administrator (RA) having jurisdiction over the State where the multistate custom combine owner/operator will begin the grain harvesting itinerary will be responsible for receiving, processing, and approving or denying the employer's request for certification for the entire grain harvesting itinerary in the United States. Certification may be granted to a multistate custom combine owner/operator for a period up to, but not exceeding, the estimated date of completion of the entire scheduled itinerary, or up to a significant break in the itinerary, whichever is a shorter period. In the case of the Canadian employer, certification may be granted for a period up to, but not exceeding, the time during which the employer plans to remain continuously in the United States without departing to Canada for a period of time which would result in a

significant break in a scheduled itinerary.

For example, if a multistate custom combine owner/operator files a request for temporary alien certification for jobs to be performed by crew members for work starting May 15, in Texas and continuing in Oklahoma, Colorado, Kansas, Nebraska, South Dakota, and ending September 30 in Montana, the RA in Region VI will be responsible for receiving and processing the request. This includes securing the necessary clearances of the job order, establishing positive recruitment requirements, and determining whether to approve or deny certification for some or all the jobs requested for all work in the listed States and for the total period of time in the itinerary, which, in the case of a Canadian employer, is the period of time the employer expects to remain continuously in the United States to harvest grain.

If the employer's grain harvesting itinerary begins in Kansas, the RA in Region VII will have this responsibility. If the itinerary begins in Montana, the RA in Region VIII will have this responsibility.

An employer who desires to resume combining in the United States after a significant break in the itinerary, such as for a return to Canada, must file a new request for temporary alien certification for the period after the break in the itinerary if H-2A certification is sought for jobs to be performed by crew members who are not U.S. workers. This might happen, for example, if a Canadian employer completes the United States wheat harvest itinerary and returns to Canada to harvest Canadian crops, and then seeks re-entry with a Canadian crew to harvest other United States crops later in the year.

*3. Application Filing*

A multistate combine owner/operator seeking H-2A certification is required to file his/her application with the Regional Office having jurisdiction over the State where the work itinerary will begin. Simultaneously, a copy of the application must be submitted to an appropriate office of the State agency where the work will start. The employer must provide a copy of the itinerary in the United States, showing names, addresses, and telephone numbers of farmers whose grain is to be harvested, and estimated dates and periods of time for harvesting grain for the first 50 percent of the total planned itinerary in the United States. In the event specific information related to actual farmers and precise employment dates beyond the 50 percent point are not firmed at the

time of filing, the employer may show only the names of towns or areas and States where employment is expected to take place. However, as soon as the specific information is known, the employer must notify the Regional Office of the names and locations of specific farmers for whom grain will be harvested during the balance of the itinerary.

The H-2A regulations and the statute specify that the employer cannot be required to submit the certification application more than 60 days before the date of need. However, because of delays in mail delivery to and from Canada experienced in the past, it is likely that Canadian combine employers will submit their 1989 applications in advance of the 60-day requirement. The RA shall promptly review the application and process it according to the provisions of DOL's regulations at 20 CFR Part 655, Subpart B. These regulations require that the RA notify the employer within 7 calendar days after receipt of the application of any deficiencies in the application which must be corrected. The RA must adhere to this time limit even if the application is received earlier than the 60-day filing requirement. If an application has deficiencies which require modification, the employer has 5 days from the date of the RA's mailing to submit the required modifications or face delays in receiving a certification determination. In the event an application requiring modification is submitted early, but the modifications are not received from the employer within the specified 5-day period, the employer's entitlement to a certification determination 20 days before the date of need should not be delayed beyond the 20-day point until it is 48 days before the date of need and an acceptable modified application has still not been received.

Regional Offices and Canadian employers should also exchange their FAX identification numbers, since use of the FAX system will expedite the delivery and receipt of communications among the employers and the Regional Office. Express Mail services should also be utilized, as well as overnight mail and mailgrams/telegrams.

**4. Clearing Job Orders.**

The RA who receives the request filed by a multistate employer whose 1989 itinerary will begin in that region will be responsible for directing the necessary clearances of the job orders in States in the region as well as in other States which the RA determines to be potential sources of U.S. workers. The RA will telephonically advise the order-holding State Employment Security Agency

(SESA) Office to transmit copies of the job order to other SESAs and to other involved Regional Offices for their clearance and recruitment actions.

Regional Administrators in other involved Regional Offices will assist in the recruitment effort by ensuring that the job orders are cleared to States in their regions where potential U.S. workers may be available, and by timely reporting the results of recruitment efforts in their regions to the RA responsible for the certification determination. Applicant-holding offices should refer applicants and report recruitment results to the order-holding office. In addition, supply States should also report recruitment results to their respective Regional Offices. In reaching a certification decision, the RA will take into consideration information obtained from all sources. The RA will also inform other involved RAs of the issuance of any certification to a multistate custom combining employer so that they, in turn, may notify their respective State agencies, and referral in accordance with the 50 percent hiring requirement may continue. Active recruitment should cease after the certification determination is made.

Custom combine employers who employ H-2A workers are subject to monitoring by the Employment Standards Administration (ESA) under the provisions of ESA's regulations at 29 CFR Part 501. Therefore, copies of all written certifications and approved job orders should be provided at the time certification is granted to ESA staff who will have the responsibility for enforcement of contractual obligations. The RA issuing the certification should send copies to each Wage and Hour Regional Director having jurisdiction over the areas of employment shown in the combiner's itinerary.

**5. Duration of Itinerary Policy**

A multistate custom combine owner/operator may require on a criteria job order that a U.S. worker applying for a job must be available to work as a member of the crew for the employer's entire grain harvesting itinerary in the United States and for the total duration of the period of employment specified in the job order. This is a lawful job-related requirement. A U.S. worker referred after the labor certification has been granted must be available and willing to join the crew at whatever place the crew is located at the time and to remain with the crew for the balance of the itinerary. An employer's rejection of a U.S. worker who is unable or unwilling to accept such a requirement will be considered to be a rejection for a lawful job-related reason.

The three-fourths guarantee of employment provided for at 20 CFR 655.102 will apply to the entire period of employment in the U.S., and the 50 percent hiring requirement provided for at 20 CFR 655.103 will mean 50 percent of the entire period of employment in the United States.

**6. Wages**

The multistate custom combining employer must offer and pay to all U.S. and H-2A alien workers who are crew members in the 1989 grain harvest at least the following minimum monthly wage rates, or the applicable hourly adverse effect wage rate (AEWR), whichever is higher. These wages must be paid in U.S. dollars or the equivalent in Canadian dollars to Canadian workers, plus free room and board:

For work in	Monthly wage rate
Texas .....	\$1,000
Oklahoma .....	800
Kansas .....	1,000
Colorado .....	800
Nebraska .....	1,000
South Dakota .....	800
North Dakota .....	800
Montana .....	800

Notwithstanding the fact that these wage rates are computed on a monthly basis, U.S. and H-2A crew members must be paid at least twice monthly. The employer must guarantee each crew member, for each pay period, at least the applicable hourly adverse effect wage rate for each State where the work is performed.

For example, if work is performed in Texas, the monthly wage rate paid is \$1,000. For each of the two pay periods in a month, if the worker works 12 hours per day for 14 consecutive days for a total of 168 hours actually worked, the worker is entitled to payment of \$750.96 (168 hours worked x \$4.47 per hour AEWR guaranteed per pay period). If the worker, at the end of the pay period, is paid \$500 (half of the monthly wage rate of \$1,000), then the worker is due an additional \$250.96 as make-up pay for that pay period.

The employer must also maintain and retain adequate records of actual time worked by crew members in order to ensure that the AEWR guarantee is met.

**7. Meals**

The employer must provide 3 daily meals to each worker by: (1) Preparing and providing these meals himself/herself; (2) arranging for the workers to eat meals in restaurants or other public eating places and paying for those meals

on behalf of the workers; (3) arranging for catered meals to be provided; or (4) providing workers with free groceries and food preparation facilities, including fuel and utensils, so workers can prepare their own meals in their mobile lodging units. Any combination of these arrangements is acceptable. The board arrangements must be spelled out in the job offer, and the employer may not charge the worker for meals or food provided.

#### 8. Housing

Multistate custom combining employers from Canada who indicate that lodging for their crew members will be campers or other type of mobile unit must submit with their H-2A applications a report of inspection of such vehicles conducted by a representative of the Canadian Government. A new inspection and report is required annually for each vehicle.

In the event that U.S. multistate custom combining employers seeking H-2A certification should indicate that lodging for their crew members will be campers or other types of mobile units, Regional Offices should telephone the National Office for guidance on inspection procedures for this type of situation.

A multistate custom combining employer may use a camper or similar vehicle for sleeping purposes and supplement this unit with lodgings in a motel or other public accommodation. An employer may also indicate in the job offer that motels, rather than a camper, will be used for lodging crew members. In such cases, the rental accommodations to be provided through the first 50 percent of the contract period must be identified, and the employer must assure that these accommodations comply with local or State standards for such habitation. In the event the required inspection and approval report does not accompany the application, it may be submitted later. However, in no event should any certification be granted until any required inspection report is received from the employer, unless the employer amends his/her order prior to the certification determination date by notifying the RA that motels, instead of campers, will be used to lodge crew members.

#### 9. Insurance

The employer shall provide an assurance that workers' compensation insurance coverage which meets the minimum requirements for each State where custom combining work will be performed by crew members will be provided for all its employees. This

applies regardless of whether workers' compensation coverage in that State is or is not mandatory. Such an assurance, contained in either the initial application and job offer, or submitted later in the form of an amendment to the job order before certification is granted, will be sufficient for certification purposes, assuming all other requirements for certification have been met. Actual proof that workers' compensation insurance coverage has been obtained will not be required prior to certification.

#### 10. Referral of U.S. Workers

Every U.S. worker referred to a job opening with a multistate custom combine employer during the recruitment period:

a. Must be informed of the requirement that he/she must be available and willing to join the employer's crew by the date of need and at the place where the employer's 1989 grain harvesting itinerary in the United States will begin, and to remain with the crew for the balance of the itinerary. If a U.S. worker so informed agrees to this condition of employment, referral of the worker may be made. If the U.S. worker indicates he/she is not available and/or willing to accept this condition, the worker should not be referred. The same principle applies if the worker is referred under the 50 percent rule after an H-2A certification has been granted.

b. Must be asked if he/she meets all of the job specifications set out in the job offer at Item 11. This includes the ability to operate a combine and drive a grain truck or transporter truck. A worker who can operate a combine but cannot drive a grain or transporter truck, or does not have the required driver's license to drive such trucks, should not be referred.

c. Must be informed that he/she will be required to produce and furnish to the employer a current "driver's abstract" which shows that the applicant has an acceptable driving record. A "driver's abstract" is available at minimal cost from the Motor Vehicle Division of the State where the driver is or has been registered. The rejection of an applicant by the employer due to the applicant's failure to produce a "driver's abstract", or to produce one that shows an acceptable driving record, will be considered a rejection for a lawful job-related reason.

#### 11. Extension of Certifications

Requests for extensions of labor certifications of two weeks or less must be directed by the employer to the Immigration and Naturalization Service (INS). Requests for extensions of more

than two weeks are to be processed by the RA provided that INS has not already granted the employer a short-term extension. The request to the RA for extension must be in writing, and must be made after completion of the 50 percent period. There is no provision for an administrative appeal from the RA's decision to deny a request for extension.

#### 12. Billing

When Canadian custom combine employers are billed the fees for certifications granted, the billing notice should instruct them to pay by check or money order (including International Money Order), but, that the check or money order shall be payable in U.S. currency.

#### 13. "Model Job Order"

A revised and updated "model" job order, including Form ETA 790 and Form ETA 750, and related materials which are to be used by employers for the 1989 season have been provided to the Canadian Embassy in Washington, DC, for distribution to Canadian employers who may wish to apply for H-2A certification in 1989.

Members of the Association of Canadian Custom Harvesters should be able to obtain these materials and other applicable information from association officers. Regional Offices and SESA's are requested to supply the revised forms and information to non-members of the Association who make inquiries about certification procedures. A copy of the "model" job order is being sent, under separate cover, to Regional Offices for information purposes.

[FR Doc. 89-8635 Filed 4-11-89; 8:45 am]

BILLING CODE 4510-30

[Employment Service Program Letter No. 16-88]

#### Employment Service; State Employment Security Agency Notification of Violations of Employment-Related Laws

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is publishing Employment Service Program Letter No. 16-88, advising State Employment Security Agencies of the procedures that have been established which will provide them with notification of violations of employment-related laws. State Employment Security Agencies

must be notified of violations of employment related laws in order to initiate discontinuation of services of employers who have been found in violation by an appropriate agency.

**DATE:** Employment Service Program Letter No. 16-88 was issued on August 24, 1988.

**FOR FURTHER INFORMATION CONTACT:** Gilbert Apodaca, National Monitor Advocate, United States Employment Service, Employment and Training Administration, United States Department of Labor, Room N-4456,

Washington, DC 20210. Telephone: (202) 535-0163 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Section 658.501(a)(4) of the Employment Service Regulations (20 CFR 658.501(a)(4)) provides that State Employment Service agencies shall initiate procedures for discontinuation of services to employers who:

Are found by a final determination by an appropriate enforcement agency to have violated any employment-related laws and notification of this final determination has been provided to [the employment service] by that enforcement agency. . . .

Employment Service Program Letter (ESPL) No. 16-88 was issued by the Employment and Training Administration on August 24, 1988, to advise State employment service agencies of procedures established to provide them with notification of employment-related laws. The ESPL No. 16-88 is published below for public information.

Signed at Washington, DC, this 3rd day of March, 1989.

**Robert T. Jones,**  
*Assistant Secretary of Labor.*

**BILLING CODE 4510-30-M**

<b>U.S. Department of Labor</b> Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION ES/Admin. & Mgmt.
	CORRESPONDENCE SYMBOL TEEL
	DATE August 24, 1988

**DIRECTIVE :** EMPLOYMENT SERVICE PROGRAM LETTER NO. 16-88  
**TO :** ALL STATE EMPLOYMENT SECURITY AGENCIES  
**FROM :** DONALD J. KULICK *D. Kulick*  
 Administrator  
 for Regional Management  
**SUBJECT :** SESA Notification of Violations of Employment  
 Related Laws

1. Purpose. To advise State Employment Security Agencies (SESAs) of procedures established to provide them with notification of violations of employment-related laws.
2. Reference. 20 CFR Part 651; 20 CFR Part 653, Subparts B and F; 20 CFR Part 658, Subpart F; 29 CFR Part 42.
3. Background. The Department of Labor has published comprehensive regulations concerning employment service activities for migrant and seasonal farmworkers (MSFWs) (20 CFR Parts 651 and 653, Subpart B); agricultural clearance order activity (20 CFR Parts 651 and 653, Subpart F); coordinated enforcement of farmworker-related protective statutes (29 CFR Part 42); and discontinuation of services to employers (20 CFR Part 658, Subpart F). The Department, pursuant to those regulations, is issuing procedures for the notification to State Employment Security Agencies (SESAs) of employers who have violated provisions of certain employment-related laws administered by the Employment Standards Administration (ESA) and Occupational Safety and Health Administration (OSHA). See 20 CFR 658.501(a)(4).
4. Discontinuation of Services Provisions. Subpart F of Part CFR 658 contains provisions for the discontinuation of services to employers by the Federal-State Employment Service System (United States Employment Service (USES) and State Employment Security Agencies (SESAS)). The discontinuation of services procedures are applicable to all occupations, not only agricultural work. The procedures at 20 CFR 658.501(a)(4) provide that SESAs shall initiate procedures for discontinuation of services to employers who:

RESCISSIONS	EXPIRATION DATE August 31, 1989
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(4) Are found by a final determination by an appropriate enforcement agency to have violated any employment-related laws and notification of this final determination has been provided to JS by that enforcement agency....

Those employers who have placed orders with the Employment Service or who wish to place an order are to be denied services in accordance with 20 CFR 658.502(a)(4). Employers shall be notified that all services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the enforcement agency has reversed its ruling and that the employer did not violate employment-related laws, or

(ii) Provides adequate evidence that the appropriate fines have been paid and/or appropriate restitution has been made, and

(iii) Provides assurances that any policy, procedures, or conditions responsible for the violation have been corrected and the same or similar violations are not likely to occur in the future.

5. Quarterly Notification Procedures. Last year both ESA and OSHA developed lists of employers who had been debarred for labor law violations. However, several problems were raised by various Regional staff regarding the lists. Notification procedures have been updated by both ESA and OSHA to correct previous problems and to advise all SESAs on a quarterly basis of contractors that have been debarred, suspended or declared ineligible by the U.S. Department of Labor and the reason for such disbarment.

The information provided in the quarterly lists constitutes final determination by an enforcement agency (ESA or OSHA) as defined in Federal regulations at 20 CFR 658.501(a)(4). Business concerns and employers on either the ESA or OSHA list shall be denied employment services pursuant to these provisions. No discontinuation of services or other action

will be necessary with regard to most contractors since the majority on the list have never registered with the Employment Service. Action will be necessary only with regard to those employers on the list who have orders with the Employment Service or who seek to place an order. Many employers have offices in several States. Consequently, discontinuation of services would apply to all offices operated by an employer.

Each State should establish discontinuation of services procedures at the central office. The discontinuation of services procedures are applicable to non-agricultural as well as agricultural employers. Since most employers on the list will be non-agricultural, responsibility for discontinuation of services should be given to someone other than the Monitor Advocate; In fact, responsibility for these procedures would detract from the Monitor Advocate function as outlined in Federal regulations at 20 CFR 653.108(g).

6. Notification by the Employment Standards Administration (ESA). ESA will directly distribute a national list of debarred Contractors to all SESAs and ETA Regional Offices four times per year in January, April, July and October. The latest list is attached for your information and appropriate action. Each listing will supercede the list previously issued by ESA. There will be no interim amendments to the list. Employers or individuals who have come into compliance with ESA standards simply will not appear on the succeeding list.

ESA regional offices will also continue to prepare a list of agricultural employers with outstanding penalties and/or farm labor contractors who have outstanding penalties or to whom certificates of registration have been denied. This list will be provided quarterly by ESA staff to their regional ETA counterparts for transmission to the appropriate State agencies.

7. Notification by the Occupational Safety and Health Administration (OSHA). OSHA has also revised and reissued instructions to their Regional Offices in order to address the various problems raised by ETA staff. The revised instructions were developed and implemented earlier this year. The OSHA instructions differ from the ESA procedures in that they will not issue a national list. Regional OSHA staff will provide their ETA counterparts in each Region with a quarterly list of employers who have not complied with OSHA standards and have been given final notification. Regional offices in turn will transmit the list to the SESAs.

8. Action Required. SESA Administrators are requested to:

- (a) Inform all employees of this policy and procedures for discontinuation of services;
- (b) Take action where appropriate to discontinue services to employers on the ESA list; and
- (c) Continue to take appropriate action with respect to the OSHA list.

9. Inquiries. Direct inquiries to the appropriate ETA Regional Office.

10. Attachment. Department of Labor's List of Debarred, Suspended & Ineligible Contractors of ESA violators.

Attachments Omitted

[FR Doc. 89-8634 Filed 4-11-89; 8:45 am]

BILLING CODE 4510-30-C

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[89-26]

**Agency Report Forms Under OMB Review****AGENCY:** National Aeronautics and Space Administration.**ACTION:** Notice of agency reports forms under OMB review.**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the *Federal Register* notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

**DATE:** Comments are requested by May 12, 1989. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.**ADDRESS:** John W. Gaff, NASA Agency Clearance Officer, Code NA, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700-xxxx), Washington, DC 20503.**FOR FURTHER INFORMATION CONTACT:** Shirley C. Peigare, NASA Reports Officer, (202) 453-1090.**Reports***Title:* Satellite Magnetic Data Use Survey.*OMB Number:* None.*Type of Request:* New.*Frequency of Reports:* One-time only.*Type of Respondents:* Individuals or households, businesses or other for-profit, Federal agencies or employees, non-profit institutions.*Number of Respondents:* 1,000.*Responses per Respondent:* 1.*Annual Responses:* 1,000.*Hours per Response:* 0.2.*Annual Burden Hours:* 200*Abstract-Need/Uses:* The Laboratory for Terrestrial Physics has the responsibility to design and manage earth orbiting satellites which measure the Earth's magnetic field. In

order to ensure the maximum utility from the data derived from such a mission, we want to conduct a survey of the geophysical exploration community to determine their awareness of, interest in, and use of satellite magnetic data.

March 31, 1989.

**John W. Gaff,***Director, Management Operations Office.*

[FR Doc. 89-8605 Filed 4-11-89; 8:45 am]

**BILLING CODE 7510-01-M****NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES****National Endowment for the Humanities****Agency Information Collection Activities Under OMB Review****AGENCY:** National Endowment for the Humanities.**ACTION:** Notice.**SUMMARY:** The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).**DATES:** Comments on this information collection must be submitted on or before June 1, 1989.**ADDRESSES:** Send comments to Ms. Ingrid Y. Reyes, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202-786-0249) and Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3208, Washington, DC 20503 (202-395-7316).**Category: Extension***Title:* Review and Evaluation Process Letters and Forms*Form Number:* 3136-0061*Frequency of Collection:* Collections occur once or twice annually, according to individual program application deadlines (once per application)*Respondents:* Individuals or households; academic scholars—teachers, administrators*Use:* Used by staff and reviewers to process applications submitted to the Endowment.*Estimated Number of Respondents:* 150*Frequency of Response:* 1.**Category: New Collection***Title:* Forms for Reporting Activities*Form Number:* 3136-*Frequency of Collection:* Collections occur once annually, according to individual program application deadlines (once per application)*Respondents:* Individuals or households; academic scholars—teachers administrators*Use:* Used by staff and reviewers to evaluate projects funded by the Endowment.*Estimated Number of Respondents:* 1275*Frequency of Response:* 1.**Category: Extension***Title:* Summary Report on Institute Participants (ES)*Form Number:* 3136-0057*Frequency of Collection:* Collections occur once annually, according to individual program application deadlines (once per application)*Respondents:* Individuals or households; academic scholars—teachers, administrators*Use:* Used by staff and reviewers to evaluate projects funded by the Endowment.*Estimated Number of Respondents:* 20*Frequency of Response:* 1.**Category: Extension***Title:* Summary Report on Institute Participants (EH)*Form Number:* 3136-0058*Frequency of Collection:* Collections occur once annually, according to individual program application deadlines (once per application)*Respondents:* Individuals or households; academic scholars—teachers, administrators*Use:* Used by staff and reviewers to evaluate projects funded by the Endowment.*Estimated Number of Respondents:* 20*Frequency of Response:* 1*Estimated Hours for Respondents to**Provide Information:* 8 per respondent*Estimated Total Annual Reporting and Recording Burden:* 1200.**Susan H. Metts,***Assistant Chairman for Administration.*

[FR Doc. 89-8642 Filed 4-11-89; 8:45 am]

**BILLING CODE 7536-01-M****Humanities Panel; Meeting****AGENCY:** National Endowment for the Humanities.**ACTION:** Notice of change in Humanities Panel meeting.

The Humanities Panel meeting for Summer Seminars for College Teachers scheduled for April 28, 1989 has been rescheduled for April 26, 1989. This meeting will review applications to direct Summer Seminars for College Teachers in English and American Literature, submitted to the Division of Fellowships and Seminars. The meeting will be held at the Old Post Office Building, 1100 Pennsylvania Avenue NW., Room 316-2, Washington, DC 20506 from 8:30 a.m. to 5:30 p.m. The notice was published in the **Federal Register** on March 20, 1989 on page 11462.

Stephen J. McCleary,  
Advisory Committee, Management Officer.

[FR Doc. 89-8643 Filed 4-11-89; 8:45 am]

BILLING CODE 7536-01-M

### Humanities Panel; Meeting

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

**SUPPLEMENTARY INFORMATION:** The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee

meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. *Date:* May 1, 1989.  
*Time:* 8:30 a.m. to 5:30 p.m.  
*Room:* 316-2.

*Program:* This meeting will review applications to direct Summer Seminars for College Teachers in Arts—Classics and Comparative Literature submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1989.

2. *Date:* May 1-2, 1989.  
*Time:* 8:30 a.m. to 5:30 p.m.  
*Room:* 415.

*Program:* This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after October 1, 1989.

3. *Date:* May 1-2, 1989.  
*Time:* 8:00 a.m. to 5:00 p.m.  
*Room:* 430.

*Program:* This meeting will review applications submitted for Humanities Programs, submitted to the Division of General Programs, for projects beginning after October 1, 1989.

4. *Date:* May 2, 1989.  
*Time:* 8:30 a.m. to 5:30 p.m.  
*Room:* 316-2.

*Program:* This meeting will review applications to direct Summer Seminars for College Teachers in History, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

5. *Date:* May 8, 1989.  
*Time:* 8:30 a.m. to 5:30 p.m.  
*Room:* 315

*Program:* This meeting will review applications to direct Summer Seminars for College Teachers in Politics and Society, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

6. *Date:* May 9, 1989.  
*Time:* 8:30 a.m. to 5:30 p.m.  
*Room:* 316-2.

*Program:* This meeting will review applications to direct Summer Seminars for College Teachers in Philosophy and Religion, submitted to the Division of Fellowships and Seminars for projects beginning after May 1, 1990.

7. *Date:* May 11-12, 1989.  
*Time:* 8:30 a.m. to 5:30 p.m.  
*Room:* 415.

*Program:* This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after October 1, 1989.

8. *Date:* May 18-19, 1989.  
*Time:* 8:30 a.m. to 5:30 p.m.  
*Room:* 415.

*Program:* This meeting will review applications submitted to Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after October 1, 1989.

9. *Date:* May 26, 1989.  
*Time:* 9:00 a.m. to 5:30 p.m.  
*Room:* 430.

*Program:* This meeting will review applications submitted to Humanities Projects in Libraries and Archives program during May 1989 deadline, submitted to the Division of General Programs, for projects beginning after October 1, 1989.

10. *Date:* May 22, 1989.  
*Time:* 8:30 a.m. to 5:30 p.m.  
*Room:* 316-2.

*Program:* This meeting will review applications to direct Summer Seminars for School Teachers in Foreign Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

11. *Date:* May 23, 1989.  
*Time:* 8:30 a.m. to 5:30 p.m.  
*Room:* 316-2.

*Program:* This meeting will review applications to direct Summer Seminars for School Teachers in British and American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

12. *Date:* May 24, 1989.  
*Time:* 8:30 a.m. to 5:30 p.m.  
*Room:* 316-2.

*Program:* This meeting will review applications to direct Summer Seminars for School Teachers in Social and Political Science, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

13. *Date:* May 24, 1989.  
*Time:* 8:30 a.m. to 5:30 p.m.  
*Room:* 315.

*Program:* This meeting will review applications to direct Summer Seminars for School Teachers in Philosophy and Religion and the Arts, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

14. *Date:* May 25, 1989.  
*Time:* 8:30 a.m. to 5:30 p.m.  
*Room:* 316-2.

*Program:* This meeting will review applications to direct Summer Seminars for School Teachers in Classical Medieval, and Renaissance Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

15. *Date:* May 25, 1989.  
*Time:* 8:30 a.m. to 5:30 p.m.

Room: 315.

**Program:** This meeting will review applications to direct Summer Seminars for School Teachers in History, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

Stephen J. McCleary,

*Advisory Committee, Management Officer.*

[FR Doc. 89-8644 Filed 4-11-89; 8:45 am]

BILLING CODE 7536-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-483]

### Union Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-30, issued to Union Electric Company (the licensee), for operation of the Callaway Plant, located in Callaway County, Missouri.

#### Environmental Assessment

##### *Identification of Proposed Action*

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to the steam generator low-low level trip circuitry by adding an Environmental Allowance Modifier (EAM) and a Trip Time Delay (TTD). The EAM will distinguish between a normal and an adverse containment environment and will adjust the steam generator low-low level setpoint accordingly. The TTD will delay the trip signals during low power operations (less than or equal to 20% of rated thermal power).

The proposed action is in accordance with the licensee's application for amendment dated August 30, 1988, as supplemented by letters dated November 18 (2 letters) and December 28, 1988, and February 7, 10 and 15, 1989.

##### *The Need for the Proposed Action*

The proposed change to the TS is required in order to provide greater operational flexibility to reduce the frequency of unnecessary feedwater-related reactor trips.

##### *Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed revision to TS and concludes that the proposed changes will result in a significant decrease in the frequency of unnecessary feedwater-related reactor

trips and, at the same time, ensure adequate protection during normal and accident conditions. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

The Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the *Federal Register* on October 13, 1988 (53 FR 40148). No request for hearing or petition for leave to intervene was filed following this notice.

With regard to potential nonradiological impacts, the proposed change to the TS involves systems located within the restricted area as defined by 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

##### *Alternatives to the Proposed Action*

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

##### *Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Callaway Plant dated January 1982.

##### *Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

##### *Finding of No Significant Impact*

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a

significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated August 30, 1988, as supplemented by letters dated November 18 (2 letters) and December 28, 1988, and February 7, 10 and 15, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Dated at Rockville, Maryland, this 4th day of April 1989.

For The Nuclear Regulatory Commission.

John N. Hannon,

*Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 89-8618 Filed 4-11-89; 8:45 am]

BILLING CODE 7590-01-M

### Establishment of Second Legal Public Document Room for the High-Level Waste Geologic Repository Site, Yucca Mountain, NV

Notice is hereby given that the Nuclear Regulatory Commission (NRC) has established a local public document room (LPDR) at the University of Nevada—Reno Library for the Department of Energy's (DOE) proposed high-level radioactive waste geologic repository site near Yucca Mountain, Nevada. This is the second LPDR established by the NRC for the Yucca Mountain site. In January 1988, the first Yucca Mountain LPDR was established in the Special Collections Department at the University, Las Vegas Library.

Members of the public may now inspect and copy documents related to the licensing of the DOE high-level waste geologic repository at the University of Nevada—Reno Library, Government Publications Department, Reno, Nevada, 89557. The Government Publications Department is open on the following schedule: Monday through Thursday, 8 a.m. to midnight; Friday, 8 a.m. to 5 p.m.; Saturday, and Sunday, 10 a.m. to midnight.

For further information, interested members of the public in the Reno area may contact the LPDR directly through Mr. Duncan Aldrich, telephone number (702) 784-6579. Members of the public outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room,

2120 L Street, NW., Washington, DC 20555, telephone number (202) 634-3273.

Questions concerning the NRC's LPDR program or the availability of documents at the Yucca Mountain LPDRs should be addressed to Ms. Jona L. Souder, LPDR Program Manager, Freedom of Information Act/Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number (800) 638-8081, toll-free.

Dated at Bethesda, Maryland this 6th day of April 1989.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services.

[FR Doc. 89-8619 Filed 4-11-89; 8:45 am]

BILLING CODE 7590-01-M

**Baltimore Gas and Electric Co.;  
Consideration of Issuance of  
Amendment to Facility Operating  
License and Proposed No Significant  
Hazards Consideration Determination  
and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-69, issued to the Baltimore Gas and Electric Company (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit No. 2 located in Calvert County, Maryland.

The amendment would make the following changes in accordance with the licensee's applications for amendment dated February 12, 1988 and February 7, 1989:

1. Increase the minimum required shutdown margin of Technical Specification (TS) Limiting Condition for Operation (LCO) 3.1.1.1 above the currently required +3.5 delta k/k in accordance with the linear progression where the shutdown margin limit shall be greater than or equal to +[3.5+1.5(P)] delta k/k where P is the fraction of core life. Thus, at 0% core life (beginning of life) the shutdown margin limit is +3.5 delta k/k but at 100% core life (end of core life) the limit is +5.0 delta k/k.

2. Change the TS Figure 3.1-2, "CEA Group Insertion Limits vs. Fraction of Allowable Thermal Power for Existing RCP Combination," Bank 5 Transient Insertion Limit from the linear progression with values of 25% insertion at 90% rated thermal power (RTP) and 35% insertion at 100% RTP to a constant insertion limit of 35% between 90% and 100% RTP.

3. Reduce unnecessary Axial Shape Index (ASI) trips below 70% RTP and

provide additional operating flexibility by:

a. Modifying TS Figure 2.2-1, "Peripheral Axial Shape Index vs. Fraction of Rated Thermal Power," by altering the acceptable operation region below 70% RTP to the area bounded by the linear equations for the ASI limits, where

(1) ASI limit =  $\pm 0.6$  at powers below 40% RTP,

(2) ASI limits =  $+[.6 + \frac{2}{3}(.4-P)]$  and  $-[.6 + .7(.4-P)]$  (where P is the fraction of RTP) between 40% and 100% RTP, and

(3) ASI limits =  $-\frac{1}{2}P$  (1.17-P) and  $+\frac{2}{3}P$  (1.17-P) between 100% and 117% RTP (where P is the fraction of RTP).

The current ASI limits are  $\pm 0.4$  at powers below 70% RTP,  $\pm[.4 + \frac{2}{3}(.7-P)]$  between 70% and 100% RTP, and  $\pm[1.2-P]$  between 100% and 120% RTP (where P is the fraction of RTP);

b. Expanding the acceptable operation region of TS Figure 3.2-2, "Linear Heat Rate Axial Flux Offset Control Limits," and TS Figure 3.2-4, "DNB Axial Flux Offset Control Limits," by increasing the negative ASI limit below 50% RTP from the current value of -0.3 to

(1) The linear equation limit, between 15% and 50% RTP, of the negative ASI limit =  $[0.3 + \frac{3}{4}(.5-P)]$ , where P is the fraction of RTP;

(2) Below 15% RTP, the negative ASI limit = -0.45.

4. Reflect the lowering of the departure from nucleate boiling ration (DNBR) limit to 1.15 due to the incorporation of an extended statistical combination of uncertainties methodology through modifying Figures 2.2-2, "Thermal Margin/Low Pressure Trip Setpoint Part 1 (ASI v. A<sub>1</sub>)," and 2.2-3, "Thermal Margin/Low Pressure Trip Setpoint Part 2 (Fraction of Rated Thermal Power v. QR<sub>1</sub>)," by

a. Changing the equation for the pressure variable trip from P (TRIP VAR) =  $2061(Q_{DNB}) + 15.85(T_{IN}) - 8915$  to P (TRIP VAR) =  $2892 Q_{DNB} + 17.16(T_{IN}) - 10682$ ;

b. Changing Q<sub>DNB</sub>, which equals QR<sub>1</sub> × A<sub>1</sub>, by increasing QR<sub>1</sub> from the values of QR<sub>1</sub> = .235 + (628/781) P between 0% and 78.1% RTP, QR<sub>1</sub> = .863 - (109.191) × (P - .781) between 78.1% and 97.2% RTP, QR<sub>1</sub> = P above 97.2% RTP to

QR<sub>1</sub> = .3 + ( $\frac{1}{2}P$ ) between 0% and 60% RTP, QR<sub>1</sub> = .85 + ( $\frac{2}{3}P$ ) between 60% and 100% RTP, QR<sub>1</sub> = P above 100% RTP, where P is the fraction of RTP.

5. Modify LCO 3.1.3.1 Action Statements f and g and TS Figure 3.1-3, "Allowable Time to Realign CEA Versus Initial Total Integrated Radial Peaking Factor," to raise the maximum peaking

factor allowed for the uppermost CEA realignment time of 60 minutes from a value of 1.53 to a higher peaking factor of 1.57. Similarly, the minimum peaking factor for which no CEA realignment time is permitted would be increased from 1.63 to 1.67. The linear equation for radial peaking factor versus CEA realignment time would be changed from (978 - 600 F<sub>r</sub>) minutes, where F<sub>r</sub> is the initial total integrated radial peaking factor. In addition, if a time allowance is available from the Better Axial Shape Selection System (BASSS), it would be used vice the time allowance provided by TS Figure 3.1-3.

6. Reduce the allowable peak linear heat generation rate (APLHR) of TS Figure 3.2-1, "Allowable Peak Linear Heat Rate vs. Burnup," from a maximum value of 15.5 kw/ft to a new value of 15.2 kw/ft.

7. Reduce the maximum allowable fraction of RTP for operation with peaking factors above 1.785, as provided in TS Figure 3.2-3b, "Total Planar Radial Peaking Factor vs. N," from a value of  $[1-200(F_{xy}^{T_r}-1.54)/245]$  to  $[1-200(F_{xy}^{T_r}-1.54)/285]$ , where P is the fraction of rated thermal power and F<sub>xy</sub><sup>T<sub>r</sub></sup> is the total planar radial peaking factor.

8. a. Modify Action Statement a of LCO 3.2.2.1 [LCO 3.2.3] to allow thermal power to be reduced within 6 hours to the power limit provided by BASSS as a function of F<sub>xy</sub><sup>T<sub>r</sub></sup> [F<sub>r</sub>] when F<sub>xy</sub><sup>T<sub>r</sub></sup> [F<sub>r</sub>] is greater than 1.70.

b. Delete the equation for F<sub>xy</sub><sup>T<sub>r</sub></sup> [F<sub>r</sub>] from LCO 3.2.2.1 [LCO 3.2.3] and modify this equation in Surveillance Requirements 4.2.2.1.2 and 4.2.2.2 [4.2.3.2] such that (1) F<sub>xy</sub><sup>T<sub>r</sub></sup> = F<sub>xy</sub> (1 + T<sub>q</sub>) [F<sub>r</sub> = F<sub>r</sub> (1 + T<sub>q</sub>)], when F<sub>xy</sub> [F<sub>r</sub>] is determined with a non-full core power distribution mapping system and (2) F<sub>xy</sub><sup>T<sub>r</sub></sup> = F<sub>xy</sub> [F<sub>r</sub> = F<sub>r</sub>], when F<sub>xy</sub> [F<sub>r</sub>] is determined with a full core power distribution mapping system. T<sub>q</sub> is the azimuthal power tilt.

c. Change TS Surveillance Requirements 4.2.2.1.3 and 4.2.2.2.3 [4.2.3.3] to require determinations of F<sub>xy</sub><sup>T<sub>r</sub></sup> [F<sub>r</sub>] instead of F<sub>xy</sub> [E<sub>r</sub>] for each instance a calculation is required by TS 4.2.2.1.2 and 4.2.2.2.2 [4.2.3.2].

d. Require T<sub>q</sub> calculations, as specified by TS Surveillance Requirements 4.2.2.1.4 and 4.2.2.2.4 [4.2.3.4] for only instances where F<sub>xy</sub><sup>T<sub>r</sub></sup> [F<sub>r</sub>] is determined through use of a non-full core power distribution mapping system.

e. Raise the LCO 3.2.3 limit for F<sub>r</sub> from .165 to 1.70 and modify the maximum allowable RTP limits for F<sub>r</sub> values above 1.70 to those provided

through the linear equation  
 $RTP=1-200(1.7-F_r)/85$ .

9. Change the nomenclature of the DNB parameter of LCO 3.2.5 and TS Table 3.1-1, "DNB Parameters," from "Axial Shape Index, Core Power" to "Axial Shape Index, Thermal Power."

10. Add a new TS Surveillance Requirement 4.2.5.3 to permit the use of BASSS to monitor thermal power as a function of axial shape index. BASSS monitoring would be limited to CEA insertions of the lead bank of less than or equal to 55%.

11. Raise the maximum auxiliary feedwater (AFW) flow that can be accommodated through the AFW suction line, with one unit requiring flow, prior to pump cavitation due to low net positive suction head, from 1300 gpm to 1550 gpm. This flow condition is specified in TS Basis 3/4.7.1.2, "Auxiliary Feedwater System," for initial automatic response to a main steam line break design basis event.

12. Increase the TS 5.3.1 U-235 enrichment limit for fuel assemblies in the reactor core from 4.1 to 4.35 weight percent U-235. Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee evaluated the proposed changes against the standards in 10 CFR 50.92 and has determined that the amendment would not:

(i) Involve a significant increase in the probability or consequences of an accident previously evaluated . . .

All the non-LOCA transient safety analyses for Unit 2 Cycle 9 are bounded by previously presented and approved analyses. All key transient *input parameters* of the Cycle 9 non-LOCA analyses are conservative with respect to the previously approved reference cycle values (Unit 1 Cycle 10), with the exception of the following parameters:

Unit 2 Cycle 9 Batch L fuel utilizes a small flow hole debris-resistant design on each of the 92 fresh fuel assemblies.

The maximum Auxiliary Feedwater (AFW) flow assumed for Unit 2 Cycle 9 safety

analyses was increased from 1300 gpm for the reference cycle to 1550 gpm.

The maximum assumed number of plugged U-tubes per steam generator was increased to 500 plugged tubes for all non-LOCA Cycle 9 analyses.

The analyses and evaluations performed on those Design Basis events affected by these input parameters changes indicate that the results are abounded by those presented in the reference cycle.

An ECCS performance analysis (large and small break LOCA) was performed for Unit 2 Cycle 9 wherein compliance with the acceptance criteria of 10 CFR 50.46 is demonstrated. The debris-resistant Batch L lower end fitting design and a reduction of 260 gpm in assumed Low Pressure Safety Injection (LPSI) flow was considered in the Cycle 9 ECCS analysis. The large break LOCA analysis assumes 500 plugged U-tubes per steam generator, whereas the small break LOCA analysis assumes only 150 plugged U-tubes per steam generator. Both the large and small break LOCA's are conservatively bounded by the reference cycle analyses.

Since the results of the Unit 2 Cycle 9 analyses are all conservatively bounded by the reference cycle, and due to the nature of the changes to the three inputs to the safety analyses addressed above, the Unit 2 Cycle 9 core reload does not present a significant hazards consideration with respect to the existing safety analyses. The Cycle 9 reload does not involve an increase in the probability or consequences of an accident previously evaluated.

(ii) Create the possibility of a new or different type of accident from any accident previously evaluated . . .

The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated. The design of Unit 2 Cycle 9 closely follows that of the reference cycle, Unit 1 Cycle 10. The four  $Er_2O_3$  lead demonstration assemblies, included in the Cycle 9 core, do not impact the core design in any adverse manner. All nuclear, mechanical, thermal-hydraulic, and transient (LOCA and non-LOCA) safety analyses performed for the Unit 2 Cycle 9 reload core design considered the lead demonstration assemblies. These lead demonstration assemblies are discussed in the attachment to this request for license amendment. Several fuel mechanical design changes are included in the Batch L design and are addressed individually.

The mechanical design of each assembly in the Batch L reload fuel is identical to the Batch M fuel previously inserted in Calvert Cliffs Unit 1 with the following noted exceptions:

The Batch L lower end fitting flow hole configuration has been modified to a new smaller hole, more debris-resistant design. In this design, nine small, chamfered holes replace each of the larger holes in the reference cycle design, this forming a smaller diameter flow path more restrictive to the intrusion of reactor coolant system debris into the fuel assembly.

The debris-resistant lower end fitting design used in the Batch L reload fuel has also been considered in all aspects of the nuclear, mechanical, thermal-hydraulic, and

transient (LOCA and non-LOCA) safety analyses for Unit 2 Cycle 9. Each of these areas considered the impact of increased core differential pressure due to the introduction of a smaller hole design. It was determined that a new accident type would not result from the smaller hole lower end fitting. Reactor coolant system flow is maintained and individual assembly flow is not adversely affected. The impact of the flow both through the assemblies with the small hole debris-resistant design and the other 125 standard hole lower end fittings were analyzed to determine whether the presence of the more flow restrictive design causes an imbalance in the inlet flow to the other assemblies. It was determined that no significant impact or imbalance occurs for the Unit 2 Cycle 9 design.

The fuel rod plenum spring in the Batch L fuel has been redesigned to maximize the available rod internal void volume. This modification helps reduce high end cycle (EOC) internal gas pressures.

It has been determined that the fuel rod plenum spring in the Batch L fuel will in no way increase the probability to cause a new or different kind of accident than has previously been evaluated. The design is materially the same as used in previously approved CE nuclear fuel. It is dimensionally different to take up less volume in the plenum of the fuel rod, thereby making more volume available for internal fission gas expansion. This spring is provided in each fuel rod to ensure integrity of the fuel pellet stack during the fuel shipping process. It prevents fuel pellet separation.

The overall length of the batch L B,C burnable poison rod has been increased so that the poison rod length is now the same as the fuel rod length. This allows the same type cladding tube to be used for both rod types.

All the fuel to be loaded in Cycle 9 was reviewed to ascertain that adequate shoulder gap clearance exists. Analyses were performed with approved models and it was concluded that all shoulder gap and fuel assembly length clearances are adequate for Cycle 9 operation. Using the same cladding tube for the burnable poison rods as is used for the fuel rods has been shown to be acceptable after analysis of expected rod growth using accepted analysis methods, confirmed by visual examination of fuel assemblies with burnups in excess of those expected for Batch L fuel.

The size and number of crimp holes in the upper end of each of the five guide tubes of each Batch L assembly have been modified. This design change allows the fuel assembly upper end fitting guide tube posts to be reusable if the assembly must be disassembled for fuel rod reconstitution.

This modification allows easier fuel assembly reconstitution and does not affect the mechanical strength of the fuel assembly upper end fitting and guide tube post assembly. The ability of the guide posts to hold the upper end fitting of the assembly in place is not altered by the crimp hole design modification. No new or different accident is created by the introduction of this design modification.

(iii) Involve a significant reduction in a margin of safety.

No margins of safety for the Unit 2 Cycle 9 reload core design are reduced with respect to the previously reported and approved reference cycle. With each proposed Technical Specification change, sufficient conservatism or margin of safety remains between the proposed limits of the changes and actual safety limits (Specified Acceptable Fuel Design Limits—SAFDL's). In fact the margin previously reported in the reference cycle is applicable to Unit 2 Cycle 9.

Based upon the above, the NRC staff proposes to determine that the TS changes proposed for the Unit 2 Cycle 9 reload involve no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch.

By May 12, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written 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 amendment 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.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or

shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 325-6000 (in Missouri 1 (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Capra: petitioner's name and telephone number; data petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to D. A. Brune, Jr., General Counsel, Baltimore Gas & Electric Company, P.O. Box 1475, Baltimore, Maryland 21203, attorney for the licensee.

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)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the applications for amendment which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW.,

Washington, DC 20555, and at the Local Public Document Room, Calvert County Library, Prince Frederick, Maryland.

Dated at Rockville, Maryland, this 6th day of April 1989.

For the Nuclear Regulatory Commission.

Scott Alexander McNeil,

*Project Manager, Project Directorate I-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation*

[FR Doc. 89-8617 Filed 4-11-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-16055]

**Advanced Medical Systems, Inc. Assignment of Atomic Safety and Licensing Appeal Board**

In the matter of: Advanced Medical Systems Inc., One Factory Row, Geneva, OH 44041.

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 enforcement proceeding: Christine N. Kohl, Chairman, Alan S. Rosenthal, Howard A. Wilber.

Barbara A. Tompkins,

*Secretary to the Appeal Board.*

Dated: April 4, 1989.

[FR Doc. 89-8562 Filed 4-11-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443-OL and 50-444-OL; ASLBP No. 82-471-02-OL]

**Public Service Co. of New Hampshire, et al.; Seabrook Station, Units 1 and 2; Withdrawal of Alternate Board Member (Offsite Emergency Planning)**

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *Public Service Company of New Hampshire, et al.* (Seabrook Station, Units 1 and 2) (Offsite Emergency Planning), Docket Nos. 50-443-OL and 50-444-OL, is hereby reconstituted by the withdrawal of Administrative Judge James H. Carpenter who is unavailable to serve in this proceeding.

As reconstituted, the Board is comprised of the following administrative Judges: Ivan W. Smith,

Chairman, Dr. Richard F. Cole, Dr. Kenneth A. McCollom.

B. Paul Cotter, Jr.,

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

Dated at Bethesda, Maryland, this 4th day of April 1989.

[FR Doc. 89-8563 Filed 4-11-89; 8:45 am]

BILLING CODE 7590-01-M

**SECURITIES AND EXCHANGE COMMISSION**

**Forms Under Review by Office of Management and Budget**

*Agency Clearance Officer:* Kenneth A. Fogash, (202) 272-2142.

*Upon Written Request, Copy Available From:* Securities and Exchange Commission, Office of Consumer Affairs, and Information Services, 450 Fifth Street NW., Washington, DC 20549.

*Extension:*

File No. 270-174—Rule 31a-2  
File No. 270-216—Rule 206(3)-2

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 31a-2 under the Investment Company Act of 1940, and Rule 206(3)-2 under the Investment Advisers Act of 1940. Rule concerns preservation of records by registered investment companies and certain majority-owned subsidiaries thereof. Each of the three thousand five hundred respondents incur an average estimated 15.4 burden hours to comply with this requirement.

Rule 206(3)-2 permits registered investment advisers to comply with section 206(3) by obtaining a blanket consent from a client to enter into agency cross transactions provided certain disclosure is made to the client. Four thousand six hundred and ninety seven respondents each incur an estimated average of one-half hour to comply with this rule.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative survey or study of the cost of SEC rules and forms.

Direct general comments to Garry Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours

for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street NW., Washington, DC 20549-6004, and Gary Waxman, Clearance Officer, Office of Management and Budget, Paperwork Reduction Project (3235-0179 for Rule 31a-2, and 3235-0243 for Rule 206(3)-2) Room 3208 New Executive Office Building, Washington, DC 20543.

Jonathan Katz,

*Secretary.*

April 5, 1989.

[FR Doc. 89-8565 Filed 4-11-89; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations; Midwest Stock Exchange; Application for Unlisted Trading Privileges in Over-the-Counter Issues and to Withdraw Unlisted Trading Privileges in Over-the-Counter Issues**

April 5, 1989.

The Midwest Stock Exchange, Inc. ("MSE") on February 22, 1989, submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under Section 12(b) of the Act:

File No.	Symbol	Issuer
7-4262	ADBE	Adobe Systems, Inc., No Par Value.
7-4263	MCAW-A	McCaw Cellular Communications, Inc., \$.01 Par Value.
7-4264	NOVL	Novell, Inc., \$.10 Par Value.
7-4265	FEXC	First Executive Corp., \$2.00 Par Value.

The MSE also applied to withdraw UTP pursuant to section 12(f)(4) of the Act on the following OTC issues:

File No.	Symbol	Issuer
7-4266	APCI	Apollo Computer, \$.02 Par Value.
7-4267	KEMC	Kemper Corporation, \$.50 Par Value.
7-4268	LAGR	L.A. Gear, Inc., No Par Value.
7-4269	WHGP	Wheelabrator Group, Inc. (Formerly Henley Group), No Par Value.

The MSE applied to withdraw UTP on L.A. Gear, Inc. and Kemper Corporation, due to their recent listing on the New York Stock Exchange, thus rendering them ineligible for continued trading on

the MSE on an OTC/UTP basis. In the case of Apollo Computer, a replacement issue is being requested as a result of extremely low volume. In the case of Wheelabrator Group, Inc., a replacement issue is being requested due to its reorganization. As a result of the reorganization, the price of Wheelabrator dropped from approximately \$25 to \$7.50.

#### Comments

Interested persons are invited to submit on or before April 17, 1989, written comments, data, reviews and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Commentators are asked to address whether they believe the requested grants of UTP would be consistent with section 12(f)(1)(C). In considering an application for extension of UTP in OTC securities under section 12(f)(1)(C), the Commission is required to consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system. The Commission may not grant such application if any rule of the national securities exchange making an application under 12(f)(1)(C) would unreasonably impair the ability of any dealer to solicit or effect transactions in such security for his own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists. Commentators also should address whether the requested withdrawal of UTP would be consistent with section 12(f)(4) of the Act. That section empowers the Commission to grant a request for withdrawal if, to do so, is necessary or appropriate in the public interest or for the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

[FR Doc. 89-8566 Filed 4-11-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26695; File No. SR-NASD-89-16]

#### Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Specifications and Study Outline for the Registered Options Limited Representative

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 23, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD has filed specifications and a study outline for the Registered Options Limited Representative (Series 42) examination administered by the NASD.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Series 42 examination is used to qualify persons seeking registration as registered options representatives. The specifications and study outline reflect a joint securities industry self-regulatory effort to continue the modular approach to securities industry registration.

The examination will be ninety-minute, 50-question multiple-choice PLATO examination. The examination will cover all option product areas.

The specifications and study outline are consistent with section 15A(g)(3) of the Securities Exchange Act of 1934, which provides that a registered

securities association may prescribe standards of training, experience and competence for persons associated with a member and may examine and verify the qualifications of such persons in accordance with procedures established by the rules of the association.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the specifications or study outline for the Series 42 examination will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All

submissions should refer to the file number in the caption above and should be submitted by May 3, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

**Jonathan G. Katz,**  
*Secretary.*

Dated: April 4, 1989.

[FR Doc. 89-8613 Filed 4-11-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24856]

**Filings Under the Public Utility Holding Company Act of 1935 ("Act")**

April 6, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 1, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Central and South West Services, Inc., et al. (70-7435)**

Central and South West Corporation ("CSW"), a registered holding company, and its subsidiary Central and South West Services, Inc. ("CSWS"), have filed an application pursuant to sections 9(a) and 10 of the Act.

CSWS currently, among other things, provides shareholder and stock transfer services to CSW and the operating companies in the CSW system. CSWS

now proposes to provide shareholder and stock transfer services to companies not associated with CSW. As now conducted, CSWS provides stock transfer, recordkeeping, dividend disbursement, correspondence and dividend reinvestment services for CSW and the operating companies. CSWS desires to reduce the costs of providing these in-house services by providing the same services to nonassociated companies. By performing the same type of services for nonassociated companies and charging a competitive fee, CSWS states that it could reduce the expenses charged to the operating companies and, therefore, benefit their ratepayers.

**Southern Company Services, Inc. (70-7523)**

Southern Company Services, Inc. ("SCS"), 64 Perimeter Center East, Atlanta, Georgia 30346, a wholly-owned subsidiary of The Southern Company, a registered holding company, has filed an application pursuant to sections 9(a) and 10 of the Act.

SCS is establishing a separate division to provide temporary employees to associated companies in the Southern system ("Client Companies") and also proposes to provide such temporary employees to unaffiliated entities. SCS believes that through such a division, it can provide more qualified and experienced temporary professional and technical employees than can be obtained from independent temporary help supply organizations and can do so at lower costs. In addition to the temporary employees, the new division will have a small permanent staff, initially consisting of a manager and four other employees.

SCS will maintain a list of former employees of SCS and Client Companies and others who are available and have the requisite educational background and technical experience qualifying them to serve as temporary employees. SCS believes that by being able to provide such employees with temporary employment on a regular basis, both with the Client Companies and unaffiliated entities, their availability will be assured. All fees received from unaffiliated entities are to be applied by SCS toward the cost of maintaining the new division, thereby reducing the total costs associated therewith and resulting in temporary employees being provided to the Client Companies at even lower costs.

**Western Massachusetts Electric Company (70-7623)**

The Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill

Avenue, West Springfield, Massachusetts 01089, a wholly owned electric utility subsidiary of Northeast Utilities ("NU"), a registered holding company, has filed an application pursuant to sections 9(a) and 10 of the Act.

WMECO proposes to enter into a Purchase and Sale Agreement and to sell its rental water heater business including approximately 11,670 rental water heaters and concomitant leases to Western Massachusetts Water Heater Co., Inc. ("WMWH"), a newly created affiliate of Massachusetts Water Heater Co., Inc., a Massachusetts corporation and not affiliated with WMECO or NU, for a purchase price of approximately \$1,102,581 ("Purchase Price"). The Purchase Price will be comprised of \$700,000 in cash and up to \$402,581 by note ("Note"). A small number of unused heaters that WMECO has in stock will also be conveyed to WMWH at WMECO's cost.

The term of the Note is five years and will be interest-free for the first two years. After the first two years, the Note will bear interest at a rate that is three percentage points above the rate designated by Bank of New England, Boston, Massachusetts or its successor as its "prime" or equivalent rate. Installments of principal that would otherwise be due and payable during the first eight months following the closing date will be deferred until the month following the first anniversary of the Note. The Note will be unsecured and subordinated to the debt of WMWH to its purchase money lenders.

Payments of principal and interest under the Note shall be adjusted to provide a credit ("Credit") to WMWH to the extent that the number of remaining functional heaters falls below a predetermined number. Conversely, to the extent that the number of heaters exceeds the predetermined number and produces revenue, WMWH will pay WMECO a premium ("Premium"). In no event will the total Credit exceed the original principal amount of the Note and interest thereon. The amount of the Premium could equal up to \$447,500 over the five year term of the Note, if the rate of attrition of the heaters after the sale is as projected by WMECO.

**The Columbia Gas System, Inc. et al. (70-7642)**

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, and two of its wholly owned subsidiaries, Columbia Gas Transmission Corporation ("Transmission") and Columbia Natural

Resources, Inc. ("CNR") (collectively with Columbia, "Applicants"), both located at 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(c) and under the Act and Rules 42 and 43 thereunder.

Applicants propose that Transmission's natural resource properties, including all mineral and surface rights and related personal property, be sold and transferred to CNR. Transmission's operations would thereafter be confined to the operation of an interstate pipeline. The consummation of the proposed transactions would lead to CNR becoming the only subsidiary of Columbia through which essentially all exploration and production of oil and natural gas in the eastern U.S. would be handled.

The transfer of properties will be pursuant to a Reorganization Agreement and Plan to be entered into by the Applicants that provides, in relevant part: (1) For CNR to acquire all of the production, exploration and other non-transmission properties owned by Transmission in several states, including oil properties, gas properties and the coal properties (which would continue under lease to Columbia Coal Gasification Corporation); (2) in exchange therefor, CNR will issue common stock ("CNR Common Stock") and Transmission will acquire such CNR Common Stock equal in value to the aggregate net book value of the natural resource properties received from Transmission; and (3) Transmission will then transfer the CNR Common Stock to Columbia in exchange for its own common stock of an equal aggregate par value for retirement. Applicants state that this reorganization will not cause any adverse change in Transmission's ability to provide reasonably priced gas service to its customers.

#### Energy Initiatives, Inc. (70-7647)

Energy Initiatives, Incorporated ("EII"), One Gatehall Drive, Gatehall Center I, Parsippany, New Jersey 07054, a subsidiary of General Portfolios Corporation, a subsidiary of a registered holding company, General Public Utilities Corporation, has filed a declaration with the Commission pursuant to section 12(b) of the Act and Rule 45 thereunder.

In order to finance the construction of a 65 MW gas-fired cogeneration facility in Elmwood Park, New Jersey, EII proposes to make additional capital contributions to Prime Energy Limited Partnership ("Partnership"), a New

Jersey limited partnership and subsidiary of Elmwood Energy Corporation ("Elmwood"), a wholly owned subsidiary of EII. Elmwood is the general and a limited partner of the Partnership. Under the Partnership's limited partnership agreement, Elmwood is required to make a capital contribution of \$4,215,000 to the Partnership. Thus far, Elmwood has contributed a total of \$1,050,000 to the Partnership's capital. EII therefore requests authority to make further capital contributions, due on or about May 1, 1989, to the Partnership directly or indirectly through Elmwood in the aggregate amount of \$3,165,000.

#### Blackstone Valley Electric Company (70-7649)

Blackstone Valley Electric Company ("Blackstone"), Washington Highway, P.O. Box 1111, Lincoln, Rhode Island 02865, an electric utility subsidiary of Eastern Utilities Associates, a registered holding company, has filed an application pursuant to section 6(b) of the Act and Rule 50(a)(5) thereunder.

Blackstone proposes to issue and sell through April 30, 1991 up to an aggregate amount of \$15 million, in any combination, of first mortgage bonds and/or notes ("Notes") (collectively, "Debt") to one or more institutional investors maturing in not less than 3 nor more than 30 years from the first day of the month in which they are issued. The Notes may be unsecured or secured by a lien on substantially all or a portion of the assets of Blackstone.

The net proceeds of the sale of the Debt will be applied to pay or reduce short-term borrowings from banks, to provide funds to pay the annual sinking fund requirement on outstanding First Mortgage Bonds of Blackstone on December 1, 1989, for the acquisition of tangible assets of Blackstone, and for general corporate purposes.

Blackstone requests authorization to begin negotiations, pursuant to an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5), with institutional investors, or to engage a placement agent to negotiate with institutional purchasers in connection with the issuance and sale of the Debt. It may do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-8614 Filed 4-11-89 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16905; (812-7080)]

#### Suncoast Finance Corporation; Application

April 6, 1989.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for an exemption under the Investment Company Act of 1940 (the "1940 Act").

*Applicant:* Suncoast Finance Corporation (formerly Suncoast Mortgage Finance Corporation, "Suncoast"), on behalf of itself and certain trusts ("Trusts," collectively with Suncoast, or individually, in their capacity as an issuer of Bonds, an "Issuer").

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) from all provisions of the 1940 Act.

*Summary of Application:* Applicant seeks an order amending an existing order (Investment Company Act Release No. 15346 (October 5, 1986)) ("Existing Order") to permit the Issuers (i) to issue and sell fixed rate and floating rate Bonds (as defined below); (ii) to sell Bonds to foreign investors; and (iii) to sell the cash flow remaining after required payments on a series of Bonds and expenses are paid ("Residual Interests") to certain institutional and non-institutional investors.

*Filing Dates:* The application was filed on July 21, 1988, and amended on December 7, 1988, and March 23 and April 3, 1989.

*Hearing or Notification of Hearing:* If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on May 1, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Suncoast Finance Corporation, 4350 Sheridan Street, Hollywood, Florida 33021.

**FOR FURTHER INFORMATION CONTACT:** Thomas C. Mira, Staff Attorney, (202) 272-3047 or, Brion R. Thompson, Branch Chief, (202) 272-3016.

**SUPPLEMENTARY INFORMATION:**

Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

**Applicant's Representations**

1. Suncoast is a direct, wholly-owned, limited purpose subsidiary of Suncoast Savings and Loan Association, a state-chartered capital stock savings and loan association. Under the Existing Order, Suncoast engages in asset-backed financing by (i) establishing Trusts to issue and sell series of fixed rate bonds collateralized by Mortgage Certificates ("Bonds"), (ii) purchasing, owning and selling to the Trusts Mortgage Certificates as collateral for the Bonds, and (iii) selling one or more series of Residual Interests consisting of participation certificates in the Trusts ("Trust Certificates"). In addition to the foregoing, Applicant now proposes, subject to the conditions contained in the Existing Order, as amended and restated in the application, and to certain additional terms and conditions as described below: (i) To issue Bonds directly from Suncoast; (ii) to issue floating rate Bonds; (iii) to sell Bonds to foreign investors; and (iv) to sell Residual Interests to accredited institutional and non-institutional investors.

2. According to the application, the "Mortgage Certificates" will consist of mortgage pass-through certificates that are fully guaranteed as to principal and interest by the Government National Mortgage Association ("GNMA Certificates"), Mortgage Participation Certificates issued and guaranteed by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), and Guaranteed Mortgage Pass-Through Certificates issued and guaranteed by the Federal National Mortgage Association ("FNMA Certificates"). In addition to Mortgage Certificates, a series of Bonds will be secured by a separate collection account for each series of Bonds and may include a reserve fund, in each case as specified in the prospectus supplement for a particular series (collectively with Mortgage Certificates, "Mortgage Collateral").

3. The Bonds will be issued in series. Each series of Bonds issued will be separately secured by Mortgage Certificates and will be issued pursuant to an indenture between an independent trustee (the "Trustee") and the Issuer for each such series (the "Indenture").

4. In the case of each series of Bonds:

(a) The Issuer will hold no substantial

assets other than the Mortgage Collateral; (b) the Bonds will be secured by Mortgage Collateral having a collateral value which at the time of issuance of the Bonds and following each payment date for the Bonds is equal to or greater than the outstanding principal balance of the Bonds; (c) the cash flow generated by the Mortgage Certificates, together with the other collateral pledged to secure the Bonds, will be sufficient to provide for the full and timely payment of principal of and interest on the Bonds; and (d) the Mortgage Collateral will be assigned to the Trustee and will be subject to the lien of the related Indenture. In the event of a default on the Bonds under the Indenture, the Trustee, acting on behalf of Bondholders, may exercise the remedies available to a secured party with a perfected security interest in the Mortgage Collateral.

5. In addition, each Issuer reserves the right to sell Residual Interests consisting of the excess cash flow after required payment on the Bonds are made and expenses are paid. This sale can take a number of forms; for example, a corporate Issuer (*i.e.*, Suncoast) could sell Residual Interests in the form of non-voting participation interests or a Trust Issuer could sell Trust Certificates.

**Applicant's Legal Conclusions**

1. The exemptive relief requested is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act because: (1) The transactions described in the application should not cause any Issuer to be deemed an entity to which the provisions of the 1940 Act were intended to be applied, and (2) the Issuer's proposed activities will enhance the national goal expressly articulated by Congress of expanding financing for housing.

**Applicant's Conditions****A. Conditions Relating to the Bonds**

(1) Each series of Bonds will be registered under the Securities Act of 1933 ("1933 Act"), unless offered in a transaction exempt for registration pursuant to section 4(2) of the 1933 Act or because such series of Bonds is offered and sold outside the United States or to non-United States persons in reliance upon an opinion of United States counsel that registration is not required. No single offering of Bonds sold both within and outside the United States will be made without registration of all such Bonds under the 1933 Act without obtaining a no-action letter

permitting such offering or otherwise complying with applicable standards then governing such offerings. In all cases, Applicant will adopt agreements and procedures reasonably designed to prevent such Bonds from being offered or sold in the United States or to United States persons (except as United States counsel may then advise is permissible). Disclosure provided to purchasers located outside the United States will be substantially the same as that provided to United States investors in United States offerings.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, as amended. In addition, the collateral directly securing the Bonds will be GNMA Certificates, FNMA Certificates and/or FHLMC Certificates.

(3) If new Mortgage Certificates are substituted for Mortgage Certificates initially pledged as security for a series of Bonds, the substitute Mortgage Certificates must: (i) Be of equal or better quality than the Mortgage Certificates replaced; (ii) have similar payment terms and cash flow as the Mortgage Certificates replaced; (iii) be insured or guaranteed to the same extent as the Mortgage Certificates replaced; and (iv) meet the conditions set forth in Conditions A.(2) and A.(4). In addition, new Mortgage Certificates will not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as Mortgage Collateral. In no event may any new Mortgage Certificates be substituted for any substitute Mortgage Certificates.

(4) All mortgage Collateral securing a series of Bonds will be held by the Trustee or on behalf of the Trustee by an independent custodian. Neither the Trustee nor the custodian will be an "affiliate" (as the term "affiliate" is defined in Securities Act Rule 405, 17 CFR 230.405) of any Issuer. The Mortgage Collateral pledged to the Trustee will be registered in the name of the Trustee or its nominee, and the Trustee will be provided with a first priority perfected security or lien interest in and to all Mortgage Collateral.

(5) Each series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with the Issuer of the Bonds. The Bonds will not be considered "redeemable securities" within the meaning of section (2)(a)(32) of the 1940 Act.

(6) So long as applicable law requires, no less often than annually, an independent public accountant will audit the books and records of each Issuer and, in addition, will report on whether the anticipated payments of principal and interest on the Mortgage Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Trustee.

(7) Without the written consent of each Bondholder to be affected, neither the Applicant nor the holders of any Residual Interest in any series of the Bonds will be able to impair or adversely affect the Mortgage Collateral securing such series (including, without limitation, selling the Mortgage Certificates while a series of Bonds remains outstanding).

#### *B. Conditions Relating to Floating Rate Bonds*

(1) Each class of floating rate Bonds will have set maximum interest rates (interest rate caps), which may vary from period to period as specified in the related prospectus or other offering document, and will be secured by Mortgage Collateral to the same extent as any other class of Bonds.

(2) At the time of the acquisition of the Mortgage Collateral by Suncoast or the deposit of the Mortgage Collateral with an issuing Trust, as the case may be, as well as during the life of the Bonds, the scheduled payments of principal and interest to be received by the Trustee on all Mortgage Collateral pledged to secure the Bonds, plus reinvestment income thereon, and funds, if any, pledged to secure the Bonds will be sufficient to make all payments of principal and interest on the Bonds then outstanding, assuming the maximum interest rate on each class of floating rate Bonds. Such Mortgage Collateral will be paid down as the Mortgage comprising or underlying the Mortgage Collateral are repaid, but will not be released from the lien of the Indenture prior to the payment of the Bonds.

(3) In addition to those mechanisms referred to in the application, a number of mechanisms exist, and others may be identified in the future, to ensure the adequacy of the Mortgage Collateral notwithstanding subsequent increases in the interest rate applicable to the floating rate Bonds. Applicant will give the Staff of the Division of Investment Management ("Staff") notice by letter of any additional mechanisms before they are utilized in order to give Staff an opportunity to raise any questions as to the appropriateness of their use. In all cases, these mechanisms will be

adequate to ensure the accuracy of paragraph B.(2) and will be adequate to meet the standards required for a rating of the Bonds in one of the two highest bond rating categories, and no Bonds will be issued for which this is not the case.

#### *C. Conditions Relating to REMIC Election*

(1) The election by the Applicant to treat the arrangement by which any series of Bonds is issued as a real estate mortgage investment conduit ("REMIC") will have no effect on the level of the expenses that would be incurred by any such issuing entity. If such an election is made, the Issuer will provide that all administrative fees and expenses in connection with the administration of the trust estate will be paid or provided for in a manner satisfactory to the agency or agencies rating the Bonds. Each Issuer that elects to be treated as a REMIC will provide for the payment of administrative fees and expenses in connection with the issuance of the Bonds and the administration of the trust estate by one or more of the methods describe fully in the application.

(2) Each Issuer will ensure that the anticipated level of fees and expenses will be adequately provided for regardless of which or all of the methods (which methods may be used in combination) are selected by such Issuer to provide for the payments of such fees and expenses.

#### *D. Conditions Relating to the Sale of Residual Interests*

(1) Residual Interests will be sold only where the related Bonds are collateralized by one or more of the following: GNMA Certificates, FNMA Certificates and/or FHLMC Certificates. Residual Interests will be offered and sold only to (i) institutional investors or (ii) non-institutional investors which are "accredited investors" as defined in Rule 501(a) of the 1933 Act. Institutional investors will have such knowledge and experience in financial and business matters as to be able to evaluate the risks of purchasing Residual Interests and understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage related securities and residual interests therein. Non-institutional accredited investors will be limited to not more than 15, be required to purchase at least \$200,000 (measured by market value at the time of purchase) of such Residual Interests and will have a net worth at the time of purchase that exceeds \$1,000,000 (exclusive of their primary residence). Non-institutional accredited investors

will have such knowledge and experience in financial and business matters, specifically in the field of mortgage related securities, as to be able to evaluate the risks of purchasing Residual Interests and will have direct, personal and significant experience in making investments in mortgage related securities. Holders of Residual Interests will be limited to mortgage lenders, thrift institutions, commercial and investment banks, saving and loan associations, pension funds, employee benefit plans, insurance companies, real estate investment trusts or other institutions or non-institutional investors as described above that customarily engage in the purchase or origination of mortgages and other types of mortgage related securities.

(2) Residual Interests will be sold only in transactions not involving any public offering within the meaning of Section 4(2) of the 1933 Act.

(3) Transfers of Residual Interests will be prohibited in any case where, as a result of the proposed transfer, there would be more than 100 Residual Interest Holders of any series of Bonds at any time.

(4) Each purchaser of a Residual Interest will be required to represent that it is not purchasing for distribution and that it will hold such Residual Interests in its own name or for accounts as to which it exercises sole investment discretion.

(5) No Residual Interest Holder may be affiliated with the Trustee, the custodian of the Mortgage Collateral or the rating agency rating the relevant series of Bonds.

(6) No holders of a controlling interest in an Issuer (as the term "control" is defined in Rule 405 under the 1933 Act) will be affiliated with either (a) any custodian which may hold the Mortgage Collateral on behalf of the Trustee or (b) any nationally recognized statistical rating agency rating the Bonds.

(7) Notwithstanding the sale of Residual Interests, all of Suncoast's outstanding stock will continue to be owned by Suncoast Savings and Loan Association. If any shares of the common stock of Suncoast were to be sold and such sale results in the transfer of control (as the term "control" is defined in Rule 405 under the 1933 Act) of Suncoast other than to an affiliate of Suncoast Savings and Loan Association, the relief afforded by an order granted on the application would not apply to subsequent Bond offerings by Suncoast or any of the Trusts.

(8) If the sale of Trust Certificates results in the transfer of control (as the term "control" is defined in Rule 405

under the 1933 Act) of any Trust, the exemptive relief afforded by an order granted on the application would not apply to subsequent Bond offerings by such Trust.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

[FR Doc. 89-8615 Filed 4-11-89; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area # 2343; Amdt. # 3]

### Kentucky and Contiguous Counties in the States of Indiana, Ohio, West Virginia, Virginia, Illinois, Missouri and Tennessee

The above-numbered Declaration (54 FR 9584), as amended (54 FR 11602), and (54 FR 13283), is hereby further amended in accordance with the Notice of Amendment to the President's declaration, dated March 8, 1989, to include the counties of Caldwell, Carlisle, Christian, Graves, Marshall, McCracken, and Trigg, in the Commonwealth of Kentucky, as a result of damages from severe storms and flooding between February 13 and March 8, 1989.

In addition, applications for economic injury from small businesses located in the contiguous counties of Ballard, Calloway, Crittenden, Livingston, and Lyon, in the Commonwealth of Kentucky; Massac, Pope, and Pulaski Counties in the State of Illinois; Mississippi County, Missouri; and Henry, Montgomery, and Stewart Counties, in the State of Tennessee, may be filed until the specified date at the previously designated location.

Any other counties contiguous to the above-named primary counties have been previously declared for the same storms and flooding and are, therefore, eligible.

The number assigned to the State of Illinois for economic injury is 674400; for the State of Missouri the number of 674500; and for the State of Tennessee the economic injury number is 674600.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on April 27, 1989, and for economic injury until the close of business on November 24, 1989.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: March 22, 1989.

Bernard Kulik,  
Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-8621 Filed 4-11-89; 8:45 am]

BILLING CODE 8025-01-M

## Interest Rates

The interest rate of section 7(a) Small Business Administration direct loans (as amended by Pub. L. 97-35) and the SBA share of immediate participation loans is ten (10) percent for the fiscal quarter beginning April 1, 1989.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8-1(d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the April-June quarter of 1989, this rate will be nine (9).

Pursuant to 13 CFR 108.503-8(b)(4), the maximum legal interest rate for a commercial loan which funds any portion of the cost of a project (see 13 CFR 108.503-4) shall be the greater of 6% over the New York prime rate or the limitation established by the constitution or laws of a given State. For a fixed rate loan, the initial rate shall be the legal rate for the term of the loan.

Edwin T. Holloway,  
Associate Administrator for Finance and Investment.

[FR Doc. 89-8620 Filed 4-11-89; 8:45 am]

BILLING CODE 8025-01-M

## Region II Advisory Council; Public Meeting

The U.S. Small Business Administration Region II Advisory Council, located in the geographical area of New York City, will hold a public meeting at 9:30 a.m., on Tuesday, April 11, 1989 at the Jacob Javits Federal Building, 26 Federal Plaza, New York, NY 10278. The meeting will concern itself with matters that will be presented by members, staff of the U.S. Small Business Administration or others present.

For further information, write or call Bert X. Haggerty, District Director, U.S. Small Business Administration, 26 Federal Plaza, Room 3100, New York, NY 10278—Telephone (212) 264-1318.

Jean M. Nowak,  
Director, Office of Advisory Councils.  
April 10, 1989

[FR Doc. 89-8864 Filed 4-10-89; 3:41 pm]

BILLING CODE 8025-01-M

## DEPARTMENT OF STATE

[CM-8/1275]

### The U.S. Organization for the International Telegraph and Telephone Consultative Committee CCITT Study Group B; Meeting

The Department of State announces that Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Friday, May 26, 1989, at 9:30 a.m. in Room 1912, Department of State, 2201 C Street NW, Washington, DC.

The Agenda of the meeting will be as follows:

1. Approval of Minutes of March 15, 1989, Joint Working Party on Integrated Service Digital Network and Study Group C Meeting.
2. Consideration of Contributions in Preparation for the CCITT Study Group XVIII Meeting, June 19-30, Geneva.
3. Consideration of Nominations for U.S. Delegation to CCITT Study Group XVII Meeting.
4. Other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl S. Barbely, State Department, Washington, DC; telephone (202) 647-5220. All attendees must use the C Street entrance to the building.

Date: March 31, 1989.

Earl S. Barbely,  
Director, Office of Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee.

[FR Doc. 89-8587 Filed 4-11-89; 8:45 am]

BILLING CODE 4710-17-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Ft. Lauderdale-Hollywood Airport, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Board of County Commissioners, Broward County, Florida, for the Ft. Lauderdale-Hollywood International Airport, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the Ft. Lauderdale-Hollywood International Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before September 24, 1989.

**EFFECTIVE DATE:** The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is March 29, 1989. The public comment period ends May 27, 1989.

**FOR FURTHER INFORMATION CONTACT:** C. Ed Howard, Airport Planning Specialist, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, FL, telephone (407) 648-6583. Comments on the proposed noise compatibility program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for the Ft. Lauderdale-Hollywood International Airport are in compliance with applicable requirements of Part 150, effective March 29, 1989. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before September 24, 1989. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with

the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Board of County Commissioners, Broward County, Florida submitted to the FAA on January 12, 1989, noise exposure maps, descriptions and other documentation which were produced during an airport noise compatibility planning study from January 21, 1986 to March 20, 1989. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Board of County Commissioners, Broward County, Florida. The specific maps under consideration are "Existing (1985) Noise Exposure Map" and "Future (1990) Recommended Development Noise Exposure Map" in the submission. The FAA has determined that these maps for Ft. Lauderdale-Hollywood International Airport are in compliance with applicable requirements. This determination is effective on March 29, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities

are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Ft. Lauderdale-Hollywood International Airport, also effective on March 29, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the summation of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before September 24, 1989.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC. 20591  
Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, FL 32827-5096  
Director of Aviation, Ft. Lauderdale-Hollywood International Airport, 1400 Lee Wagener Boulevard, Ft. Lauderdale, FL 33315

Questions may be directed to the individual named above under the

**heading FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, March 29, 1989.

**Billy Langley,**

*Acting, Manager, Orlando Airports District Office.*

[FR Doc. 89-8588 Filed 4-11-89; 8:45 am]

**BILLING CODE 4910-13-M**

**Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Panama City-Bay County Airport, FL**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Panama City-Bay County Airport and Industrial District for the Panama City-Bay County Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the Panama City-Bay County Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before September 19, 1989.

**EFFECTIVE DATE:** The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is March 23, 1989. The public comment period ends May 22, 1989.

**FOR FURTHER INFORMATION CONTACT:** Tommy J. Pickering, Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32827-5096 (407) 648-6583. Comments on the proposed noise compatibility program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for Panama City-Bay County Airport are in compliance with applicable requirements of Part 150, effective March 23, 1989. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before September 19, 1989. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement

Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Panama City-Bay County Airport and Industrial District submitted to the FAA noise exposure maps, descriptions and other documentation which were produced during an airport noise compatibility planning study from January 10, 1985 to November 22, 1988. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of this Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Panama City-Bay County Airport and Industrial District. The specific maps under consideration are 1985 Existing Noise Contours dated September 1986 and 1990 Future Noise Contours dated September 1986 in the submission. The FAA has determined that these maps for the Panama City-Bay County Airport are in compliance with applicable requirements. This determination is effective on March 23, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific

properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the Panama City-Bay County Airport and Industrial District, also effective on March 23, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before September 19, 1989.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise

compatibility program are available for examination at the following locations:  
Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32827-5096

Panama City-Bay County Airport and Industrial District, P.O. Box 1029, Panama City, Florida 32402

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, March 23, 1989.  
James E. Sheppard,  
Manager, Orlando Airports District Office.  
[FR Doc. 89-8596 Filed 4-11-89; 8:45 am]  
BILLING CODE 4910-13-M

[Summary Notice No. PE-89-16]

**Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before May 1, 1989.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. \_\_\_\_\_, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are

available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on April 5, 1989.  
Denise Donohue Hall,  
Manager, Program Management Staff, Office of the Chief Counsel.

**Petitions for Exemption**

**Docket No.:** 25184.  
**Petitioner:** Imperial Aviation, Inc.  
**Regulations Affected:** 14 CFR 121.371(a).

**Description of Relief Sought:** To extend Exemption No. 4793 that allows petitioner to use certain original equipment manufacturers to perform maintenance, preventive maintenance, and alterations outside of the United States on petitioner's Fairchild FH-227 aircraft.

**Docket No.:** 25744.  
**Petitioner:** United States Skyships.  
**Sections of the FAR Affected:** 14 CFR 91.79(b).

**Description of Relief Sought:** To allow petitioner to fly at 50 feet AGL over congested areas and at 300 feet AGL while orbiting a specific target area.

**Docket No.:** 25760.  
**Petitioner:** Flight International.  
**Sections of the FAR Affected:** 14 CFR 21.25(b)(2) and 91.36(b).

**Description of Relief Sought:** To permit operation of petitioner's Northrop F-5 aircraft in the restricted category for compensation for carriage of defense-related equipment.

**Docket No.:** 25830.  
**Petitioner:** Metro Express, Inc., dba Eastern Metro Expenses.  
**Sections of the FAR Affected:** 14 CFR 135.225(e) and 91.116(g).

**Description of Relief Sought:** To allow petitioner's pilots to take off aircraft from Myrtle Beach Air Force Base, SC, using takeoff visibility minimums, subject to the approval of the appropriate military authority, which are less than one mile and are equal to or greater than the landing visibility minimums established for this airfield.

**Docket No.:** 25842.  
**Petitioner:** Air Transport Association of America.

**Sections of the FAR Affected:** 14 CFR 121.337 and 121.417(c)(1).

**Description of Relief Sought:** To allow petitioner's member airlines a 6-month extension, until January 6, 1990, to comply with the requirements for

protective breathing equipment and training in the use of that equipment.

**Docket No.:** 23430.

**Petitioner:** Douglas Aircraft Company.  
**Regulations Affected:** 14 CFR 61.57(c).

**Description of Relief Sought/Disposition:** To extend Exemption No. 3754, as amended, that allows petitioner's pilots to meet the pilot-in-command landing recency requirements by using a Phase I simulator. *Grant, March 28, 1989. Exemption No. 3754C.*

**Docket No.:** 25036.

**Petitioner:** Florida Express.

**Sections of the FAR Affected:** 14 CFR 121.371(a) and 121.378.

**Description of Relief Sought/Disposition:** To extend Exemption No. 4750 that allows petitioner to use certain original equipment manufacturers to perform maintenance, preventive maintenance, and alteration outside the United States on its BAC 1-11 aircraft or on the engines and components for such aircraft. *Grant, March 30, 1989. Exemption No. 5036.*

**Docket No.:** 25433.

**Petitioner:** Raleigh Jet Enterprises.

**Sections of the FAR Affected:** 14 CFR 25.853(c), 135.169(a), and 121.312(b).

**Description of Relief Sought/Disposition:** To allow petitioner to operate its Gulfstream G-1159B (N489QP) aircraft without complying with the seat fireblocking requirements until one of its other Gulfstream aircraft is in compliance with the fireblocking requirements. *Denial, March 27, 1989. Exemption No. 5035.*

**Docket No.:** 25747.

**Petitioner:** Northwest Airlines, Inc.

**Sections of the FAR Affected:** 14 CFR 121.371(a) and 121.378.

**Description of Relief Sought/Disposition:** To allow petitioner to contract with foreign original equipment manufacturers and their designated repair agencies for the inspection, repair, overhaul, and modification of parts to support its Airbus A320-200 aircraft. *Grant, March 30, 1989. Exemption No. 5037.*

**Docket No.:** 24052.

**Petitioner:** United States Navy, The Blue Angels.

**Sections of the FAR Affected:** 14 CFR 91.70(a) and (b), 91.71(c) and (d), and 91.79(c).

**Description of Relief Sought/Disposition:** To allow petitioner to conduct demonstration rehearsals in the vicinity of Choctaw, Florida, Naval Air Station; Pensacola, Florida, Naval Air Station; and El Centro, California, Naval

Air Facility. Grant, March 28, 1989,  
Exemption No. 4504A.

[FR Doc. 89-8564 Filed 4-11-89; 8:45 am]

BILLING CODE 4910-13-M

## Federal Railroad Administration

[BS-AP-NO. 2799]

### Chicago and North Western Transportation Co.; Public Hearing

The Chicago and North Western Transportation Company has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance of the automatic block signal system between Butler, Wisconsin and Tavit, Wisconsin. Subsequently, that segment of the line extending between Cleveland and Tavit was sold to the Fox River Valley Railroad. This proceeding is identified as FRA Block Signal Application Number 2799.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on Thursday, June 15, 1989, in Room 290-B of the Henry Reuss Federal Building at 310 West Wisconsin Avenue, Milwaukee, Wisconsin.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR Part 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on April 5, 1989.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89-8547 Filed 4-11-89; 8:45 am]

BILLING CODE 4910-06-M

[RS&I-AP-NO. 1050]

### Northeast Illinois Regional Commuter Railroad Corp., Chicago, Missouri and Western Railway Co.; Public Hearing

The Northeast Illinois Regional Commuter Railroad Corporation (NIRC) and the Chicago, Missouri and Western Railway Company (CMW) have petitioned the Federal Railroad Administration seeking relief from the requirements of § 236.566 of the Rules, Standards and Instructions (49 CFR 236) to the extent that CMW be permitted to operate locomotives not equipped with automatic cab signal apparatus responsive to the roadway equipment on the trackage of the NIRC between Blue Island, milepost 15.60, and Joliet, Illinois, milepost 40.56. This proceeding is identified as FRA Rules, Standards and Instructions Application No. 1050.

The FRA has issued a public notice seeking comments of interested parties and conducted a field investigation in this matter. After examining the carriers' proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal. In the interim, the FRA has granted temporary approval for the CMW to operate on the NIRC subject to the following conditions:

1. That an absolute block be established in advance of each CMW train;
2. That CMW trains shall not exceed 30 mph;
3. That CMW trains shall operate only between the hours of 2 a.m. and 5 a.m.; and
4. That CMW trains may consider a signal aspect indicating more favorable than "proceed at restricted speed" to be an absolute block, but shall consider all other aspects as indicating "stop and stay."

The proposal contained in this proceeding has raised serious concerns about the mix of freight trains and commuter trains on this line. The NIRC operates 27 commuter trains daily Monday through Friday, 14 commuter trains on Saturday and 10 commuter trains on Sunday. Passenger trains are operated by signal indications of a traffic control system on two main tracks supplemented by automatic cab signals. The maximum authorized speed is 70 mph.

Three freight railroads already operate over this line: The Iowa Interstate Railroad; CSX Transportation; and the Chicago Rail Link. These carriers operate 6 to 10 freight trains daily. None of the locomotives used by the freight railroads are equipped with

automatic cab signal apparatus. For this reason, the FRA is restricting the operation of CMW trains to between 2 a.m. and 5 a.m., the time during which passenger trains are not operated. The purpose of the public hearing is to review the operation of non-equipped freight trains in this commuter corridor before a final decision is made in this proceeding.

Accordingly, a public hearing is hereby set for 9 a.m. on Wednesday June 14, in Room 1220 of the Dirksen Building at 219 South Dearborn in Chicago, Illinois.

The hearing will be a non-adversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on April 5, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89-8548 Filed 4-11-89; 8:45 am]

BILLING CODE 4910-06-M

## DEPARTMENT OF TRANSPORTATION

[BS-AP-NO. 2782]

### Soo Line Railroad Co.; Public Hearing

The Soo Line Railroad Company has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance of the traffic control and automatic block signal systems between Humboldt Avenue, Minneapolis, Minnesota and Ortonville, Minnesota. This proceeding is identified as FRA Block Signal Application Number 2782.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on Tuesday, June 20, 1989, in Room 196 of the Fort Snelling Federal Building in St. Paul, Minnesota.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR Part 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be

no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on April 5, 1989.

J.W. Walsh,

*Associate Administrator for Safety.*

[FR Doc. 89-8549 Filed 4-11-89; 8:45 am]

BILLING CODE 4910-06-M

### Maritime Administration

[Docket S-845]

#### Lykes Bros. Steamship Co., Inc.; Application to Acquire Argonaut Line, Inc. and Farrell Lines Inc. and Subsidiaries; Possible Bifurcation of Issues and Findings Relating to Section 608 and 605(c) of the Merchant Marine Act, 1936, As Amended.

By letter of February 16, 1989, as amended on February 27, 1989, Lykes Bros. Steamship Co., Inc. (Lykes) advised that it had entered into a Plan and Agreement of Merger pursuant to which Lykes will be acquiring all of the outstanding stock of Argonaut Line, Inc. (Argonaut) including Farrell Lines Incorporated (Farrell) and all of its subsidiaries and requested appropriate approvals to permit the transaction. Farrell, by letter of February 23, 1989, joined in Lykes' request. Notice of the application was published in the *Federal Register* on March 6, 1989 (54 FR 9271). Since some of the respondents to the Notice were apparently unclear as to the scope of the application, particularly as it relates to sections 608 and 605(c) of the Merchant Marine Act, 1936, as amended (Act), the Maritime Administration queried Lykes in an attempt to clarify Lykes' position. By letter of April 5, 1989, counsel for Lykes responded to the inquiry. The complete text of Lykes' response follows:

Pursuant to your inquiry of today, I have raised the question with my client concerning the possibility of bifurcating the above referenced application such that any 605(c) issued be resolved separate and apart from the Board's making of the requisite 608 determinations required to approve the acquisition. If the Board is of the opinion that it is necessary to bifurcate the 605(c) issues from the 608 determinations in order to expedite the Board's action to approve the

transaction, Lykes will not object to the proposed bifurcation.

By letter of April 6, 1989, counsel for Farrell requested that the scope of Lykes' application for the acquisition of Argonaut be narrowed by the removal of the request for the expansion of Farrell's ODSA, Contract MA/MSB-482 to include U.S. gulf ports. Farrell urgently requests that the Maritime Administration take immediate action to sever the 608 issue from any 605(c) issues.

A copy of the Plan and Agreement of Merger (Restated) has also been filed with the Maritime Administration.

Interested parties may inspect the foregoing documents in the Office of the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administration will consider any comments submitted and take such action with respect thereto as may be deemed appropriate. Comments must be received by 5:00 p.m., April 18, 1989.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

By Order of the Maritime Subsidy Board.

Date: April 10, 1989.

*James E. Saari*

*Secretary.*

[FR Doc. 89-8817 Filed 4-11-89; 8:45 am]

BILLING CODE 4910-81-M

### DEPARTMENT OF THE TREASURY

#### Public Information Collection Requirements Submitted to OMB for Review

Date: April 6, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

#### Alcohol, Tobacco and Firearms

*OMB Number:* New.

*Form Number:* ATF F 5630.5R and ATF F 5630.5RC.

*Type of Review:* New Collection.

*Title:* Special Tax "Renewal"

Registration and Return and Registration Card.

*Description:* 26 USC Chapters 51, 52 and 53 authorizes the collection of an occupational tax from persons engaging in certain alcoholic, tobacco and firearms businesses. ATF F 5630.5R and 5630.5RC are to be used for the renewal cycle to both compute and report the tax, and as an application for registry as required by statute. Upon receipt of the tax, a special tax stamp is issued.

*Respondents:* Individuals or households, Businesses or other for-profit, Federal agencies or employees, Small businesses or organizations.

*Estimated Number of Respondents:* 402,000.

*Estimated Burden Hours Per Response:* 30 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting Burden:* 201,000 hours.

*OMB Number:* 1512-0083.

*Form Number:* ATF F 5130.6 (1582-B).

*Type of Review:* Extension.

*Title:* Drawback on Beer Exported.

*Description:* When beer is withdrawn from a brewery taxpaid and ultimately exported, the business exporting the beer becomes eligible for drawback or refund of the Federal taxes paid. By completion of this form, plus supporting documentation, the exporter can have tax monies returned.

*Respondents:* Business or other for-profit, Small businesses or organizations.

*Estimated Number of Respondents:* 100.

*Estimated Burden Hours Per Response:* 1 hour.

*Frequency of Response:* On occasion

*Estimated Total Reporting Burden:* 5,000 hours.

*OMB Number:* 1512-0162.

*Form Number:* ATF F 3087 (5210.9).

*Type of Review:* Extension.

*Title:* Inventory-Manufacturer of Tobacco Products.

*Description:* This form is necessary to determine the beginning and ending inventories of tobacco products at the premises of a tobacco products manufacturer. The inventory is recorded on this form by the proprietor and is used to determine tax liability, compliance with regulation and for protection of the revenue.

*Respondents:* Businesses or other for-profit, Small businesses or organizations.

*Estimated Number of Respondents:* 34.

*Estimated Burden Hours Per Response:* 5 hours.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 170 hours.

*OMB Number:* 1512-0164.

*Form Number:* ATF F 3069 (5200.7).

*Type of Review:* Extension.

*Title:* Schedule of Tobacco Products, Cigarette Papers or Tubes Withdrawn From the Market.

*Description:* ATF F 3069 (5200.7) is used by persons who intend to withdraw tobacco products from the market for which the tax has already been paid or determined. The form describes the products that are to be withdrawn to determine the amount of tax to be claimed later as a tax credit or refund. The form notifies ATF when withdrawal or destruction is to take place, and ATF may elect to supervise withdrawal or destruction.

*Respondents:* Businesses or other for-profit, Small businesses or organizations.

*Estimated Number of Respondents:* 174.

*Estimated Burden Hours Per Response:* 45 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 1,566 hours.

*OMB Number:* 1512-0184.

*Form Number:* ATF F 5400.4.

*Type of Review:* Extension.

*Title:* Explosives Transaction Record (Nonlicensee/Nonpermittee).

*Description:* This form is used to verify the qualification and identification of unlicensed persons wishing to purchase explosives materials from licensed dealers, as well as the location in which the explosives are intended for storage and/or use. ATF uses the information in its investigations and inspections to establish leads and determine compliance.

*Respondents:* Businesses or other for-profit, Small businesses or organizations.

*Estimated Number of Respondents:* 1,140.

*Estimated Burden Hours Per Response/Recordkeeping:* 3 hours 10 mins.

*Frequency of Response:* On occasion.

*Estimated Total Recordkeeping/Reporting Burden:* 7,227 hours.

*OMB Number:* 1512-0336.

*Form Number:* ATF REC 5150/2.

*Type of Review:* Extension.

*Title:* Letterhead Applications and Notices Relating to Denatured Spirits.

*Description:* Denatured spirits are used for nonbeverage industrial purposes in the manufacture of personal/household products. Permits/applications control the authorized uses and flow. Tax revenue and public safety is protected.

*Respondents:* State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

*Estimated Number of Respondents:* 3,111.

*Estimated Burden Hours Per Response:* 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Recordkeeping/Reporting Burden:* 1,556 hours.

*OMB Number:* 1512-0337.

*Form Number:* ATF REC 5150/1.

*Type of Review:* Extension.

*Title:* Usual and Customary Business Records Relating to Denatured Spirits.

*Description:* Denatured spirits are used for nonbeverage industrial purposes in the manufacture of personal/household products. Records ensure spirits accountability. Tax revenue and public safety are protected.

*Respondents:* State or local governments, Businesses or other for-profit, Small businesses or organizations.

*Estimated Number of Recordkeepers:* 3,111.

*Estimated Burden Hours Per Recordkeeper:* None.

*Frequency of Response:* Recordkeeping.

*Estimated Total Reporting Burden:* 1 hour.

*OMB Number:* 1512-0345.

*Form Number:* ATF REC 5150/12.

*Type of Review:* Extension.

*Title:* Manufacturers Recovering Taxpaid Alcohol.

*Description:* Manufacturers, apothecaries, pharmacists, etc. may use and recover taxpaid alcohol for nonbeverage purposes in the manufacture of flavoring extracts, food products and compounding medicines and receive drawback. Records ensure spirits accountability and protect tax revenues.

*Respondents:* Businesses or other for-profit.

*Estimated Number of Respondents:* 20.

*Estimated Burden Hours Per Response/Recordkeeping:* 90 hours.

*Frequency of Response:* On original notification.

*Estimated Total Recordkeeping/Reporting Burden:* 1,800 hours.

*OMB Number:* 1512-0358.

*Form Number:* ATF REC 5210/1.

*Type of Review:* Extension.

*Title:* Tobacco Products Manufacturers—Records of Operations.

*Description:* Tobacco products manufacturers must maintain a system of records that provide accountability over the tobacco products received and produced. The system of records is needed to enable ATF officers to trace tobacco products transactions and ensure that tax liabilities have been totally satisfied.

*Respondents:* Businesses or other for-profit.

*Estimated Number of Recordkeepers:* 145.

*Estimated Burden Hours Per Recordkeeper:* 150 hours.

*Frequency of Response:* Recordkeeping.

*Estimated Total Recordkeeping Burden:* 21,750 hours.

*OMB Number:* 1512-0363.

*Form Number:* ATF REC 5210/6.

*Type of Review:* Extension.

*Title:* Tobacco Products Manufacturers—Supporting Records for Removals for the Use of the United States.

*Description:* Used by tobacco products manufacturers to record removals of tobacco products for the use of the United States. Used by ATF to verify that removal was tax exempt. Needed to maintain accountability over removals; allows transactions to be traced. Protects tax revenue.

*Respondents:* Businesses or other for-profit.

*Estimated Number of Recordkeepers:* 125.

*Estimated Burden Hours Per Recordkeeper:* 5 hours.

*Frequency of Response:* Recordkeeping.

*Estimated Total Recordkeeping Burden:* 625 hours.

*OMB Number:* 1512-0368.

*Form Number:* ATF REC 5230/1.

*Type of Review:* Extension.

*Title:* Tobacco Products Importer or Manufacturer—Records of Large Cigar Wholesale Prices.

*Description:* Used by tobacco products importers or manufacturers who import or make large cigars. Record needed to verify wholesale prices of those cigars; tax is based on those prices. Ensures that all tax revenues due the government are collected.

*Respondents:* Businesses or other for-profit.

*Estimated Number of Recordkeepers:* 140.

*Estimated Burden Hours Per Recordkeeper:* 2 hour 20 minutes.

*Frequency of Response:*  
Recordkeeping.

*Estimated Total Recordkeeping Burden:* 327 hours.

*OMB Number:* 1512-0371.

*Form Number:* ATF REC 5400/1.

*Type of Review:* Extension.

*Title:* Inventories: Licensed Explosives Importers, Manufacturers, Dealers and Permittees.

*Description:* These records show the explosive material inventories of those persons engaged in the various activities within the explosives industry, and are used by the government as initial figures from which an audit trail can be developed during the course of a compliance inspection or criminal investigation.

*Respondents:* Businesses or other for-profit, Small businesses or organizations

*Estimated Number of Recordkeepers:* 12,249.

*Estimated Burden Hours Per Recordkeeper:* 2 hours.

*Frequency of Response:*  
Recordkeeping.

*Estimated Total Recordkeeping Burden:* 24,588 hours.

*OMB Number:* 1512-0373.

*Form Number:* ATF REC 5400/3.

*Type of Review:* Extension.

*Title:* Records and Supporting Data: Importation, Receipt, Storage, and Disposition by Licensed Explosives Importers, Dealers, and Permittees.

*Description:* These are the records of importation, receipt, storage, and disposition of explosive materials by persons engaged in business within the explosives industry, and are used by the Government to determine where and to whom explosive materials are sent, thereby ensuring these materials are kept out of criminal commerce.

*Respondents:* Businesses or other for-profit, Small businesses or organizations

*Estimated Number of Recordkeepers:* 8,646.

*Estimated Burden Hours Per Recordkeeper:* 20 hours.

*Frequency of Response:*  
Recordkeeping.

*Estimated Total Recordkeeping Burden:* 173,000 hours.

*OMB Number:* 1512-0391.

*Form Number:* ATF REC 5210/10.

*Type of Review:* Extension.

*Title:* Tobacco—Record of Disposition of More Than 60,000 Cigarettes in a Single Transaction.

*Description:* Records must be maintained by tobacco products manufacturers and cigarette distributors showing details of large cigarette transactions; used to trace the movement of contraband cigarettes. Helps curtail the illicit traffic in cigarettes between states.

*Respondents:* Businesses or other for-profit, Small businesses or organizations.

*Estimated Number of Recordkeepers:* 9,500.

*Estimated Burden Hours Per Recordkeeper:* 120 hours.

*Frequency of Response:*  
Recordkeeping.

*Estimated Total Recordkeeping Burden:* 1,140,000 hours.

*Clearance Officer:* Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

*OMB Reviewer:* Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

*Departmental Reports Management Officer.*

[FR Doc. 89-8545 Filed 4-11-89; 8:45 am]

**BILLING CODE 4810-25-M**

### Silver Sales

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury, pursuant to the Treasury Department Appropriations Act 1989 (Title I, Pub. L. 100-440), announces its plans to sell two million five hundred thousand fine troy ounces of silver annually during fiscal years 1989, 1990 and 1991. The amount of silver required to be sold each year may be reduced if the Secretary, or his designee, makes a written determination to the Congress that such a sale will severely disrupt the domestic market for silver. In addition, particular sales scheduled within a fiscal year may be postponed when the Treasury determines that it is advisable in the public interest to do so.

**ADDRESSES:** Copies of the Treasury's economic analysis used to determine the criteria for sales may be obtained from: Office for Public Affairs and Public Liaison, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Levine, Office for Public Affairs, telephone 202-566-2041.

**SUPPLEMENTARY INFORMATION:** The Secretary has delegated the authority to sell silver under sections 621-623 of Pub. L. 100-440 to the Treasurer of the United States, who is authorized to redelegate operational responsibility for sales. Prior to authorizing each sale, the Treasurer will consult with a Silver Sales Review Group comprised of the Assistant Secretaries for Economic Policy, Domestic Finance, International Affairs,

Legislative Affairs, and Management, or their respective designee. Sales will proceed as scheduled at the direction of the Treasurer unless the Review Group advises the Treasurer in writing that a sale should not proceed.

Two sales of 1,250,000 fine troy ounces each are planned for fiscal year 1989. Sales are expected in May and August, 1989. Four quarterly sales of 625,000 fine troy ounces each are expected in October, January, April, and July of fiscal years 1990 and 1991. It is anticipated that the U.S. Mint will conduct the sales using the Defense Logistics Agency as an agent.

The Department has developed the following market-based criterion to define "severe market disruption":

A proposed sale should be allowed to go forward unless there have been at least 15 spot market declines in the price of silver in the previous 20 business days, and the price of silver has fallen by five percent or more during those 20 days.

The rule will be applied on the day before the sale is announced, making use of that day's price and the prices for the previous 20 trading days, to determine whether the announcement should take place. Then, if the rule permits the announcement to be done, the rule will be applied again using the price figure six days prior to the date of sale and the figures from the previous 20 days. If this second application of the rule indicates that the sale should be cancelled, there will be five days left to announce the cancellation.

Using that criterion, the Department expects to hold its first sale in early May.

David M. Nummy,

*Acting Assistant Secretary of the Treasury (Management).*

[FR Doc. 89-8580 Filed 4-11-89; 8:45 am]

**BILLING CODE 4810-25-M**

### Bureau of Alcohol, Tobacco and Firearms

[Notice No. 681]

### Appointments of Individuals To Serve as Members of the Performance Review Board; Senior Executive Service

The Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4) requires that the appointment and changes in the membership of performance review boards be published in the Federal Register. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of the performance review board for the Bureau of Alcohol, tobacco and

Firearms (ATF) for the rating year beginning July 1, 1988, and ending June 30, 1989. This notice effects changes in the membership of the ATF Performance Review Board previously appointed May 5, 1987 (52 FR 16478).

#### Name and Title

John W. Mangels—Director, Office of Operations, Department of the Treasury.

Paul T. Weiss—Associate Administrator for Administration, General Services Administration.

Philip P. Russo—Assistant Director, Taxpayer Services Division, Internal Revenue Service, Department of the Treasury.

Marvin J. Dessler—Chief Counsel, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

**FOR FURTHER INFORMATION CONTACT:** James J. Panagis, Personnel Division, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, (202) 566-7146.

Signed: April 4, 1989.

Stephen E. Higgins,  
Director.

[FR Doc. 89-8548 Filed 4-11-89; 8:45 am]

BILLING CODE 4810-31-M

#### Fiscal Service

[Dept. Circ. 570, 198—Rev., Supp. No. 8]

#### Surety Companies Acceptable on Federal Bonds; Suspension of Authority; Binford Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Binford Insurance Company of Schaumburg, IL, under the United States Code, Title 31, sections 9304-9308, to qualify as an acceptable surety on Federal bonds, is hereby suspended, effective this date. The suspension will remain in effect until further notice.

This suspension does not preclude Binford Insurance Company from writing bonds for the U.S. Customs Service.

The Company was last listed as an acceptable surety on Federal bonds at 53 FR 25057, July 1, 1988. Federal bond-approving officers should annotate their reference copies of Treasury Circular 570 to reflect the suspension.

With respect to any bonds currently in force with Binford Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921.

Mitchell A. Levine,

Assistant Commissioner, Comptroller  
Financial Management Service.

Dated: April 6, 1989.

[FR Doc. 89-8593 Filed 4-11-89; 8:45 am]

BILLING CODE 4810-35-M

#### DEPARTMENT OF VETERANS AFFAIRS

##### Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs<sup>1</sup>.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202), 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before May 12, 1989.

Dated: April 5, 1989.

<sup>1</sup> On March 15, 1989, the Veterans Administration became the Department of Veterans Affairs (see 54 FR 10476).

By direction of the Secretary:

Frank E. Lalley,

Director, Office of Information Management and Statistics.

#### Extension

1. Veterans Benefits Administration
2. Veteran's Application for Compensation or Pension
3. VA Form 21-526
4. This form is used to gather the information needed to determine eligibility for disability benefits.
5. Once
6. Individuals or households
7. 248,284 responses
8. 1 1/3 hours
9. Not applicable

[FR Doc. 89-8598 Filed 4-11-89; 8:45 am]

BILLING CODE 8320-01-M

#### Privacy Act of 1974; Report of Matching Program

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice of matching program—veterans indebtedness records with Administrative Office of the Courts personnel file.

**SUMMARY:** The Department of Veterans Affairs (VA) is providing notice that the Veterans Benefits Administration will conduct a series of recurring computer matches of VA compensation, pension, education, rehabilitation and home loan default indebtedness records with Administrative Office of the Courts Personnel File.

The goal of these matches is to identify active Office of the Courts employees, who are indebted to the Department of Veterans Affairs under the compensation, pension, education and rehabilitation benefit programs or resulting from home loan defaults. The purpose of the match is to initiate salary offset in the collection of unpaid obligations to the VA.

**DATES:** It is anticipated that the matches will commence in approximately April 1989.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Helen Anthony, Veterans Benefits Administration (20B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, 202-233-6591.

**SUPPLEMENTARY INFORMATION:** Further information regarding the matching program is provided below. This information is required by paragraph 5.f(1) of the Revised Supplemental Guidance for Conducting Matching Programs, issued by the Office of Management and Budget (47 FR 21656,

May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Approved: April 15, 1989.

Edward J. Derwinski,  
Secretary of Veterans Affairs.

**Report of Matching Program:  
Department of Veterans Affairs  
Compensation, Pension, Education,  
Rehabilitation and Home Loan Default  
Indebtedness Records and  
Administrative Office of the Courts  
Personnel File**

a. *Authority:* The Debt Collection Act of 1982, Public Law 97-365.

b. *Program Description:*

(1) *Purpose:* The Department of Veterans Affairs, Veterans Benefits Administration, plans to match indebtedness records for veterans and their dependents with the Record Office of the Administrative Office of the Courts to identify active Office of the Courts employees, who are indebted to the Department of Veterans Affairs. The purpose of the match is to initiate salary offset when all other collection actions have been unsatisfactory.

(2) *Procedures:* A match will be made of VA debt records with the Office of the Courts Personnel File. The match will be performed by the VA, Veterans Benefits Administration. In order to conduct a match, the VA will request that Office of the Courts provide computerized extracts of their Record Office Personnel File containing names, identifying data and record descriptions. When necessary to resolve the identity of debtors who may be listed in Office

of the Courts records, the VA will conduct appropriate, independent inquiries. This match will be repeated periodically.

In the event of a "hit", i.e., the determination through the matching program that a debtor appears on Office of the Courts files as an Office of the Courts employee, the identity of the debtor will be verified by the VA. If confirmed, the information will be referred by the VA for action to recover the outstanding debt(s) by salary offset, when all other collection actions have been pursued and have been unsatisfactory.

c. *Records to be Matched:* A computer extract list from the following systems of records will be matched with Office of the Courts Records Office Personnel File:

58VA21/22—Compensation, Pension, Education and Rehabilitation Records—VA; Privacy Act Issuances, 1986 Comp., Volume V, pages 798-802; as amended at 52 FR 4078, February 9, 1987. The disclosure of information from this system of records for the purpose of the matching program is permitted by published routine uses 11 through 13.

55VA26—Loan Guaranty Home, Condominium and Manufactured Home Loan Application Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records—VA; Privacy Act Issuances, 1986 Comp., Volume V, pages 794-796 and amended at 52 FR 721, January 8, 1987. The disclosure of information from this system of records, for the purpose of the matching program is permitted by published routine uses 17 and 19.

d. *Period of Match:* Intermittently from approximately April 1989.

e. *Safeguards:* Records used in the matches and data generated as a result, will be safeguarded from unauthorized disclosure. Access will be limited to those persons who have a need for the information in order to conduct the matches or follow-up actions. All of the material will be stored in locked containers when not in use. The matching files to be used in this project will remain under the control of the Veterans Benefits Administration. The matching file will be used and accessed only to match files in accordance with this notice. It will not be used to extract information concerning "non-hit" individuals for any purpose. It will not be disseminated outside the Veterans Benefits Administration unless authorized by the Chief Benefits Director.

f. *Retention and Disposition:* Records not resulting in "hits" will not be used by the VA for any purpose. Records not resulting in "hits" will be destroyed by burning, shredding or electronic erasing within two months of the completion of the individual matches. Records resulting in "hits" will be retained by the Veterans Benefits Administration until the completion of any necessary administrative, collection or legal action and will then be disposed of in accordance with approved records control schedules and/or approved disposition authority from the Archivist of the United States.

[FR Doc. 89-8609 Filed 4-11-89; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register

Vol. 54, No. 69

Wednesday, April 12, 1989

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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## FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

**TIME AND DATE:** 11:00 a.m., Monday, April 17, 1989.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

### MATTERS TO BE CONSIDERED:

1. Policy regarding annual leave program for officers. (This item was originally announced for a closed meeting on March 30, 1989.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and Salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

### CONTACT PERSON FOR MORE

**INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 7, 1989.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 89-8726 Filed 4-7-89; 4:34 pm]

BILLING CODE 6210-01-M

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## FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 13604, April 4, 1989.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 11:00 a.m., Monday, April 10, 1989.

**CHANGES IN THE MEETING:** Addition of the following closed item(s) to the meeting:

Consideration of legislation relating to banking structure.

### CONTACT PERSON FOR MORE

**INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: April 10, 1989.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 89-8851 Filed 4-10-89; 3:24 pm]

BILLING CODE 6210-01-M

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## UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-89-14

**TIME AND DATE:** Wednesday, April 26, 1989 at 10:00 a.m.

**PLACE:** Room 101, 500 E Street, SW., Washington, DC 20436.

**STATUS:** Open to the public.

### MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints.
5. Inv. No. 731-TA-405 (f) (Sewn Cloth Headwear from the People's Republic of China)—briefing and vote.
6. Any items left over from previous agenda.

### CONTACT PERSON FOR MORE

**INFORMATION:** Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

*Secretary.*

April 6, 1989.

[FR Doc. 89-8787 Filed 4-10-89; 11:49 am]

BILLING CODE 7020-02-M

## UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-89-13]

**TIME AND DATE:** Wednesday, April 19, 1989 at 10:00 a.m.

**PLACE:** Room 101, 500 E Street, SW., Washington, DC 20436.

**STATUS:** Open to the public.

### MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints: Certain Phenylene Sulfide Polymers and Polymer Compound and Products Containing Same (D/N 1496)
5. Any items left over from previous agenda.

### CONTACT PERSON FOR MORE

**INFORMATION:** Kenneth R. Mason, Secretary, (202) 252-1000.

April 5, 1989.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 89-8788 Filed 4-10-89; 11:49 am]

BILLING CODE 7020-02-M

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## POSTAL RATE COMMISSION

**TIME AND DATE:** 2:30 p.m., Thursday, April 13, 1989.

**PLACE:** Conference Room, 1333 H Street NW., Suite 300, Washington, DC 20268.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** To discuss the motion of the Postal Service to dismiss in docket No. C89-1.

### CONTACT PERSON FOR MORE

**INFORMATION:** Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street NW., Washington, DC 20268-0001, telephone (202) 789-6840.

Charles L. Clapp,

*Secretary.*

[FR Doc. 89-8749 Filed 4-10-89; 9:20 am]

BILLING CODE 7715-01-M

# Corrections

Federal Register

Vol. 54, No. 69

Wednesday, April 12, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 178

[Docket No. 87F-0294]

#### Indirect Food Additives; Polymers

##### *Correction*

In rule document 89-7150 appearing on page 12432 in the issue of Monday,

March 27, 1989, make the following correction:

#### § 178.3295 [Corrected]

On page 12432, in the third column, in the table, under "Limitations", in the seventh line, "§ 117.1520(c)" should read "§ 177.1520(c)".

BILLING CODE 1505-01-D

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### 43 CFR Public Land Order 6702

[ID-943-09-4214; I-07470, I-09371, I-012556, I-15302, I-15594]

**Revocation of Secretarial Order Dated December 9, 1918, Bureau of Land Management Order Dated August 18, 1955, and Public Land Order Numbers 1829, 2022, 2066, and 3164; Idaho**

##### *Correction*

In rule document 89-529 beginning on page 976 in the issue of Wednesday, January 11, 1989, make the following correction:

On page 977, in the second column, under T.8N., R.14E., the first line should read, "Sec. 5, lots 3, 4, S½NW¼, and S½".

BILLING CODE 1505-01-D

**Federal Register**

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**Wednesday  
April 12, 1989**

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**Part II**

**Environmental  
Protection Agency**

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**40 CFR Part 503**

**Standards for the Disposal of Sewage  
Sludge; Locations and Schedules for  
Public Hearings and Workshops on the  
Proposed Regulations**



**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 503**

[FRL-3552-3]

**Proposed Standards for the Disposal of Sewage Sludge; Locations and Schedules for Public Hearings and Workshops****AGENCY:** Environmental Protection Agency.**ACTION:** Notice of locations and schedules for public hearings and workshops on the proposed regulations, Part 503—Standards for the Disposal of Sewage Sludge.**SUMMARY:** EPA announces the locations and schedules of four public hearings and two workshops for the proposed regulations, Part 503—Standards for the Disposal of Sewage Sludge. The Part 503 regulations were proposed on February 6, 1989 (54 FR 5746-5902) under the authority of sections 405 (d) and (e) of the Clean Water Act, as amended (33 U.S.C.A. 1251, *et seq.*). EPA will hold four public hearings to receive oral and written comments on the proposal and answer questions, and will conduct two workshops to discuss the technical bases of the proposed regulations.**DATES:** For dates of hearings and workshops see SUPPLEMENTARY INFORMATION.**ADDRESSES:** For addresses of hearings and workshops see SUPPLEMENTARY INFORMATION.**FOR FURTHER INFORMATION CONTACT:** Mark L. Morris, Sludge Regulation and Management Branch (WH-585), 401 M Street, SW., Washington, DC 20946, (202) 475-7312. To schedule oral testimony (public hearings only), register attendance, or for logistical information regarding the hearings and workshops, contact EPA's Sludge Hotline, 6 Whittemore Street, Arlington, MA 02174, Telephone (617) 648-7898/7899.**SUPPLEMENTARY INFORMATION:** These hearings and workshops are scheduled as follows:**Public Hearings**

(1) Washington, July 6, 1989, Holiday Inn Capitol Hill, First Floor, 550 "C" Street, SW., Washington, DC 20024.

(2) Boston, July 13, 1989, John Hancock Hall, 180 Berkeley Street, Boston, MA 02117.

(3) Chicago, July 18, 1989, Chicago Marriott Downtown, Conference Room 8, Third Floor, 540 Michigan Avenue, Chicago, IL 60611.

(4) San Francisco, July 20, 1989, Lone Mountain Conference Center, University of San Francisco, Ignatian Heights, 2800

Turk Street (between Parker &amp; Masonic Sts.), San Francisco, CA 94117-1080.

**Workshops**

(1) Philadelphia, May 23-24, 1989, Adam's Mark Philadelphia, City Avenue &amp; Monument Road, Philadelphia, PA 19131.

(2) Seattle, May 31-June 1, 1989, Red Lion Inn, 300 112th Avenue, Bellevue, WA 98004 (suburban Seattle).

**Background**On February 6, 1989, under authority of section 405 (d) and (e) of the Clean Water Act (CWA), as amended (33 U.S.C.A. 1251, *et eq.*), the Environmental Protection Agency (EPA) proposed regulations to protect public health and the environment from any reasonably anticipated adverse effects of certain pollutants which may be present in sewage sludge (54 FR 5746-5902). The regulation establishes requirements for the final use and disposal of sewage sludge when it is applied to the land, distributed and marketed, placed in monofills (sludge-only landfills) or on surface-disposal sites, or incinerated. The standards for each end use and disposal method consist of either limits on the pollutant concentrations in sewage sludge or equations for calculating these pollutant limits; management practices; and other requirements that prescribe the level of management control that treatment works, users, and disposers must exercise over sewage sludge. EPA also proposed monitoring, record keeping, and reporting requirements.

These standards apply to publicly and privately owned treatment works that generate or treat domestic sewage sludge, as well as to any person who uses or disposes of sewage sludge from such treatment works. Consistent with the statute, the proposed rule requires compliance within 12 months of the date the rule is promulgated, or within 24 months if the regulations require construction of new pollution control facilities. Qualified publicly owned treatment works (POTWs) that comply with the requirements in 40 CFR Part 403 may be eligible to revise categorical pretreatment standards applicable to industrial users in order to allow additional discharges into POTWs of the pollutants included in this rule.

The proposed standards do not apply to sewage sludge treatment processes that precede final use or disposal or to domestic sewage that is treated along with industrial waste and wastewater by privately owned industrial facilities.

In addition, standards are not established in this part for sewage sludge that is determined to be hazardous using the procedures in 40 CFR Part 261, Appendix II, or to sewage

sludge found to contain greater than 50 parts per million (ppm) of polychlorinated biphenyls (PCBs). Requirements in 40 CFR Parts 261-268 apply to sewage sludge determined to be hazardous, and requirements in 40 CFR Part 761 apply to sewage sludge containing greater than 50 ppm of PCBs. Compliance with these requirements will constitute compliance with section 405 of the CWA. Included in the rule are conforming amendments to 40 CFR Part 257. The conforming amendments remove the applicability of Part 257 for sewage sludge disposed of by those practices for which EPA is proposing standards under Part 503.

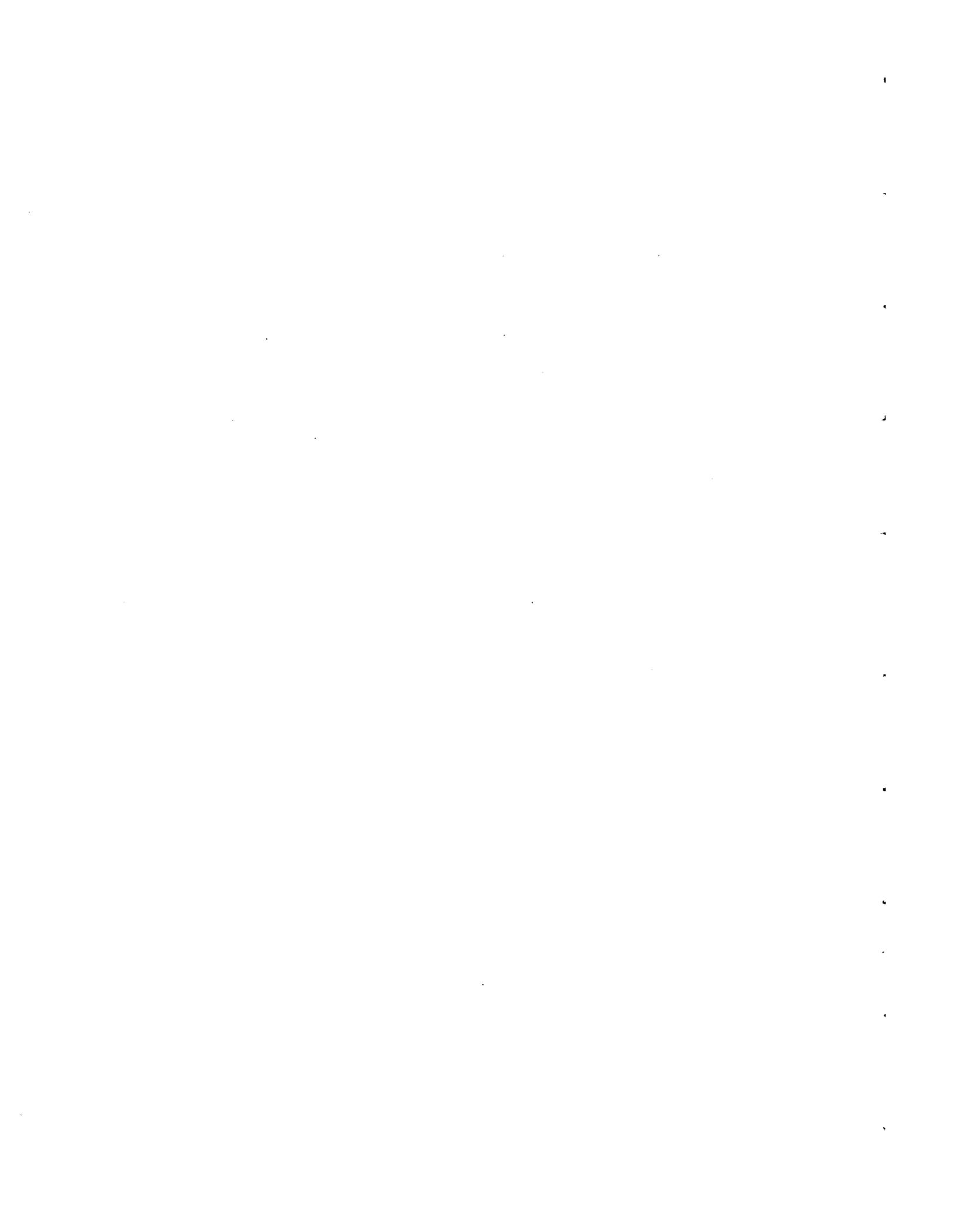
Because of the innovative and precedential risk-based approaches used in developing the proposal, EPA has solicited public comments on a broad range of issues and requested specific data and information to support final promulgation. To allow the public ample time to respond, EPA will accept public comments on the proposed rule until August 7, 1989 (180-days). In addition, EPA will hold four 1-day public hearings to receive oral and written comments on the proposal, and will conduct two 2-day workshops to discuss the technical bases of the regulation.

Today, EPA is announcing the locations and schedules for the public hearings and workshops on the proposed rule.

The hearing registration will be at 8:00 am with the hearings beginning at 9:00 am and running until 5:30 pm. The hearings may be adjourned earlier if there are no remaining comments. Those who want to make a statement at the hearings should notify, in writing, Kate Schalk, Sludge Hotline, 6 Whittemore Street, Arlington, MA 02174. Such requests should be received 15 days in advance of each hearing. Those wishing to make oral presentations must restrict them to 15 minutes and are encouraged to have written copies of their complete comments for inclusion in the official record. If time allows, those who have not pre-registered will be allowed to make presentations after pre-registered speakers.

To better inform the public, EPA will also conduct two 2-day workshops prior to the public hearings to discuss the technical bases of the proposed rule. Pre-registration for the workshops is required due to space limitations. To register, please contact EPA's Sludge Hotline, 6 Whittemore Street, Arlington, MA 02174, Telephone (617) 648-7898/7899.

Rebecca Hanmer,  
Acting Assistant Administrator for Water.  
[FR Doc. 89-8419 Filed 4-11-89; 8:45 am]  
BILLING CODE 6560-50-M



**Federal Register**

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**Wednesday  
April 12, 1989**

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**Part III**

**Department of  
Education**

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**34 CFR Part 425 et al.  
State-Administered Adult Education  
Programs and Secretary's Discretionary  
Programs of Adult Education; Notice of  
Proposed Rulemaking**

**DEPARTMENT OF EDUCATION**

34 CFR Parts 425, 426, 432, 433, 434, 435, 436, 437, 438, and 441

**State-Administered Adult Education Programs and Secretary's Discretionary Programs of Adult Education**

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to issue regulations governing three State-administered Adult Education Programs and six Discretionary Programs of Adult Education. These programs are authorized by the Adult Education Act and the Stewart B. McKinney Homeless Assistance Act, as revised by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297) and the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628). These regulations explain the types of activities that the Secretary may support under each program, how to apply for an award under each program, and the basis on which the Secretary would make awards.

**DATE:** Comments must be received on or before June 12, 1989.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to Dr. Thomas L. Johns, Director, Policy Analysis Staff, Office of Vocational and Adult Education, U.S. Department of Education (Mary E. Switzer Building, Room 4521), 400 Maryland Avenue SW., Washington, DC 20202-7120. Telephone: (202) 732-2237.

A copy of any comments that concern information requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

**FOR FURTHER INFORMATION CONTACT:**

Mrs. Sharon A. Jones, Chairperson, Adult Education Regulations Taskforce, U.S. Department of Education (Mary E. Switzer Building, Room 4521), 400 Maryland Avenue SW., Washington, DC 20202-7120. Telephone: (202) 732-2470.

**SUPPLEMENTARY INFORMATION:**

**Background**

*Adult Education Act*

Pub. L. 100-297 was signed into law on April 28, 1988. Title II, Part B of Pub. L. 100-297 revises the Adult Education Act (the Act), which was previously set forth in 20 U.S.C. 1201 *et seq.* The revised Act continues Federal assistance for adult education through fiscal year 1993.

The primary effect of the Act is the continuance of the Adult Education State-administered Basic Grant Program. Under the revised Act States are now required to develop a systematic approach for meeting the needs of populations eligible for adult education programs. States must also expand the delivery of adult education services to reach typically underserved groups and involve a variety of public and private agencies and organizations that serve educationally disadvantaged adults in the development and implementation of the State's programs.

The Act heightens the focus of programs on "educationally disadvantaged adults"—defined by the Act generally as adults who demonstrate basic skills at or below the fifth grade level or have been placed in the lowest or beginning level of an adult education program. Special emphasis is also given to such adult populations as the incarcerated, individuals of limited English proficiency, adults with handicaps, adult immigrants, the chronically unemployed, homeless adults, migrant farmworkers, the institutionalized, and minorities. The Act also encourages long-range coordinated planning, and increases requirements related to coordination with other programs and public and community involvement. Beginning with the grant from the fiscal year 1990 appropriation, States must pay an increasing share of the cost of programs.

In addition to the basic State grant program, the Act authorizes several new categorical programs—some to be administered at the national level, others to be administered by the States.

*Stewart B. McKinney Homeless Assistance Act*

Title VI, Part A, Subpart 1 of Pub. L. 100-297 and Title VII, Subtitle A, section 701 of Pub. L. 100-628 amend section 702 of the McKinney Act, which authorizes the Adult Education for the Homeless Program. The amendments to section 702—

(1) Provide that State applications include "an estimate of the number of homeless adults expected to be served and the number of homeless adults within each of the school districts within the State to be served";

(2) Remove the State grant allocation formula;

(3) Provide authority for a discretionary program;

(4) Permit a State to implement the program either directly or through contracts or subgrants; and

(5) Expand the definition of State to include the Virgin Islands, Guam, American Samoa, and the

Commonwealth of the Northern Mariana Islands.

**Summary of Major Provisions**

(1) *Terms.* The Act uses interchangeably the terms "individuals of limited English proficiency," "persons with limited English proficiency," "limited English proficient adults," and "adults with limited English proficiency." The Act also defines "individuals of limited English proficiency" (section 312(11)) and cross-references a definition of "limited English proficiency" and "limited English proficient" when used with reference to individuals. The latter definition is found in section 7003(a)(1) of Pub. L. 100-297. For the sake of clarity, the regulations provide one definition for all of the terms that refer to persons of limited English proficiency. This is the definition in section 7003(a)(1). This definition includes at least all of the individuals covered in the definition in section 312(11) as well as other populations.

(2) *Adult Education State-administered Basic Grant Program—(a) State requirements.* Section 426.3 requires each State that participates in the Adult Education State-administered Basic Grant Program to designate the State educational agency (SEA) as the sole State agency responsible for the administration and supervision of its State program, and to assign qualified State personnel to carry out the SEA's responsibilities under the State plan.

In formulating the State plan, the SEA must meet with and utilize the State advisory council, if the State has chosen to establish a council, conduct at least two public hearings regarding the development of the State plan; make a thorough assessment of the needs of adults to be served and those served and of the capability of existing programs and institutions to meet those needs; and state the changes and improvements required in adult education to fulfill the purposes of the Act and the options for implementing those changes and improvements (§ 426.11).

The State application and plan must contain a variety of new assurances and descriptions. For example, these include the new assurance that funds will be used for programs, services, and activities that are designed to expand or improve the quality of adult education, to initiate new programs of high quality, or, where necessary, to maintain programs (§ 426.10(b)(3)). Further, each State must assure that information will be reported about the State's adult education students, programs,

expenditures, and goals, as may be required by the Secretary. Although not explicitly enumerated, these data may include, but are not limited to, information with respect to the age, sex, and race of students in programs assisted under the Act and whether the students complete the programs (§ 426.10(b)(10)).

The new required descriptions include, for example, a description of the needs of all segments of the adult population, particularly the needs of adults who are educationally disadvantaged (§ 426.12(a)(1)); a description of the manner in which the needs of adults of limited English proficiency or no English proficiency will be met through programs designed to teach English and, as appropriate, to allow those adults to progress effectively through the adult education program or to prepare them to enter the regular program of adult education as quickly as possible (§ 426.12(a)(8)); a description of how the special educational needs of adult immigrants, the incarcerated, adults with handicaps, the chronically unemployed, homeless adults, migrant farmworkers, the disadvantaged, and minorities in the State will be addressed (§ 426.12(a)(9)); and a description of the methods proposed for joint planning and coordination with programs conducted under a variety of State and Federal programs (§ 426.12(a)(13)).

The regulations clarify the statute by requiring that the descriptions of activities to be carried out under the State plan must also include a description of the policies, procedures, and activities for carrying out special experimental demonstration projects and teacher training projects and corrections education and education for other institutionalized adults (§ 426.12(a)(16) and (17), respectively). The regulations also require that State plans include the States' planned use of Federal funds for administrative costs, including planned expenditures for State advisory councils (§ 426.12(a)(18)).

The SEA must submit its State plan and application to the Secretary not later than 90 days prior to the first program year for which the plan is in effect (§ 426.13(a)). At least sixty days before submitting the State plan to the Secretary, the SEA must submit its plan to the State advisory council, if the State has chosen to establish a council, the State board or agency for vocational education, the State Job Training Coordinating Council under the Job Training Partnership Act, and the State board or agency for postsecondary education (§ 426.13(b) and (c)).

The provisions in section 435 of the General Education Provisions Act (GEPA) dealing with the general State application do not apply to State-administered adult education programs by virtue of section 341(c) of the Act.

(b) *Eligible recipients.* Local educational agencies (LEAs) and other public or private agencies, organizations, or institutions that meet certain conditions continue to be eligible to receive awards from SEAs. A consortium that includes a for-profit agency, organization, or institution is now also eligible if the for-profit entity has entered into a contract with an LEA or other nonprofit entity and the for-profit entity can make a significant contribution toward attaining the objectives of the Act (§§ 426.30 and 426.31(g)).

(c) *Local application requirements.* Section 322(a)(3) of the Act establishes local application requirements (§ 426.31(c)). In order to strengthen the link between local applications and the State plan, and to ensure accountability, the regulations include additional information the State may consider when reviewing local applications (§ 426.31(d)).

(d) *Program reviews and evaluations.* These regulations describe the program reviews and evaluations States are required to perform (§ 426.46), and the criteria the Secretary considers in approving a State's plan to carry out these activities (§ 426.22). Section 426.46(d)(1)(ii) requires States to report, within 90 days of the close of each program year, on the program review and evaluation activities it has conducted during that year. However, this requirement does not mean that States must restrict their program reviews and evaluations to a period of only 90 days after the close of a particular project.

(e) *State advisory councils.* States are not required to establish State advisory councils. However, if a council is established, there are several new provisions governing their operation (§§ 426.50 through 426.52). For example, the Governor — rather than the SEA — determines the level of funding for the council (§ 426.50(b)(4)). The costs of State councils are considered as State administrative costs (§ 426.50(b)(3)).

(f) *Fiscal requirements.* An SEA must expend not less than 10 percent of its grant for corrections education and education for other institutionalized adults (§ 426.33).

For grants awarded on or after June 30, 1991, an SEA may use no more than 5 percent of its grant or \$50,000, whichever is greater, to pay the costs for State

administration of the Program (§ 426.40(a)).

An eligible recipient may expend no more than 5 percent of its award for local administrative costs, except that necessary and reasonable costs in excess of the 5 percent limitation may be negotiated between an SEA and eligible recipient (§ 426.40(b)).

While section 361(b) of the Act apparently refers to the Federal fiscal year (October 1 through September 30) as a basis for maintenance of effort computations, by long standing practice States carry out their adult education programs on the basis of program years running from July 1 through June 30. The regulations, therefore, provide States the flexibility to perform maintenance of effort computations on either a Federal fiscal year or program year basis. However, once a State chooses the basis for its maintenance of effort computations, that basis must be used consistently.

(3) *National Workplace Literacy Program.* The National Workplace Literacy Program provides direct grants for demonstration projects that teach literacy skills needed in the workplace through education partnerships between business, industry, or labor organizations and educational organizations (§ 432.1). The regulations establish eligibility requirements (§ 432.2), program priorities (§ 432.20), and selection criteria for evaluating applications (§ 432.22). In general, Federal funds are to be used to pay 70 percent of the costs of projects (§ 432.30).

(4) *State-administered Workplace Literacy Program.* If the appropriation for the Workplace Literacy Program is \$50,000,000 or greater, the Secretary makes grants to SEAs — rather than making grants directly to partnerships. The SEAs in turn make awards to partnerships (§§ 433.1 and 433.30). The Secretary determines the amount of each State's allotment according to the formula in section 371(b)(7)(B) of the Act (§ 433.20). Section 433.21 implements a statutory provision under which States may not obligate after the end of a fiscal year any amount in excess of 10 percent of the amount allotted to the State for that fiscal year. The Secretary reallocates unobligated excess amounts to other States that did not have unobligated funds in excess of 10 percent. The Secretary is particularly interested in receiving comments about the implementation of this provision.

(5) *State-administered English Literacy Program.* Under this program, grants are provided to States for the establishment, operation, and

improvement of English Literacy programs of instruction that are designed to help limited English proficient adults, out-of-school youths, or both, achieve full competence in the English language (§ 434.3). To receive an award under this program, an SEA must have included in its State plan the descriptions required under section 372(a)(2) of the Act (§§ 434.2 and 434.10). These regulations establish a formula for determining the amount of each State's allotment (§ 434.20). The regulations also describe the eligible recipients, percentage requirements, and other conditions to be met after a State receives an award (§§ 434.30 through 434.33).

(6) *National English Literacy Demonstration Program for Individuals of Limited English Proficiency*. This discretionary program provides grants and contracts for the development of innovative approaches and methods of English literacy education for individuals of limited English proficiency (§ 435.3). The regulations describe eligible applicants and establish selection criteria for evaluating applications (§§ 435.2 and 435.21, respectively).

(7) *Adult Migrant Farmworker and Immigrant Education Program*. This discretionary program provides direct grants for planning, developing, and evaluating projects that are designed to provide adult education programs, services, and activities to meet the special needs of adult migrant farmworkers and immigrants (§ 436.2). The regulations describe eligible applicants, program priorities, and criteria for evaluating applications (§§ 436.3, 436.20, and 436.22, respectively). Eligible applicants, including SEAs, must provide direct services since there is no subgrant authority under this program (§ 436.3).

(8) *National Adult Literacy Volunteer Training Program*. This discretionary program provides direct grants for planning, implementing, and evaluating projects designed to train adult volunteers, especially the elderly, who wish to participate as tutors in local adult education programs under the Act (§ 437.3). The regulations describe the eligible applicants and selection criteria for evaluating applications (§§ 437.2 and 437.21, respectively). Eligible applicants, including SEAs, must provide direct services since there is no subgrant authority under this program (§ 437.2).

(9) *State Program Analysis Assistance and Policy Studies Program*. This discretionary program authorizes activities to assist States in evaluating the status and progress of adult education in achieving the purposes of

the Act (§ 438.1). The regulations provide for the program to be administered directly or through grants or contracts (§§ 438.2 and 438.3). The regulations also describe the type of activities to be funded (§ 438.3) and the criteria for evaluating applications (§ 438.21).

(10) *Adult Education for the Homeless Program*. This program—authorized by section 702 of the Stewart B. McKinney Homeless Assistance Act—provides financial assistance to enable State educational agencies to implement a program of literacy training and basic skills remediation for adult homeless individuals within their State (§ 441.1). The Adult Education for the Homeless Program is currently a formula grant program. However, as a result of the amendments in Pub. L. 100-297, the program will be administered as a national discretionary program in order to maximize the impact of the small amount of funds available specifically for educating homeless adults. The regulations also define terms (§ 441.5), establish criteria for evaluating applications (§ 441.21), describe conditions to be met after a State receives an award (§§ 441.30 and 441.31), and provide that a State may implement its program either directly or through contracts or subgrants (§ 441.1).

#### Applicable Regulations

The provisions in these proposed regulations that cite other applicable regulations, §§ 425.3 and 441.4, do not include the usual reference to 34 CFR Part 78 (Hearing Procedures for the Education Appeal Board), because the Education Appeal Board has been succeeded, as of October 25, 1988, by a new Office of Administrative Law Judges. In Pub. L. 100-297, Congress amended Part E of the General Education Provisions Act (GEPA), effective October 25, 1988, requiring the Secretary to establish an Office of Administrative Law Judges to replace the Education Appeal Board, and establishing new hearing procedures (20 U.S.C. 1234-1234i). The Department published proposed regulations implementing the amended Part E of GEPA on December 2, 1988, 53 FR 48866, and those regulations, when final, will apply to the adult education programs. Sections 425.3 and 441.4 of these regulations will then be amended to include references to the revised regulations under Part E.

#### Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the

criteria for major regulations established in the order.

#### Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Under the State-administered adult education programs, grants are available only to States, and States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act. To the extent that these regulations have an impact on small entities, they repeat statutory requirements.

The selection criteria for applications reviewed under the Secretary's discretionary programs require the minimum amount of information necessary for a fair appraisal of the activities proposed by applicants in order to ensure the funding of high quality projects.

#### Paperwork Reduction Act of 1980

Sections 426.10, 426.12, 426.13, 426.14, 426.22, 426.31, 426.44, 426.46, 426.51, 426.52, 432.22, 433.10, 433.32, 433.51, 434.10, 434.34, 435.21, 436.22, 437.21, 438.21, and 441.21 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for review.

(44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503, Attention: James D. Houser.

#### Intergovernmental Review

Programs covered by 34 CFR Parts 426, 432, 433, 434, 435, 436, 437, 438, and 441 are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

**Invitation to Comment**

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4521, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays.

To assist the Department in complying with specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

**Assessment of Educational Impact**

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects****34 CFR Part 425**

Administrative practice and procedure, Adult education, Education, and Grant programs.

**34 CFR Part 426**

Administrative practice and procedure, Adult education, Bilingual education, Business and industry, Colleges and universities, Day care, Education, Education of disadvantaged, Education of handicapped, Foreign persons, Grant programs, Labor unions, Libraries, Manpower training programs, Migrant labor, Minority groups, Prisoners, Public health, Reporting and recordkeeping requirements, Secondary education, Transportation, Vocational education, and Volunteers.

**34 CFR Parts 432 and 433**

Adult education, Business and industry, Colleges and universities, Day care, Education, Grant programs, Labor unions, Manpower training programs, Reporting and recordkeeping requirements, Schools, and Transportation.

**34 CFR Parts 434 and 435**

Adult education, Bilingual education, Education, Grant programs, and Reporting and recordkeeping requirements.

**34 CFR Part 436**

Adult education, Bilingual education, Education, Foreign persons, Grant programs, Migrant labor, and Reporting and recordkeeping requirements.

**34 CFR Part 437**

Adult education, Elderly, Education, Grant programs, Reporting and recordkeeping requirements, and Volunteers.

**34 CFR Parts 438 and 441**

Adult education, Education, Grant programs, and Reporting and recordkeeping requirements.

Dated: December 23, 1988.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.002 Adult Education State-administered Basic Grant Program; 84.192 Adult Education for the Homeless Program; and 84.198 National Workplace Literacy Program. Catalog of Federal Domestic Assistance Numbers have not been assigned for: State-administered Workplace Literacy Program; State-administered English Literacy Program; National English Literacy Demonstration Program for Adults of Limited English Proficiency; Adult Migrant Farmworker and Immigrant Education Program; National Adult Literacy Volunteer Training Program; and State Program Analysis Assistance and Policy Studies Program)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Parts 425 and 426, and adding new Parts 432, 433, 434, 435, 436, 437, 438, and 441 as follows:

1. Part 425 is revised to read as follows:

**PART 425—ADULT EDUCATION—GENERAL PROVISIONS**

Sec.

425.1 What is the purpose of the Adult Education Act?

425.2 What programs are authorized by the Adult Education Act?

425.3 What regulations apply to the adult education programs?

425.4 What definitions apply to the adult education programs?

Authority: 20 U.S.C. 1201 *et seq.*, unless otherwise noted.

**§ 425.1 What is the purpose of the Adult Education Act?**

The purpose of the Adult Education Act (the Act) is to assist the States to—

(a) Improve educational opportunities for adults who lack the level of literacy skills requisite to effective citizenship and productive employment;

(b) Expand and improve the current system for delivering adult education services, including delivery of these

services to educationally disadvantaged adults; and

(c) Encourage the establishment of adult education programs that will—

(1) Enable adults to acquire the basic educational skills necessary for literate functioning;

(2) Provide adults with sufficient basic education to enable them to benefit from job training and retraining programs and obtain and retain productive employment so that they might more fully enjoy the benefits and responsibilities of citizenship; and

(3) Enable adults who so desire to continue their education to at least the level of completion of secondary school.

(Authority: 20 U.S.C. 1201)

**§ 425.2 What programs are authorized by the Adult Education Act?**

The following programs are authorized by the Act:

(a) Adult Education State-administered Basic Grant Program (34 CFR Part 426).

(b) National Workplace Literacy Program (34 CFR Part 432).

(c) State-administered Workplace Literacy Program (34 CFR Part 433).

(d) State-administered English Literacy Program (34 CFR Part 434).

(e) National English Literacy Demonstration Program for Individuals of Limited English Proficiency (34 CFR Part 435).

(f) Adult Migrant Farmworker and Immigrant Education Program (34 CFR Part 436).

(g) National Adult Literacy Volunteer Training Program (34 CFR Part 437).

(h) State Program Analysis Assistance and Policy Studies Program (34 CFR Part 438).

(Authority: 20 U.S.C. 1201 *et seq.*)

**§ 425.3 What regulations apply to the adult education programs?**

The following regulations apply to the adult education programs:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations) for grants, including cooperative agreements, to institutions of higher education, hospitals, and nonprofit organizations.

(2) 34 CFR Part 75 (Direct Grant Programs) (applicable to Parts 432, 435, 436, 437, and 438).

(3) 34 CFR Part 76 (State-administered Programs) (applicable to Parts 426, 433, and 434), except that 34 CFR 76.101 (The general State application) does not apply.

(4) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(5) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(6) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements for State and Local Governments) for grants, including cooperative agreements, to State and local governments, including Indian tribal organizations.

(7) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this Part 425.

(c) The regulations in 34 CFR Parts 426, 432, 433, 434, 435, 436, 437, and 438.

(Authority: 20 U.S.C. 1201 *et seq.*)

**§ 425.4 What definitions apply to the adult education programs?**

(a) *Definitions in the Act.* The following terms used in regulations for adult education programs are defined in sections 312 and 320(b) of the Act:

Academic education

Adult

Adult education

Community-based organization

Community school program

Correctional institution

Criminal offender

Educationally disadvantaged adult

English literacy program

Institution of higher education

Local educational agency

Out-of-school youth

Private industry council

State educational agency

(b) *Definitions in EDGAR.* The following terms used in regulations for adult education programs are defined in 34 CFR 77.1:

Applicant

Application

Award

Budget

Budget period

Contract

ED

EDGAR

Fiscal year

Grant

Grantee

Nonprofit

Private

Project

Project period

Public

Secretary

Subgrant

Subgrantee

(c) *Other definitions.* The following definitions also apply to regulations for adult education programs:

"Act" means the Adult Education Act (20 U.S.C. 1201 *et seq.*).

"Adult basic education" means instruction designed for an adult who—

(1) Has minimal competence in reading, writing, and computation;

(2) Is not sufficiently competent to meet the educational requirements of adult life in the United States; or

(3) Is not sufficiently competent to speak, read, or write the English language to allow employment commensurate with the adult's real ability.

If grade level measures are used, adult basic education includes grades 0 through 8.9.

"Adult secondary education" means instruction designed for an adult who—

(1) Is literate and can function in everyday life, but is not proficient; or

(2) Does not have a certificate of graduation (or its equivalent) from a school providing secondary education.

If using grade level measures, adult secondary education includes grades 9 through 12.9.

"Adults with limited English proficiency," "persons with limited English proficiency," "individuals of limited English proficiency," and "limited English proficient adults" mean individuals who—

(1) Were not born in the United States or whose native language is a language other than English;

(2) Come from environments where a language other than English is dominant; or

(3) Are American Indian or Alaska Natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency; and

(4) Who, by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny these individuals the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in our society.

(Authority: 20 U.S.C. 3283(a)(1))

"Expansion" means that the State educational agency (SEA) has increased during the period covered by the State's four-year plan the number of agencies, institutions, and organizations—other than local educational agencies—used to provide adult education and support services in order to increase the number of adults served, particularly the number of typically underserved adults participating in the adult education program, such as educationally disadvantaged adults, individuals of limited English proficiency, and adults with handicaps.

"Homeless" or "homeless adult":

(1) The terms mean an adult lacking a fixed, regular, and adequate nighttime residence as well as an individual having a primary nighttime residence that is—

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(2) The terms do not include any adult imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(Authority: 42 U.S.C. 11301)

"Immigrant" means any refugee admitted or paroled into this country or any alien except one who is exempt under the provisions of the Immigration and Nationality Act, as amended.

(Authority: 8 U.S.C. 1101(a)(15))

"Institutionalized individual" means an adult, as defined in the Act, who is an inmate, patient, or resident of a correctional, medical, or special institution.

"Migrant farmworker" means a person who has moved within the past 12 months from one school district to another—or, in a State that is comprised of a single school district, has moved from one school administrative area to another—to enable him or her to obtain temporary or seasonal employment in any activity directly related to—

(1) The production or processing of crops, dairy products, poultry, or livestock for initial commercial sale or as a principal means of personal subsistence;

(2) The cultivation or harvesting of trees; or

(3) Fish farms.

"Outreach" means activities designed to—

(1) Inform educationally disadvantaged adult populations of the availability and benefits of the adult education program;

(2) Actively recruit these adults to participate in the adult education program; and

(3) Assist these adults to participate in the adult education program by providing reasonable and convenient access and support services to remove barriers to their participation in the program.

"Program year" means the twelve-month period during which a State operates its adult education program.

"State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and except for the purposes of section 313 of the Act, Guam, American Samoa, the Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, and the Virgin Islands. (Authority: 20 U.S.C. 1201a(7) and 48 U.S.C. 1681)

"State administrative costs" means costs for those management and supervisory activities necessary for direction and control by the State educational agency responsible for developing the State plan and overseeing the implementation of the adult education program under the Act. The term includes those costs incurred for State advisory councils under section 332 of the Act, but does not include costs incurred for such ancillary activities as evaluation, teacher training, dissemination, technical assistance, and curriculum development.

(Authority: 20 U.S.C. 1201 *et seq.*)

2. Part 426 is revised to read as follows:

## **PART 426—ADULT EDUCATION STATE-ADMINISTERED BASIC GRANT PROGRAM**

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Authority: 20 U.S.C. 1201 *et seq.*, unless otherwise noted.

### **Subpart A—General**

#### **§ 426.1 What is the Adult Education State-administered Basic Grant Program?**

The Adult Education State-administered Basic Grant Program (the program) is a cooperative effort between the Federal Government and the States to provide adult education. Federal funds are granted to the States on a formula basis. The States fund local programs of adult basic and secondary education based on need and resources available.  
 (Authority: 20 U.S.C. 1203)

#### **§ 426.2 Who is eligible for an award?**

State Educational Agencies (SEAs) are eligible for awards under this part.  
 (Authority: 20 U.S.C. 1203)

#### **§ 426.3 What are the general responsibilities of the State educational agency?**

(a) A State that desires to participate in the program shall designate the SEA as the sole State agency responsible for

the administration and supervision of the program under this part.

(b) The SEA has the following general responsibilities:

(1) Development, submission, and implementation of the State application and plan, and any amendments to these documents.

(2) Evaluation of activities, as described in section 352 of the Act and § 426.46.

(3) Consultation with the State advisory council, if a State advisory council has been established under section 332 of the Act and § 426.50.

(4) Consultation with other appropriate agencies, groups, and individuals involved in the planning, administration, evaluation, and coordination of programs funded under the Act.

(5)(i) Assignment of personnel as may be necessary for State administration of programs under the Act.

(ii) The SEA must ensure that—

(A) These personnel are sufficiently qualified by education and experience; and

(B) There is a sufficient number of these personnel to carry out the responsibilities of the State.

(6) If the State imposes any rule or policy relating to the administration and operation of programs under the Act (including any rule or policy based on State interpretation of any Federal law, regulation, or guidance), the SEA shall identify the rule or policy as a State-imposed requirement.

(Authority: 20 U.S.C. 1205 (a) and (b))

#### **§ 426.4 What regulations apply to the program?**

The following regulations apply to the program:

- (a) The regulations in this Part 426.  
 (b) The regulations in 34 CFR Part 425.

(Authority: 20 U.S.C. 1201 *et seq.*)

#### **§ 426.5 What definitions apply to the program?**

The definitions in 34 CFR 425.4 apply to this part.

(Authority: 20 U.S.C. 1201 *et seq.*)

### **Subpart B—How Does a State Apply for a Grant?**

#### **§ 426.10 What documents must a State submit to receive a grant?**

An SEA shall submit the following to the Secretary as one document:

(a) A State plan, developed once every four years, that meets the requirements of the Act and the regulations in this part.

(b) A State application consisting of program assurances, signed by an

authorized official of the SEA, to provide that—

(1) The SEA will provide such methods of administration as are necessary for the proper and efficient administration of the Act;

(2) Federal funds granted to the State under the Act will be used to supplement, and not supplant, the amount of State and local funds available for uses specified in the Act;

(3) Programs, services, and activities funded in accordance with the uses specified in section 322 of the Act are designed to expand or improve the quality of adult education programs, including programs for educationally disadvantaged adults, to initiate new programs of high quality, or, where necessary, to maintain programs;

(4) The SEA will provide such fiscal control and fund accounting procedures as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid to the State (including such funds paid by the State to eligible recipients under the Act);

(5) The SEA has instituted policies and procedures to ensure that copies of the State plan and all statements of general policy, rules, regulations, and procedures will be made available to the public;

(6) The SEA will comply with the maintenance of effort requirements in section 361(b) of the Act;

**Cross-Reference:** See § 426.42, What is the maintenance of effort requirement?

(7) Adults enrolled in adult basic education programs will not be charged tuition, fees, or any other charges, or be required to purchase any books or any other materials that are needed for participation in the program;

(8) The SEA may use not more than 20 percent of the funds granted to the State under the Act for programs of equivalency for a certificate of graduation from secondary school;

(9) As may be required by the Secretary, the SEA will report information concerning special experimental demonstration projects and teacher training projects supported under section 353 of the Act; and

(10) The SEA annually will report information about the State's adult education students, programs, expenditures, and goals, as may be required by the Secretary.

(Authority: 20 U.S.C. 1203a(b)(2), 1206a(c) (3) and (5), 1206b, 1207a, 1206, and 1209(b))

#### § 426.11 How is the State plan developed?

In formulating the State plan, the SEA shall—

(a) Meet with and utilize the State advisory council, if a council is

established under section 332 of the Act and § 426.50;

(b) After providing appropriate and sufficient notice to the public, conduct at least two public hearings in the State for the purpose of affording all segments of the public, including groups serving educationally disadvantaged adults, and interested organizations and groups an opportunity to present their views and make recommendations regarding the State plan;

(c) Make a thorough assessment of—

(1) The needs of adults, including educationally disadvantaged adults, eligible to be served as well as adults proposed to be served and those currently served by the program; and

(2) The capability of existing programs and institutions to meet those needs; and

(d) State the changes and improvements required in adult education to fulfill the purposes of the Act and the options for implementing these changes and improvements.

(Authority: 20 U.S.C. 1206a (a) (1) and (2), (b))

#### § 426.12 What must the State plan contain?

(a) Consistent with the assessment described in § 426.11(c), a State plan shall, for the four-year period covered by the plan, describe the following:

(1) The adult education needs of all segments of the adult population in the State identified in the assessment, including the needs of those adults who are educationally disadvantaged.

(2)(i)(A) The goals the SEA intends to achieve in meeting the needs described in paragraph (a)(1) of this section for the period covered by the plan.

(B) These goals must be designed to develop a statewide program in which the adult populations in the State, especially adults who are educationally disadvantaged, are served in a manner whereby they learn most effectively; and

(ii)(A) Proposed activities, methods, and strategies for reaching each goal, including the estimated percentages of funds under the State plan to be allocated to each goal; and

(B) The expected outcomes of programs, services, and activities.

(3) The curriculum, equipment, and instruments that are being used by instructional personnel in programs and how current these elements are.

(4) The means by which the delivery of adult education services will be significantly expanded (including efforts to reach typically underserved groups such as educationally disadvantaged adults, individuals of limited English proficiency, and adults with handicaps) through the use of agencies, institutions,

and organizations other than the public school system, such as businesses, labor unions, libraries, institutions of higher education, public health authorities, employment or training programs, antipoverty programs, organizations providing assistance to the homeless, and community and voluntary organizations.

(5) The means by which representatives of the public and private sectors were involved in the development of the State plan and how they will continue to be involved in the implementation of the plan, especially in the expansion of the delivery of adult education services by cooperation and collaboration with those public and private agencies, institutions, and organizations.

(6) The capability of existing programs and institutions to meet the needs described in paragraph (a)(1) of this section, including the other Federal and non-Federal resources available to meet those needs.

(7) The outreach activities that the State intends to carry out during the period covered by the plan, including specialized efforts—such as flexible course schedules, auxiliary aids and services, convenient locations, adequate transportation, and child care services—to attract and assist meaningful participation in adult education programs.

(8)(i) The manner in which the SEA will provide for the needs of adults of limited English proficiency or no English proficiency by providing programs designed to teach English and, as appropriate, to allow these adults to progress effectively through the adult education program or to prepare them to enter the regular program of adult education as quickly as possible.

(ii) These programs may, to the extent necessary, provide instruction in the native language of these adults or may provide instruction exclusively in English.

(iii) These programs must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

(9) How the particular educational needs of adult immigrants, the incarcerated, adults with handicaps, the chronically unemployed, homeless adults, the disadvantaged, and minorities in the State will be addressed.

(10)(i) The progress the SEA has made in achieving the goals set forth in each State plan subsequent to the initial State plan filed in 1989; and

(ii) How the assessment of accomplishments and the findings of program reviews and evaluations required by section 352 of the Act and § 426.46 were considered in establishing the State's goals for adult education in the plan being submitted.

(11) The progress the SEA expects to make in achieving the purposes of the Act during the four-year period of the plan.

(12) The criteria the SEA will use in approving applications by eligible recipients and allocating funds made available under the Act to those recipients.

(13) The methods proposed for joint planning and coordination with programs conducted under applicable Federal and State programs, including the Carl D. Perkins Vocational Education Act, the Job Training Partnership Act, the Rehabilitation Act of 1973, the Education of the Handicapped Act, the Immigration Reform and Control Act of 1986, the Higher Education Act of 1965, and the Domestic Volunteer Service Act, to ensure maximum use of funds and to avoid duplication of services.

(14) The steps taken to utilize volunteers, particularly volunteers assigned to the Literacy Corps established under the Domestic Volunteer Service Act and volunteers trained in programs carried out under section 382 of the Act and 34 CFR Part 437, but only to the extent that such volunteers supplement and do not supplant salaried employees.

(15) The measures to be taken to ensure that adult education programs, services, and activities under the Act will take into account the findings of program reviews and evaluations required by § 426.46.

**Cross-Reference:** See 34 CFR 426.22.

(16) The SEA's policies, procedures, and activities for carrying out special experimental demonstration projects and teacher training projects that meet the requirements of § 426.33.

(17) The SEA's policies, procedures, and activities for carrying out corrections education and education for other institutionalized adults that meet the requirements of § 426.32.

(18) The SEA's planned use of Federal funds for administrative costs under § 426.40(a), including any planned expenditures for a State advisory council under § 426.50.

(19) An SEA shall provide a summary of recommendations received and the SEA's response to the recommendations made through the State plan development process required under § 426.11(b).

(b) An SEA that is prohibited by State law from awarding Federal funds by subgrant or contract to public or private agencies, organizations, or institutions, other than local educational agencies, shall describe in its State plan—

(1) The legal basis of this prohibition; and

(2) How public or private agencies, organizations, or institutions will otherwise be used for expanding the delivery of services.

(c) To be eligible to participate in the State-administered Workplace Literacy Program under section 371(b) of the Act, an SEA shall comply with the requirements in 34 CFR 433.10.

(d) To be eligible to participate in the State-administered English Literacy Program under section 372(a) of the Act, an SEA shall comply with the requirements in 34 CFR 434.10.

(e) In order for a State, or the local recipients within the State, to be eligible to apply for funds under the Adult Migrant Farmworker and Immigrant Education Program under section 381 of the Act and 34 CFR Part 436, an SEA shall describe the types of projects appropriate for meeting the educational needs of adult migrant farmworkers and immigrants under section 381 of the Act.

(Authority: 20 U.S.C. 1204; 1205(c); 1206a(a)(2), (b)(1)(B), (c), (d); 1208; 1211(b)(3)(A); 1211a(a)(2); and 1213(a))

**§ 426.13 What procedures does a State use to submit its State plan?**

(a) An SEA shall submit its State plan to the Secretary not later than 90 days prior to the first program year for which the plan is in effect.

(b)(1) Not less than sixty days prior to submitting the State plan to the Secretary, the SEA shall give the State advisory council, if one is established under section 332 of the Act and § 426.50, an opportunity to review and comment on the plan.

(2) The SEA shall respond to all timely and substantive objections of the State advisory council and include with the State plan a copy of its response.

(c)(1) Not less than sixty days prior to submitting the State plan to the Secretary, the SEA shall give the following entities an opportunity to review and comment on the plan:

(i) State board or agency for vocational education.

(ii) State Job Training Coordinating Council under the Job Training Partnership Act.

(iii) State board or agency for postsecondary education.

(2) Comments (to the extent those comments are received in a timely fashion) of entities listed in paragraph (c)(1) of this section and the SEA's

response must be included with the State plan.

(Authority: 20 U.S.C. 1206(b) and 1206a(a)(3)(A) and (B))

**§ 426.14 When are amendments to a State plan required?**

If an amendment to the State plan is necessary, the amendment must be submitted to the Secretary not later than 90 days prior to the program year of operation to which the amendment applies.

(Cross-Reference: See 34 CFR 76.140)  
(Authority: 20 U.S.C. 1207(a))

**Subpart C—How Does the Secretary Make a Grant to a State?**

**§ 426.20 How does the Secretary make allotments?**

The Secretary determines the amount of each State's grant according to the formula in section 313(b) of the Act.

(Authority: 20 U.S.C. 1201b(b))

**§ 426.21 How does the Secretary make reallocations?**

(a) Any amount of any State's allotment under section 313(b) of the Act that the Secretary determines is not required, for the period the allotment is available, for carrying out that State's plan, is reallocated to other States on dates that the Secretary may fix.

(b) The Secretary determines any amounts to be reallocated on the basis of—

(1) Reports, filed by the States, of the amounts required to carry out their State plans; and

(2) Other information available to the Secretary.

(c) Reallocations are made to other States in proportion to those States' original allotments for the fiscal year in which allotments originally were made, unless the Secretary reduces a State's proportionate share by the amount the Secretary estimates will exceed the sum the State needs and will be able to use under its plan.

(d) The total of any reductions made under paragraph (c) of this section is reallocated among those States whose proportionate shares were not reduced.

(e)(1) Any amount reallocated to a State during a fiscal year is deemed part of the State's allotment for that fiscal year.

(2) A reallocation of funds from one State to another State does not extend the period of time in which the funds must be obligated.

(Authority: 20 U.S.C. 1201b(c))

**§ 426.22 What criteria does the Secretary use in approving a State's description of efforts relating to program reviews and evaluations?**

The Secretary considers the following criteria in approving a State's description of efforts relating to program reviews and evaluations under section 342(c)(13) of the Act and § 426.12(a)(15):

(a) The extent to which the State will have effective procedures for using the findings of program reviews and evaluations to identify, on a timely basis, those programs, services, and activities under the Act that are not meeting the educational goals set forth in the State plan and approved applications of eligible recipients.

(b) The adequacy of the State's procedures for effecting timely changes that will enable programs, services, and activities identified under paragraph (a) of this section to meet the educational goals in the State plan and approved applications of eligible recipients.

(c) The extent to which the State will continue to review those programs, activities, and services, and effect further changes as necessary to meet those educational goals.

(Authority: 20 U.S.C. 1206a(c)(13) and 1207a)

**§ 426.23 How does the Secretary approve State plans and amendments?**

(a) The Secretary approves, within 60 days of receipt, a State plan or amendment that the Secretary determines complies with the applicable provisions of the Act and the regulations.

(b) In approving a State plan or amendment, the Secretary considers any information submitted in accordance with § 426.13 (b) and (c).

(c) The Secretary notifies the SEA, in writing, of the granting or withholding of approval.

(d) The Secretary does not finally disapprove a State plan or amendment without first affording the State reasonable notice and opportunity for a hearing.

(Authority: 20 U.S.C. 1206(b), 1206a(a)(3), and 1207(b))

**Subpart D—How Does a State Make an Award to an Eligible Recipient?**

**§ 426.30 Who is eligible for a subgrant or contract?**

The following eligible recipients may apply to the SEA for an award:

(a) A local educational agency (LEA).

(b) A public or private nonprofit agency, organization, or institution.

(c) An LEA or public or private nonprofit agency, organization, or institution applying on behalf of a consortium that includes a for-profit

agency, organization, or institution that can make a significant contribution to attaining the objectives of the Act.

(Authority: 20 U.S.C. 1203a(a) (1), (2))

**§ 426.31 How does a State award funds?**

(a) In selecting local recipients, if appropriations under this program exceed the \$115,367,000 appropriated in the Fiscal Year 1988 appropriation for the basic grant program, an SEA shall give preference to those local applicants that have demonstrated or can demonstrate a capability to recruit and serve educationally disadvantaged adults.

(b) An SEA shall award funds on the basis of applications submitted by eligible recipients.

(c) In reviewing a local application, an SEA shall determine that the application contains the following:

(1) A description of current programs, activities, and services receiving assistance from Federal, State, and local sources in the area proposed to be served by the applicant.

(2) A description of cooperative arrangements (including arrangements with business, industry, and volunteer literacy organizations as appropriate) that have been made to deliver services to adults.

(3) Assurances that the adult educational programs, services, or activities that the applicant proposes to provide are coordinated with and not duplicative of programs, services, or activities made available to adults under other Federal, State, and local programs, including the Job Training Partnership Act, the Carl D. Perkins Vocational Education Act, the Rehabilitation Act of 1973, the Education of the Handicapped Act, the Indian Education Act, the Higher Education Act of 1965, and the Domestic Volunteer Service Act.

(4) Any other information the SEA considers necessary.

(d) In reviewing a local application, an SEA may consider the extent to which the application—

(1) Identifies the needs of the population proposed to be served by the applicant;

(2) Proposes activities that are designed to reach educationally disadvantaged adults;

(3) Describes a project that gives special emphasis to adult basic education;

(4) Describes adequate outreach activities, such as—

(i) Flexible schedules to accommodate the greatest number of adults who are educationally disadvantaged;

(ii) Location of facilities offering programs that are convenient to large

concentrations of the adult populations identified by the State in its four-year State plan or how the locations of facilities will be convenient to public transportation; and

(iii) The availability of day care and transportation services to participants in the project;

(5) Describes proposed programs, activities, and services that address the identified needs;

(6) Describes the resources available to the applicant—other than Federal and State adult education funds—to meet those needs (e.g., funds provided under the Job Training Partnership Act, the Carl D. Perkins Vocational Education Act, the Rehabilitation Act of 1973, the Education of the Handicapped Act, the Indian Education Act, the Higher Education Act of 1965, or the Domestic Volunteer Service Act, and local cash or in-kind contributions); and

(7) Describes project objectives that can be accomplished within the amount of the applicant's budget request.

(e) An SEA may not approve an application from a public or private agency, organization, or institution other than an LEA unless the applicant—

(1) Provides assurance to the State that the applicable LEA, located in the same city, county, township, school district, or other political subdivision of the State to be served by the applicant has been consulted;

(2) Provides the applicable LEA the opportunity to comment on the application; and

(3) Provides the comments of the LEA and any responses as an attachment to the application.

(f) An SEA may not approve an application from a consortium that includes a for-profit agency, organization, or institution unless the State has first determined that—

(1) The for-profit entity can make a significant contribution to attaining the objectives of the Act;

(2) The LEA, or public or private nonprofit agency, organization, or institution, will enter into a contract with the for-profit agency, organization, or institution for the establishment or expansion of programs; and

(3) The applicant, if not an LEA, has met the requirements of paragraph (f)(1) through (3) of this section.

(g) If an SEA awards funds to a consortium that includes a for-profit agency, organization, or institution, the award must be made directly to the LEA or public or private nonprofit agency, organization, or institution that applies on behalf of the consortium.

(Authority: 20 U.S.C. 1203a(a) and 1206a(c)(3))

**§ 426.32 What are programs for corrections education and education for other institutionalized individuals?**

(a) An SEA shall use not less than 10 percent of its grant for educational programs for criminal offenders in corrections institutions and for other institutionalized adults. Those programs may include—

- (1) Academic programs for—
  - (i) Basic education with special emphasis on reading, writing, vocabulary, and arithmetic;
  - (ii) Special education programs as defined by State law;
  - (iii) Bilingual or English-as-a-second-language program; and
  - (iv) Secondary school credit programs;
- (2) Vocational training programs;
- (3) Library development and library service programs;
- (4) Corrections education programs, training for teacher personnel specializing in corrections education, particularly courses in social education, basic skills instruction, and abnormal psychology;
- (5) Guidance and counseling programs;
- (6) Supportive services for criminal offenders, with special emphasis on the coordination of educational services with agencies furnishing services to criminal offenders after their release; and
- (7) Cooperative programs with educational institutions, community-based organizations of demonstrated effectiveness, and the private sector that are designed to provide education and training.

(b)(1) An SEA shall establish its own statewide criteria and priorities for administering programs for corrections education and education for other institutionalized adults.

(2) An SEA shall determine that an application proposing a project under paragraph (a) of this section contains the information in § 426.31(c) and any other information the SEA considers necessary.

(Authority: 20 U.S.C. 1203a(a)(3), (b)(1) and 1204)

**§ 426.33 What are special experimental demonstration projects and teacher training projects?**

(a) An SEA shall use not less than 10 percent of its grant for—

- (1) Special projects that will be carried out in furtherance of the purposes of the Act, that will be coordinated with other programs funded under the Act, and that—
  - (i) Involve the use of innovative methods (including methods for educating adults with handicaps, homeless adults, and adults of limited

English proficiency), systems, materials, or programs that may have national significance or will be of special value in promoting effective programs under the Act; or

(ii) Involve programs of adult education, including education for adults with handicaps, homeless adults, and adults of limited English proficiency, which are part of community school programs, carried out in cooperation with other Federal, State, or local programs that have unusual promise in promoting a comprehensive or coordinated approach to the problems of adults with educational deficiencies; and

(2) Training persons engaged, or preparing to engage, as personnel in programs designed to carry out the purposes of the Act.

(b)(1) An SEA shall establish its own statewide criteria and priorities for providing and administering special experimental demonstration projects and teacher training projects.

(2) The SEA shall determine that an application proposing a project under paragraph (a) of this section contains—

- (i) The information in § 426.31(c);
- (ii) Plans for continuing the activities and services under the project after completion of the project's funding under the Act; and
- (iii) Any other information the SEA considers appropriate.

(Authority: 20 U.S.C. 1203a(a)(3) and 1208)

**Subpart E—What Conditions Must be Met by a State?**

**§ 426.40 What are the State and local administrative costs requirements?**

(a)(1) Beginning with the fiscal year 1991 grant (a grant that is awarded on or after July 1, 1991 from funds appropriated in the fiscal year 1991 appropriation), an SEA may use no more than 5 percent of its grant or \$50,000—whichever is greater—for necessary and reasonable State administrative costs.

(2) For grants awarded from funds appropriated for fiscal years prior to fiscal year 1991 (grants awarded before July 1, 1991), an SEA may determine what percent of its grant is necessary and reasonable for State administrative costs.

(b)(1) At least 95 percent of an eligible recipient's award from the SEA must be expended for adult education instructional activities.

(2) The remainder may be used for local administrative costs—noninstructional expenses, including planning, administration, evaluation, personnel development, and coordination—that are necessary and reasonable.

(3) In cases where the administrative cost limits under paragraph (b)(2) of this section would be insufficient for adequate planning, administration, evaluation, personnel development, and coordination of programs supported under the Act, the SEA shall negotiate with local grant recipients in order to determine an adequate level of funds to be used for noninstructional purposes.

(Authority: 20 U.S.C. 1203b, and 1205(c))

**§ 426.41 What are the cost-sharing requirements?**

(a) The Federal share of expenditures made under a State plan for any of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico may not exceed—

(1) 90 percent of the costs of programs carried out with the fiscal year 1988 grant (a grant that is awarded on or after July 1, 1988 from funds appropriated in the fiscal year 1988 appropriation);

(2) 90 percent of the costs of programs carried out with the fiscal year 1989 grant (a grant that is awarded on or after July 1, 1989 from funds appropriated in the fiscal year 1989 appropriation);

(3) 85 percent of the costs of programs carried out with the fiscal year 1990 grant (a grant that is awarded on or after July 1, 1990 from funds appropriated in the fiscal year 1990 appropriation);

(4) 80 percent of the costs of programs carried out with the fiscal year 1991 grant (a grant that is awarded on or after July 1, 1991 from funds appropriated in the fiscal year 1991 appropriation); and

(5) 75 percent of the costs of programs carried out with the fiscal year 1992 grant (a grant that is awarded on or after July 1, 1992 from funds appropriated in the fiscal year 1992 appropriation) and from each grant thereafter.

(b) The Federal share for American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands (Republic of Palau), and the Virgin Islands is 100 percent.

(c) The Secretary determines the non-Federal share of expenditures under the State plan by considering—

(1) Expenditures from State, local, and other non-Federal sources for programs, services, and activities of adult education, as defined in the Act, made by public or private entities that receive from the State Federal funds made available under the Act or State funds for adult education; and

(2) Expenditures made directly by the State for programs, services, and

activities of adult education as defined in the Act.

(Authority: 20 U.S.C. 1209(a); 48 U.S.C. 1681)

**§ 426.42 What is the maintenance of effort requirement?**

(a)(1)(i) *Basic standard.* Except as provided in § 426.43, a State is eligible for a grant from appropriations for any fiscal year, only if the Secretary determines that the State has expended for adult education from non-Federal sources during the second preceding fiscal year (or program year) an amount not less than the amount expended during the third preceding fiscal year (or program year).

(ii) The Secretary determines maintenance of effort on a per student expenditure basis or on a total expenditure basis.

(2) *Meaning of "second and third preceding fiscal years (or program years)."* For purposes of determining maintenance of effort, the "second preceding fiscal year (or program year)" is the fiscal year (or program year) two years prior to the year of the grant for which the Secretary is determining the State's eligibility. The "third preceding fiscal year (or program year)" is the fiscal year (or program year) three years prior to the year of the grant for which the Secretary is determining the State's eligibility.

**Example:**

*Computation based on fiscal year.* If a State chooses to use the fiscal year as the basis for its maintenance of effort computations, the Secretary determines whether a State is eligible for the fiscal year 1989 grant (a grant that is awarded on or after July 1, 1989 from funds appropriated in the fiscal year 1989 appropriation) by comparing expenditures from the second preceding fiscal year—year 1987 (October 1, 1986-September 30, 1987)—with expenditures from the third preceding fiscal year—year 1986 (October 1, 1985-September 30, 1986). If there has been no decrease in expenditures from fiscal year 1986 to fiscal year 1987, the State has maintained effort and is eligible for its fiscal year 1989 grant.

*Computation based on program year.* If a State chooses to use a program year running from July 1 to June 30 as the basis for its maintenance of effort computation, the Secretary determines whether a State is eligible for funds for the fiscal year 1989 grant by comparing expenditures from the second preceding program year—year 1987 (July 1, 1986-June 30, 1987)—with expenditures from the third preceding program year—year 1986 (July 1, 1985-June 30, 1986). If there has been no decrease in expenditures from program year 1986 to program year 1987, the State has maintained effort and is eligible for its fiscal year 1989 grant.

(b) *Expenditures to be considered.* In determining a State's compliance with the maintenance of effort requirement,

the Secretary considers the expenditures described in § 426.41(c).

(Authority: 20 U.S.C. 1209(b))

**§ 426.43 Under what circumstances may the Secretary waive the maintenance of effort requirement?**

(a) The Secretary may waive, for one year only, the maintenance of effort requirement in § 426.42 if the Secretary determines that a waiver would be equitable due to exceptional or uncontrollable circumstances. These circumstances include, but are not limited to, the following:

- (1) A natural disaster.
- (2) An unforeseen and precipitous decline in financial resources.

(b) The Secretary does not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(Authority: 20 U.S.C. 1209(b)(2))

**§ 426.44 How does a State request a waiver of the maintenance of effort requirement?**

An SEA seeking a waiver of the maintenance of effort requirement in § 426.42 shall—

- (a) Submit to the Secretary a request for a waiver; and
- (b) Include in the request—
  - (1) The reason for the request; and
  - (2) Any additional information the Secretary may require.

(Authority: 20 U.S.C. 1209(b)(2))

**§ 426.45 How does the Secretary compute maintenance of effort in the event of a waiver?**

If a State has been granted a waiver of the maintenance of effort requirement that allows it to receive a grant from appropriations for a fiscal year, the Secretary determines whether the State has met that requirement for the grant to be awarded for the year after the year of the waiver by comparing the amount spent for adult education from non-Federal sources in the second preceding fiscal year (or program year) with the amount spent in the fourth preceding fiscal year (or program year).

*Example:* Because exceptional or uncontrollable circumstances prevented a State from maintaining effort in fiscal year 1987 (October 1, 1986-September 30, 1987)—or in a program year 1987 running from July 1, 1986-June 30, 1987—at the level of fiscal year 1986 (October 1, 1985-September 30, 1986)—or program year 1986 (July 1, 1985-June 30, 1986), the Secretary grants the State a waiver of the maintenance of effort requirement that permits the State to receive its fiscal year 1989 grant (a grant that is awarded on or after July 1, 1989 from funds appropriated in the fiscal year 1989 appropriation). In order to determine whether a State has met the maintenance of effort requirement and

therefore is eligible to receive its fiscal year 1990 grant (the grant to be awarded for the year after the year of the waiver), the Secretary compares the State's expenditures from the second preceding fiscal year (or program year)—fiscal year 1988 (October 1, 1987-September 30, 1988) or program year 1988 (July 1, 1987-June 30, 1988)—with expenditures from the fourth preceding fiscal year (or program year)—year 1986. If the expenditures from fiscal year (or program year) 1988 are not less than the expenditures from fiscal year (or program year) 1986, the State has maintained effort and is eligible for its fiscal year 1990 grant.

(Authority: 20 U.S.C. 1209(b)(2))

**§ 426.46 What requirements for program reviews and evaluations must be met by a State?**

(a) An SEA shall provide for program reviews and evaluations of all State-administered adult education programs, services, and activities it assists under the Act. The SEA shall use its program reviews and evaluations to assist LEAs and other recipients of funds in planning and operating the best possible programs of adult education and to improve the State's programs of adult education.

(b) In reviewing programs, an SEA shall, during the four-year period of the State plan, gather and analyze data on the effectiveness of all State-administered adult education programs, services, and activities including standardized test data—to determine the extent to which—

- (1) The State's adult education programs are achieving the goals in the State plan, including the goal of serving educationally disadvantaged adults; and
- (2) Grant recipients have improved their capacity to achieve the purposes of the Act.

(c)(1) An SEA shall, during the four-year period of the State plan, evaluate in qualitative and quantitative terms the effectiveness of programs, services, and activities conducted by at least one-third of the local recipients of funds.

(2) The recipients the State evaluates must be representative of all recipients in the State.

(3) An evaluation must consider the following factors:

- (i) Planning and content of the programs, services, and activities.
- (ii) Curriculum, instructional materials, and equipment.
- (iii) Adequacy and qualifications of all personnel.
- (iv) Effect of the program on the subsequent work experience of participants, completers, and graduates.
- (v) Achievement of the goals set forth in the State plan.

(vi) Extent to which educationally disadvantaged adults are being served.

(vii) Extent to which local recipients of funds have improved their capacity to achieve the purposes of the Act.

(viii) Other factors that affect program operations, as determined by the SEA.

(d)(1) Within 90 days of the close of each program year, the SEA shall submit the following to the Secretary:

(i) The information in § 426.10(b)(10).

(ii) A report on the SEA's activities under paragraph (b) of this section.

(iii) A report on the SEA's activities under paragraph (c) of this section.

(2) The reports described in paragraphs (d)(1) (ii) and (iii) of this section must include—

(i) The results of any program reviews and evaluations performed during the program year, and a description of how the SEA used the program review and evaluation process to make necessary changes to improve programs; and

(ii) The comments and recommendations of the State advisory council, if a council has been established.

(e) If an SEA has established a State advisory council on adult education under § 426.50, the SEA shall—

(1) Obtain approval of the plan for program reviews and evaluations from the State advisory council; and

(2) Inform the State advisory council of the results of program reviews and evaluations so that the State advisory council may perform its duties under section 332(f)(3) of the Act.

**Note:** In addition to the Adult Education State-administered Basic Grant Program in this Part 426, State-administered adult education programs include the State-administered Workplace Literacy Program (See 34 CFR Part 433) and the State-administered English Literacy Program (See 34 CFR Part 434).

(Authority: 20 U.S.C. 1205a(f)(3) and 1207a)

#### **Subpart F—What are the Administrative Responsibilities of a State?**

##### **§ 426.50 What are a State's responsibilities regarding a State advisory council on adult education?**

(a) A state that receives funds under section 313 of the Act may—

(1) Establish a State advisory council; or

(2) Designate an existing body as the State advisory council.

(b) If a State elects to establish or designate a State advisory council on adult education, the following provisions apply:

(1) The State advisory council must comply with §§ 426.51 and 426.52.

(2) The Governor appoints members to the State advisory council in accordance with section 332(e) of the Act.

(3) Costs incurred for a State advisory council must be counted as part of the allowable State-administrative costs under the Act.

(4) The Governor determines the amount of funding available to a State advisory council.

(5)(i) A State advisory council determines its own staffing needs, within the budget established by the Governor.

(ii) A State advisory council's staffing may include professional, technical, and clerical personnel as may be necessary to enable the council to carry out its functions under the Act.

(6) Members of a State advisory council and its staff, while serving on the business of the council, may receive subsistence, travel allowances, and compensation in accordance with State law and regulations and State practices applicable to persons performing comparable duties and services.

(Authority: 20 U.S.C. 1205a (a), (d), (e))

##### **§ 426.51 What are the membership requirements of a State advisory council on adult education?**

(a)(1) The membership of a State advisory council must broadly represent citizens and groups within the State having an interest in adult education. The council must consist of representatives of—

(i) Public education;

(ii) Private and public sector employment;

(iii) Recognized State labor organizations;

(iv) Private, voluntary, or community literacy organizations;

(v) Libraries; and

(vi) State economic development agencies.

(2) The State shall ensure that there is appropriate representation on the State advisory council of—

(i) Urban and rural areas;

(ii) Women;

(iii) Persons with handicaps; and

(iv) Racial and ethnic minorities.

(b)(1) An SEA shall certify to the Secretary the establishment of, and membership of, its State advisory council.

(2) The certification must be submitted to the Secretary prior to the beginning of any program year in which the State desires to receive a grant under the Act.

(Authority: 20 U.S.C. 1205a (a)(1), (b), and (c))

##### **§ 426.52 What are the responsibilities of a State advisory council on adult education?**

(a)(1) The State advisory council shall, using procedures agreed upon, elect a chairperson.

(2) The State advisory council shall adopt rules that govern the number, time, place, and conduct of meetings as well as council operating procedures. The rules must provide for at least one public meeting each year at which the general public is given an opportunity to express views concerning adult education programs in the State.

(b) A State advisory council shall—

(1) Meet with the SEA or its representative during the planning year to advise on the development of the State plan;

(2) Review the State plan before it is submitted to the Secretary and, if the State advisory council has substantial disagreement with the final State plan, file timely objections with the SEA;

(3) Advise the SEA on—

(i) Policies the State should pursue to strengthen adult education; and

(ii) Initiatives and methods the private sector could undertake to assist the State's improvement of adult education programs; and

(4)(i) Approve the plan for the program reviews and evaluations required in section 352 of the Act and § 426.46 and participate in implementing and disseminating the program reviews and evaluations. In approving the plan for the program reviews and evaluations, the State advisory council shall ensure that persons knowledgeable of the daily operation of adult education programs are involved;

(ii) Advise the Governor, the State legislature, and the general public of the State with respect to the findings of the program reviews and evaluations; and

(iii) Include in any reports of the program reviews and evaluations the council's comments and recommendations.

(Authority: 20 U.S.C. 1205a (d) and (f), 1206a(a)(3)(B))

3. A new Part 432 is added to read as follows:

#### **PART 432—NATIONAL WORKPLACE LITERACY PROGRAM**

##### **Subpart A—General**

Sec.  
432.1 What is the National Workplace Literacy Program?

432.2 Who is eligible for an award?

432.3 What activities may the Secretary fund?

432.4 What regulations apply?

432.5 What definitions apply?

**Subpart B—How Does One Apply for an Award?**

432.10 Are preapplications required?

432.11 How does the Secretary consider a preapplication?

**Subpart C—How Does the Secretary Make an Award?**

432.20 What priorities may the Secretary establish?

432.21 How does the Secretary evaluate an application?

432.22 What selection criteria does the Secretary use?

432.23 What additional factor does the Secretary consider?

**Subpart D—What Conditions Must be Met After an Award?**

432.30 What other requirements must be met under this program?

432.31 How must projects that serve adults with limited English proficiency provide for the needs of those adults?

Authority: 20 U.S.C. 1211(a), unless otherwise noted.

**Subpart A—General****§ 432.1 What is the National Workplace Literacy Program?**

The National Workplace Literacy Program provides assistance for demonstration projects that teach literacy skills needed in the workplace through exemplary education partnerships between business, industry, or labor organizations and educational organizations.

(Authority: 20 U.S.C. 1211(a)(1))

**§ 432.2 Who is eligible for an award?**

(a) Awards are provided to exemplary partnerships between—

(1) A business, industry, or labor organization, or private industry council; and

(2) A State educational agency (SEA), local educational agency (LEA), institution of higher education, or school (including an area vocational school, an employment and training agency, or a community-based organization).

(b) A partnership shall include as partners at least one entity from paragraph (a)(1) of this section and at least one entity from paragraph (a)(2) of this section, and may include more than one entity from each group.

(c)(1) The partners shall apply jointly to the Secretary for funds.

(2) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and the grantee. The agreement must also detail the role each partner plans to perform, and must bind each partner to every statement and assurance made in the application.

(Authority: 20 U.S.C. 1211(a)(4)(A))

**§ 432.3 What activities may the Secretary fund?**

The Secretary provides grants or cooperative agreements to projects designed to improve the Productivity of the workforce through improvement of literacy skills in the workplace by—

(a) Providing adult literacy and other basic skills services and activities;

(b) Providing adult secondary education services and activities that may lead to the completion of a high school diploma or its equivalent;

(c) Meeting the literacy needs of adults with limited English proficiency;

(d) Upgrading or updating basic skills of adult workers in accordance with changes in workplace requirements, technology, products, or processes;

(e) Improving the competency of adult workers in speaking, listening, reasoning, and problem solving; or

(f) Providing educational counseling, transportation, and child care services for adult workers during nonworking hours while the workers participate in the project.

(Authority: 20 U.S.C. 1211(a)(3))

**§ 432.4 What regulations apply?**

The following regulations apply to the National Workplace Literacy Program:

(a) The regulations in this Part 432.

(b) The regulations in 34 CFR Part 425.

(Authority: 20 U.S.C. 1211(a))

**§ 432.5 What definitions apply?**

(a) The definitions in 34 CFR 425.4 apply to this part.

(b) The following definitions also apply to this part:

"Adult worker" means an individual who has attained 16 years of age or who is beyond the age of compulsory school attendance under State law, and whose receipt of project services is expected to result in new employment, enhanced skills related to continued employment, career advancement, or increased productivity.

"Area vocational school" means—

(1) A specialized high school used exclusively or principally for the provision of vocational education to individuals who are available for study in preparation for entering the labor market;

(2) The department of a high school exclusively or principally used for providing vocational education in no less than five different occupational fields to individuals who are available for study in preparation for entering the labor market;

(3) A technical institute or vocational school used exclusively or principally for the provision of vocational education

to individuals who have completed or left high school and who are available for study in preparation for entering the labor market; or

(4) The department or division of a junior college or community college or university operating under the policies of the State board and that provides vocational education in no less than five different occupational fields leading to immediate employment but not necessarily leading to a baccalaureate degree, if, in the case of a school, department, or division described in paragraphs (3) and (4) of this definition, it admits as regular students both individuals who have completed high school and individuals who have left high school.

(Authority: 20 U.S.C. 2471)

"Business and industry organizations" include, but are not limited to—

(1) For-profit businesses or industrial concerns;

(2) Nonprofit businesses or industrial concerns, such as hospitals and nursing homes;

(3) Associations of business and industry organizations, such as local or State Chambers of Commerce;

(4) Associations of private industry councils; and

(5) Educational associations—such as the American Association for Adult and Continuing Education, the American Council on Education, the National Association for Bilingual Education, the National Association of Independent Colleges and Universities, or the National Association of Technical and Trade Schools.

"Contractor" means an individual or organization other than a partner that provides specific and limited services' equipment, or supplies to a partnership under a contractual agreement.

"Employment and training agency" includes any agency that provides—as a substantial portion of its activity—employment and training services, either directly or through contract.

"Helping organization" means an entity other than a partner that voluntarily assists a partnership by providing services, technical assistance, or cash or in-kind contributions to the project. Helping organizations may not be recipients of funds from partners or serve as contractors.

"Partner" means an entity included in the list of entities in § 432.2(a)(1) or (2).

"Private industry council" means the private industry council established under section 102 of the Job Training Partnership Act (29 U.S.C. 1512).

"Site" means an entity other than a partner that participates in a project by

providing adult workers to be trained and, at the site's option, space for this training. A site may not be a recipient of funds from partners or serve as a contractor.

(Authority: 20 U.S.C. 1211(a))

### Subpart B—How Does One Apply for an Award?

#### § 432.10 Are preapplications required?

The Secretary may require applicants to submit preapplications by including that requirement in an application notice published in the Federal Register.

(Authority: 20 U.S.C. 1211(a))

#### § 432.11 How does the Secretary consider a preapplication?

(a) The Secretary considers a preapplication if—

(1) The applicant complies with the procedural rules that govern submission of the preapplication; and

(2) The preapplication is submitted in response to an application notice that requires preapplications.

(b) If the Secretary requires preapplications and an applicant does not preapply, the applicant may not apply for a grant.

(c) If an applicant submits a preapplication—

(1) The Secretary—

(i) Informs the applicant that it is eligible and encourages it to apply for a grant;

(ii) Informs the applicant that it is eligible but does not encourage it to apply for a grant; or

(iii) Informs the applicant that it is ineligible for assistance, and explains why the applicant is ineligible; and

(2) An applicant may apply for a grant even if the Secretary has not encouraged it to apply, as described in paragraph (c)(ii) of this section.

(Authority: 20 U.S.C. 1211(a))

### Subpart C—How Does the Secretary Make an Award?

#### § 432.20 What priorities may the Secretary establish?

(a) The Secretary may announce through one or more notices published in the Federal Register the priorities for this program, if any, from the types of projects described in paragraph (b) of this section.

(b) Priority may be given to projects training adult workers who have inadequate basic skills and who—

(1) Are currently unable to perform their jobs effectively or are ineligible for career advancement due to an identified lack of basic skills;

(2) Are employed in industries retooling with high technology and for

whom training in basic skills is expected to result in continued employment;

(3) Require training in English-as-a-second-language in order to increase productivity, to continue employment, or to be eligible for career advancement; or

(4) Are employed in an industry adversely impacted by competitiveness in the world economy and for whom training is expected to result in the increased competitiveness of that industry in world markets.

(Authority: 20 U.S.C. 1211(a))

#### § 432.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 432.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 432.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the Federal Register, the Secretary may assign the reserved points among the criteria in § 432.22.

(Authority: 20 U.S.C. 1211(a))

#### § 432.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (15 points) The Secretary reviews each application to determine the extent to which the project—

(1) Demonstrates a strong relationship between skills taught and the literacy requirements of actual jobs, especially the increased skill requirements of the changing workplace;

(2) Is targeted to adults with inadequate skills for whom the training described is expected to mean new employment, continued employment, career advancement, or increased productivity;

(3) Includes support services, based on cooperative relationships within the partnership and from helping organizations, necessary to reduce barriers to participation by adult workers. Support services could include educational counseling, transportation, and child care during non-working hours while adult workers are participating in a project; and

(4) Demonstrates the active commitment of all partners to accomplishing project goals.

(b) *Extent of need for the project.* (15 points) The Secretary reviews each

application to determine the extent to which the project meets specific needs, including consideration of—

(1) The extent to which the project will focus on demonstrated needs for workplace literacy training of adult workers;

(2) The adequacy of the applicant's documentation of the needs to be addressed by the project;

(3) How those needs will be met by the project; and

(4) The benefits to adult workers and their industries that will result from meeting those needs.

(c) *Quality of training.* (15 points) The Secretary reviews each application to determine the quality of the training to be provided by the project, including the extent to which the project will—

(1) Use curriculum materials that are designed for adults and that reflect the needs of the workplace;

(2) Use individualized educational plans developed jointly by instructors and adult learners;

(3) Take place in a readily accessible environment conducive to adult learning; and

(4) Provide training through the partner classified under § 432.2(a)(2), unless transferring this activity to the partner classified under § 432.2(a)(1) is necessary and reasonable within the framework of the project.

(d) *Plan of operation.* (12 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project, and includes—

(i) A description of the respective roles of each member of the partnership in carrying out the plan;

(ii) A description of the activities to be carried out by any contractors under the plan;

(iii) A description of the respective roles, including any cash or in-kind contributions, of helping organizations; and

(iv) A description of the respective roles of any sites;

(3) How well the objectives of the project relate to the purposes of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants, who are otherwise

eligible to participate, are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(e) *Applicant's experience and quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the extent of the applicant's experience in providing literacy services to working adults.

(2) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project including—

(i) The qualifications, in relation to project requirements, of the project director, if one is to be used;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(2)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) To determine personnel qualifications under paragraphs (e)(2)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Identify expected outcomes of the participants and how those outcomes will be measured;

(4) Include evaluation of effects on job advancement, job performance (including, for example, such elements as productivity, safety and attendance), and job retention; and

(5) Are systematic throughout the project period and provide data that can be used by the project on an ongoing basis for program improvement.

(g) *Budget and cost-effectiveness.* (8 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable and necessary in relation to the objectives of the project; and

(3) The applicant has minimized the purchase of equipment and supplies in order to devote a maximum amount of resources to instructional services.

(Authority: 20 U.S.C. 1211(a))

**§ 432.23 What additional factor does the Secretary consider?**

In addition to the criteria in § 432.22, the Secretary may consider whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 1211(a))

**Subpart D—What Conditions Must be Met After an Award?**

**§ 432.30 What other requirements must be met under this program?**

(a) An applicant shall use funds to supplement and not supplant funds otherwise available for the purposes of this program.

(b) A project may include—

(1) A start-up period between the time the project begins and the time services are provided to adult workers; and

(2) An operational period during which these services are provided.

(c) In partnerships in which either an SEA or an LEA is the grantee, an award under this program may be used to pay—

(1) 100 percent of the administrative costs incurred by an SEA or an LEA in establishing projects during the start-up period referenced in paragraph (b)(1) of this section; and

(2) 70 percent of the costs of a project during the operational period referenced in paragraph (b)(2) of this section.

(d) In partnerships in which any other entity is the grantee, an award under this program may be used to pay 70 percent of costs incurred in establishing and operating the project throughout the period of the grant.

(e)(1) A project's start-up period may not last longer than 90 days; and

(2) Applicants shall minimize the start-up period, if any, proposed for their projects.

(Authority: 20 U.S.C. 1211(a)(2) and (4)(E))

**§ 432.31 How must projects that serve adults with limited English proficiency provide for the needs of those adults?**

(a) Projects serving adults with limited English proficiency or no English proficiency shall provide for the needs of these adults by providing programs designed to teach English and, as appropriate, to allow these adults to

progress effectively through the adult education program or to prepare them to enter the regular program of adult education as quickly as possible.

(b) These programs may, to the extent necessary, provide instruction in the native language of these adults or may provide instruction exclusively in English.

(c) These programs must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

(Authority: 20 U.S.C. 1205a(d) and 1211(a))

4. A new Part 433 is added to read as follows:

**PART 433—STATE-ADMINISTERED WORKPLACE LITERACY PROGRAM**

**Subpart A—General**

Sec.

433.1 What is the State-administered Workplace Literacy Program?

433.2 Who is eligible for an award?

433.3 What kinds of activities may be assisted?

433.4 What regulations apply?

433.5 What definitions apply?

**Subpart B—How Does a State Apply for a Grant?**

433.10 What must the State plan contain?

**Subpart C—How Does the Secretary Make a Grant to a State?**

433.20 How does the Secretary make allotments?

433.21 How does the Secretary make reallocations?

**Subpart D—How Does an Applicant Apply to a State for an Award?**

433.30 Who is eligible to apply to a State for an award?

433.31 How does a State carry out the State-administered Workplace Literacy Program?

433.32 What are the local application requirements?

**Subpart E—What Post-Award Conditions Must Be Met by a State and Its Subgrantees and Contractors?**

433.50 What other requirements must be met under this program?

433.51 What are the program review and evaluation requirements?

433.52 How must projects that serve adults with limited English proficiency provide for the needs of those adults?

Authority: 20 U.S.C. 1211a(b), unless otherwise noted.

**Subpart A—General**

**§ 433.1 What is the State-administered Workplace Literacy Program?**

When the annual appropriation for workplace literacy equals or exceeds

\$50,000,000, the State-administered Workplace Literacy Program provides financial assistance for adult education programs that teach literacy skills needed in the workplace through education partnerships between business, industry, or labor organizations and educational organizations.

(Authority: 20 U.S.C. 1211(b))

**§ 433.2 Who is eligible for an award?**

(a) A State educational agency (SEA) is eligible for an award if the Secretary has approved the State plan and application submitted in accordance with section 342 of the Act and 34 CFR 426.10 through 426.13, and the State plan meets the requirements in § 433.10.

(b) If a State is ineligible to receive its allotment under this program, the secretary uses the State's allotment to make direct grants to applicants in that State who are qualified to teach literacy skills needed in the workplace. To make those awards, the Secretary uses the procedures described for the National Workplace Literacy Program in 34 CFR Part 432.

(Authority: 20 U.S.C. 1211(b)(3), (6))

**§ 433.3 What kinds of activities may be assisted?**

(a) Under the State-administered Workplace Literacy Program the Secretary makes allotments to an SEA to pay the Federal share of the cost of adult education programs that teach literacy skills needed in the workplace through partnerships between the entities in §§ 433.30(a)(1) and (2).

(b) A State shall assist partnership projects that are designed to improve the productivity of the workforce through improvement of literacy skills needed in the workplace through the activities described in 34 CFR 432.3(a) through (f).

(Authority: 20 U.S.C. 1211(b)(4), (5))

**§ 433.4 What regulations apply?**

The following regulations apply to the State-administered Workplace Literacy Program:

(a) The regulations in this Part 433.

(b) The regulations in 34 CFR Part 425.

(Authority: 20 U.S.C. 1211(b))

**§ 433.5 What definitions apply?**

(a) The definitions in 34 CFR 432.5 apply to this part.

(b) The following definition also applies to this part:

"Partner" means an entity included in the list of entities in § 433.30(a)(1) or (2).

(Authority: 20 U.S.C. 1211(b))

**Subpart B—How Does a State Apply for a Grant?**

**§ 433.10 What must the State plan contain?**

To receive a grant under the State-administered Workplace Literacy Program, an SEA shall include in its State plan, submitted to the Secretary in accordance with 34 CFR 426.10, a description of—

(a) The requirements for State approval of funding of a local workplace literacy project;

(b) The procedures under which applications for that funding may be submitted; and

(c) The method by which the SEA will obtain an annual third-party evaluation of student achievement in, and the overall effectiveness of the services provided by, all projects that receive funding from the State's grant under the State-administered Workplace Literacy Program.

(Authority: 20 U.S.C. 1211(b)(3)(A))

**Subpart C—How Does the Secretary Make a Grant to a State?**

**§ 433.20 How does the Secretary make allotments?**

The Secretary determines the amount of each State's allotment according to a formula in section 371(b)(7)(B) of the Act.

(Authority: 20 U.S.C. 1211(b)(7)(B))

**§ 433.21 How does the Secretary make reallocations?**

(a)(1) At the end of each fiscal year, the Secretary reallocates the portion of any State's allotment that—

(i) Exceeds 10 percent of the State's allotment under this program for the fiscal year; and

(ii) Was not obligated by the end of the fiscal year.

(2) A State may not obligate any portion of the excess described in paragraphs (a)(1) (i) and (ii) of this section after the end of the fiscal year.

(b) The Secretary reallocates funds among the other States that themselves are not described in paragraph (a) of this section in the same proportion as each State's allocation for the fiscal year described in paragraph (a) of this section.

(c) Any amount reallocated to a State during a fiscal year is deemed part of the State's allotment for that fiscal year.

(d) Any amount that a State carries over from a prior year's allotment is deemed part of the State's allotment for the year into which funds are carried.

(e) In determining whether a State has obligated at least 90 percent of its allotment for a fiscal year, the Secretary

considers as part of the State's allotment any funds reallocated to the State during that year or carried over from a prior year allotment.

(Authority: 20 U.S.C. 1211(b)(7)(C))

**Subpart D—How Does an Applicant Apply to a State for an Award?**

**§ 433.30 Who is eligible to apply to a State for an award?**

(a) Subgrants or contracts may be provided by the SEA to exemplary partnerships between—

(1) A business, industry, or labor organization, or private industry council; and

(2) The State educational agency, a local educational agency (LEA), an institution of higher education, or a school (including an area vocational school, an employment and training agency, or a community-based organization).

(b) Partnerships must include at least one entity listed in paragraph (a)(1) of this section and one entity listed in paragraph (a)(2) of this section, and may include more than one entity from each group.

(Authority: 20 U.S.C. 1211(b)(5))

**§ 433.31 How does a State carry out the State-administered Workplace Literacy Program?**

(a) An SEA carries out the program by—

(1) Providing State administration of the grant; and

(2) Awarding subgrants or contracts to eligible partnerships.

(b) The SEA may not use program funds for the administrative costs it incurs in carrying out its responsibilities under paragraph (a) of this section.

(c) If an SEA awards a subgrant or contract to a partnership in which the SEA is a partner, the SEA shall—

(1) Take an active role in the partnership in addition to its administrative responsibilities under paragraph (a) of this section; and

(2) Serve as a full and equal partner with other members of the partnership.

(d) An SEA may use program funds for necessary and reasonable administrative costs incurred in performing its role as a partner in a project described in paragraph (c) of this section.

(Authority: 20 U.S.C. 1211(b))

**§ 433.32 What are the local application requirements?**

A local partnership application, submitted to an SEA for funding under the State-administered Workplace Literacy Program, must contain the

information in section 371(a)(4) of the Act.

(Authority: 20 U.S.C. 1211(b)(5))

**Subpart E—What Post-Award Conditions Must Be Met by a State and Its Subgrantees and Contractors?**

**§ 433.50 What other requirements must be met under this program?**

(a) The Federal share of expenditures for projects funded under the State-administered Workplace Literacy Program is paid from the State's allotment under the program.

(b) A State educational agency may reserve a portion of its allotment to pay 100 percent of the costs incurred by the SEA in obtaining evaluations required in § 433.10(c).

(c) A project funded by the SEA may include—

(1) A start-up period between the time the project begins and the time services are provided to adult workers; and

(2) An operational period during which these services are provided.

(d) An award to a partnership under this program may be used to pay—

(1) 70 percent of the costs of a project during the operational period referenced in paragraph (c)(2) of this section;

(2) 100 percent of the administrative costs incurred by an SEA or an LEA in establishing projects during the start-up period referenced in paragraph (c)(1) of this section; and

(3) 70 percent of the administrative costs incurred by other entities in establishing projects during the start-up period referenced in paragraph (c)(1) of this section.

(e)(1) A project's start-up period may not last longer than 90 days; and

(2) Partnerships shall minimize the start-up period, if any, proposed for their projects.

(Authority: 20 U.S.C. 1211(b) (1), (2))

**§ 433.51 What are the program review and evaluation requirements?**

The SEA shall provide for program reviews and evaluations in accordance with 34 CFR 426.46.

(Authority: 20 U.S.C. 1207a and 1211(b))

**§ 433.52 How must projects that serve adults with limited English proficiency provide for the needs of those adults?**

(a) An SEA shall provide for the needs of adults with limited English proficiency or no English proficiency by providing programs designed to teach English and, as appropriate, to allow these adults to progress effectively through the adult education program or to prepare them to enter the regular program of adult education as quickly as possible.

(b) These programs may, to the extent necessary, provide instruction in the native language of these adults or may provide instruction exclusively in English.

(c) These programs must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

(Authority: 20 U.S.C. 1206a(d) and 1211(b))

5. A new Part 434 is added to read as follows:

**PART 434—STATE-ADMINISTERED ENGLISH LITERACY PROGRAM**

**Subpart A—General**

Sec.

434.1 What is the State-administered English Literacy Program?

434.2 Who is eligible for an award?

434.3 What activities may the Secretary fund?

434.4 What regulations apply?

434.5 What definitions apply?

**Subpart B—How Does A State Apply for an Award?**

434.10 What State plan requirements must be met?

**Subpart C—How Does the Secretary Make an Award?**

434.20 How does the Secretary determine the amount of an award?

**Subpart D—What Conditions Must be Met After a State Receives an Award?**

434.30 Who is eligible to apply to a State for a subgrant or contract?

434.31 What percentage requirements must a State meet in using and allocating funds to eligible recipients?

434.32 How are awards made to eligible recipients?

434.33 In what additional way may a State use funds under this program?

434.34 What are the reporting and program review and evaluation requirements under this program?

434.35 What other condition applies to this program?

**Subpart E—What Compliance Procedures May the Secretary Use?**

434.40 When may the Secretary terminate a grant?

Authority: 20 U.S.C. 1211a, unless otherwise noted.

**Subpart A—General**

**§ 434.1 What is the State-administered English Literacy Program?**

The State-administered English Literacy Program provides grants to States for English literacy programs for individuals of limited English proficiency.

(Authority: 20 U.S.C. 1211a(a)(1))

**§ 434.2 Who is eligible for an award?**

A State educational agency (SEA) is eligible for an award if the Secretary has approved the State plan and application submitted in accordance with section 342 of the Act and 34 CFR 426.10 through 426.13, and the State plan meets the requirements in § 434.10.

(Authority: 20 U.S.C. 1211a(a) (1), (2))

**§ 434.3 What activities may the Secretary fund?**

(a) The Secretary provides funds for establishing, operating, and improving English literacy programs of instruction that are designed to help limited English proficient adults, out-of-school youths, or both, achieve full competence in the English language.

(b) Funds may also be used to provide support services for program participants, including child care and transportation.

(Authority: 20 U.S.C. 1201a(13) and 1211a(a)(1))

**§ 434.4 What regulations apply?**

The following regulations apply to the State-administered English Literacy Program:

(a) The regulations in this Part 434.

(b) The regulations in 34 CFR Part 425.

(Authority: 20 U.S.C. 1211a)

**§ 434.5 What definitions apply?**

The definitions in 34 CFR 425.4 apply to this part.

(Authority: 20 U.S.C. 1211a)

**Subpart B—How Does a State Apply for an Award?**

**§ 434.10 What State plan requirements must be met?**

To receive a grant under this program, an SEA shall include in its State plan, submitted to the Secretary in accordance with 34 CFR 426.10, a description of—

(a) The number of individuals of limited English proficiency in the State who need or could benefit from programs assisted under section 372(a) of the Act and this part;

(b) The activities to be undertaken with the grant under this part and the manner in which these activities will promote English literacy and enable individuals of limited English proficiency in the State to participate fully in national life;

(c) How the activities described in paragraph (b) of this section will serve individuals of limited English proficiency, including the qualifications and training of personnel who will participate in the proposed activities;

(d) The resources necessary to develop and operate the proposed activities and the resources to be provided by the State; and

(e) The specific goals of the proposed activities and how achievement of these goals will be measured.

(Authority: 20 U.S.C. 1211a(a)(2))

#### Subpart C—How Does the Secretary Make an Award?

##### § 434.20 How does the Secretary determine the amount of an award?

(a)(1) From the sums available for the purpose of grants to States under section 372 of the Act, the Secretary allots to—

(i) Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands \$10,000 each;

(ii) The Trust Territory of the Pacific Islands (Republic of Palau) an amount that bears the same ratio to \$10,000 that the population of Palau ages 18 and over bears to the total population of the Trust Territory of the Pacific Islands as formally constructed (including the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands) ages 18 and over; and

(iii) Puerto Rico, \$25,000.

(2) From the remainder of those sums the Secretary allots to each of the 50 States and the District of Columbia an amount that bears the same ratio to that remainder as the number of persons 18 years of age and older who are limited English proficient of such State bears to the number of those persons in all States, except that no State shall receive less than \$25,000. For purposes of paragraph (a)(2) of this section the term "State" does not include Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands (Republic of Palau).

(b) The Secretary relies on Census data on the number of individuals that speak English less than very well to make the determinations in paragraph (a) of this section.

(Authority: 20 U.S.C. 1211a(a))

#### Subpart D—What Conditions Must be Met After a State Receives an Award?

##### § 434.30 Who is eligible to apply to a State for a subgrant or contract?

The following entities are eligible to apply to the SEA for an award:

(a) A local educational agency (LEA).

(b) A community-based organization (CBO) with demonstrated capability to administer English proficiency programs.

(c)(1) A public or private nonprofit agency, organization, or institution.

(2) The nonprofit agency, organization, or institution shall consult the LEA in the area proposed to be served by the applicant and give that LEA an opportunity to comment on the application.

(3) The nonprofit agency, organization, or institution shall respond to the LEA's comments and attach the comments and responses to the application.

(d)(1) An LEA, CBO, or public or private nonprofit agency, organization or institution may apply on behalf of a consortium that includes a for-profit agency, organization, or institution that can make a significant contribution to attaining the objectives of the Act.

(2) The LEA or public or private nonprofit agency, organization, or institution shall enter into a contract with the for-profit agency, organization, or institution for the establishment or expansion of programs.

(Authority: 20 U.S.C. 1203a(a) and 1211a(b))

##### § 434.31 What percentage requirements must a State meet in using and allocating funds to eligible recipients?

(a) An SEA may use not more than 5 percent of its grant for State administration, technical assistance, and training.

(b) After determining the amount to be used for State administration, technical assistance, and training under paragraph (a) of this section, the SEA shall allocate at least 50 percent of the remainder of its grant to programs operated by CBOs with demonstrated capability to administer English proficiency programs.

(Authority: 20 U.S.C. 1211a(b), (f)(5))

##### § 434.32 How are awards made to eligible recipients?

(a) Except as provided in paragraph (c) of this section, an SEA shall make awards to eligible recipients using the provisions in 34 CFR 426.31.

(b) In applying the preference provisions in 34 CFR 426.31(a), the SEA shall ensure that it allocates at least 50 percent of the remainder of its grant to programs operated by CBOs, as described in 434.31(b).

(c) An SEA may not use the consultation and comment provisions in 34 CFR 426.31(e) in making awards to CBOs.

(d) An SEA shall develop appropriate criteria for the review of an application submitted by a CBO to ensure that the applicant has demonstrated capability to administer an English proficiency program.

(Authority: 20 U.S.C. 1203a(a), 1206(c)(3), and 1211a(b))

##### § 434.33 In what additional way may a State use funds under this program?

An award to an SEA under this program may be used in combination with other Federal funds awarded to a State for literacy training for individuals of limited English proficiency.

(Authority: 20 U.S.C. 1211a(f)(3))

##### § 434.34 What are the reporting and program review and evaluation requirements under this program?

An SEA that receives a grant under section 372 of the Act and this part shall—

(a)(1) Report information describing the activities funded under the SEA's grant for each fiscal year covered by the grant.

(2) Provide for program reviews and evaluations in accordance with 34 CFR 426.46.

(b) Notify the Secretary if there is no longer a need in the State for the activities funded under the SEA's grant.

(Authority: 20 U.S.C. 1207a and 1211a(a))

##### § 434.35 What other condition applies to this program?

(a) An SEA shall provide for the needs of individuals of limited English proficiency or no English proficiency by providing programs designed to teach English and, as appropriate, to allow these adults to progress effectively through the adult education program or to prepare them to enter the regular program of adult education as quickly as possible.

(b) These programs may, to the extent necessary, provide instruction in the native language of these adults or may provide instruction exclusively in English.

(c) These programs must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

(Authority: 20 U.S.C. 1206a(d) and 1211a)

#### Subpart E—What Compliance Procedures May the Secretary Use?

##### § 434.40 When may the secretary terminate a grant?

(a) The Secretary terminates a grant only if the Secretary determines that—

(1) The State has not made substantial progress in achieving the educational goals described in the State plan; or

(2) There is no longer a need in the State for the activities funded under this part.

(b) Prior to making a determination under paragraph (a) of this section, the Secretary provides the State an

opportunity to change the administration of its grant in order to—

- (1) Achieve substantial progress in meeting those educational goals; or
- (2) Meet new needs through different activities.

(Authority: 20 U.S.C. 1211a(a)(3))

6. A new Part 435 is added to read as follows:

**PART 435—NATIONAL ENGLISH LITERACY DEMONSTRATION PROGRAM FOR INDIVIDUALS OF LIMITED ENGLISH PROFICIENCY**

**Subpart A—General**

Sec.

435.1 What is the National English Literacy Demonstration Program for Individuals of Limited English Proficiency?

435.2 Who is eligible for an award?

435.3 What activities may the Secretary fund?

435.4 What regulations apply?

435.5 What definitions apply?

**Subpart B—[Reserved]**

**Subpart C—How Does the Secretary Make an Award?**

435.20 How does the Secretary evaluate an application?

435.21 What selection criteria does the Secretary use?

435.22 What additional factor does the Secretary consider?

**Subpart D—What Conditions Must be Met After an Award?**

435.30 How may States use funds under this program?

435.31 How must projects that serve individuals of limited English proficiency provide for the needs of those adults?

(Authority: 20 U.S.C. 1211a(d), unless otherwise noted.)

**Subpart A—General**

**§ 435.1 What is the National English Literacy Demonstration Program for Individuals of Limited English Proficiency?**

The National English Literacy Demonstration Program for individuals of limited English proficiency provides financial assistance for the development of innovative approaches and methods used in English literacy programs for individuals of limited English proficiency.

(Authority: 20 U.S.C. 1211a(d))

**§ 435.2 Who is eligible for an award?**

Public or private nonprofit agencies, institutions, or organizations are eligible for a grant, cooperative agreement, or contract under this program.

(Authority: 20 U.S.C. 1211a(d))

**§ 435.3 What activities may the Secretary fund?**

(a) The Secretary may support, directly or through awards, the development of innovative approaches and methods of English literacy education for individuals of limited English proficiency that use new instructional methods and technologies.

(b) These innovative approaches and methods must be designed to help limited English proficient adults, out-of-school youths, or both, to achieve full competence in the English language.

(Authority: 20 U.S.C. 1201a(13) and 1211a(d)(1))

**§ 435.4 What regulations apply?**

The following regulations apply to the National English Literacy Demonstration Program for Individuals of Limited English Proficiency:

(a) The Federal Acquisition Regulation (FAR) in 48 CFR Chapter 1 and the Department of Education Acquisition Regulation (EDAR) in 48 CFR Chapter 34 (applicable to contracts).

(b) The regulations in this Part 435.

(c) The regulations in 34 CFR Part 425.

(Authority: 20 U.S.C. 1211a)

**§ 435.5 What definitions apply?**

The definitions in 34 CFR 425.4 apply to this part.

(Authority: 20 U.S.C. 1211a)

**Subpart B—[Reserved]**

**Subpart C—How Does the Secretary Make an Award?**

**§ 435.20 How does the Secretary evaluate an application?**

(a) The secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 435.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 435.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the Federal Register, the Secretary may assign the reserved points among the criteria in § 435.21.

(Authority: 20 U.S.C. 1211a(d))

**§ 435.21 What selection criteria does the Secretary use?**

The Secretary uses the following criteria to evaluate an application:

(a) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including consideration of—

(1) The need for the innovative approaches and methods of English literacy education for individuals of limited English proficiency that the project proposes to develop;

(2) How the needs were identified; and

(3) How the project will meet the needs.

(b) *Project objectives.* (10 points) The Secretary reviews each application to determine the extent to which the project objectives—

(1) Relate to the innovative approaches and methods of English literacy education for individuals of limited English proficiency proposed for use in the project;

(2) Are clearly stated;

(3) Are measurable; and

(4) Describe appropriate outcomes.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project including—

(1) The quality of the project design and how it incorporates the use of new instructional methods and technologies;

(2) The extent to which the management plan is well-designed and ensures proper and efficient administration of the project;

(3) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(4) How the applicant will select project participants and ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Evaluation.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Contribute to the possible replication of the project; and

(4) To the extent possible, include a third party evaluation.

(e) *Quality of key personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the director and other key personnel to be used in

the project, particularly as their experience and expertise relate to English literacy and training in English-as-a-second-language for adults;

(ii) The appropriateness of the time that each person referred to in paragraph (e)(1)(i) of this section will commit to the project; and

(iii) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel will be selected without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (e)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(f) *Institutional commitment.* (5 points) The Secretary reviews each application to determine the extent to which the applicant's agency, institution, or organization—

(1) Has experience in providing English literacy services for individuals of limited English proficiency;

(2) Will provide appropriate resources; and

(3) Will provide adequate facilities, equipment, and supplies.

(g) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1211a(d))

#### § 435.22 What additional factor does the Secretary consider?

In addition to the criteria in § 435.21, the Secretary may consider whether funding a particular application would contribute to the funding of a variety of approaches and methods.

(Authority: 20 U.S.C. 1211a(d))

#### Subpart D—What Conditions Must Be Met After an Award?

##### § 435.30 How may States use funds under this program?

An award to a State educational agency under this program may be used in combination with other Federal funds awarded to a State for literacy training for individuals of limited English proficiency.

(Authority: 20 U.S.C. 1211a(d))

#### § 435.31 How must projects that serve individuals of limited English proficiency provide for the needs of those adults?

(a) Projects that serve individuals of limited English proficiency or no English proficiency shall provide for the needs of these adults by providing programs designed to teach English and, as appropriate, to allow these adults to progress effectively through the adult education program or to prepare them to enter the regular program of adult education as quickly as possible.

(b) These programs may, to the extent necessary, provide instruction in the native language of these adults or may provide instruction exclusively in English.

(c) These programs must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

(Authority: 20 U.S.C. 1208a(d) and 1211a)

7. A new Part 436 is added to read as follows:

### PART 436—ADULT MIGRANT FARMWORKER AND IMMIGRANT EDUCATION PROGRAM

#### Subpart A—General

Sec.

436.1 What is the Adult Migrant Farmworker and Immigrant Education Program?

436.2 What activities may the Secretary fund?

436.3 Who is eligible for an award?

436.4 What regulations apply?

436.5 What definitions apply?

#### Subpart B—[Reserved]

#### Subpart C—How Does the Secretary Make an Award?

436.20 What priorities may the Secretary establish?

436.21 How does the Secretary evaluate an application?

436.22 What selection criteria does the Secretary use?

436.23 What additional factor does the Secretary consider?

#### Subpart D—What Conditions Must Be Met After an Award?

436.30 How must projects that serve adults with limited English proficiency provide for the needs of those adults?

Authority: 20 U.S.C. 1213, unless otherwise noted.

#### Subpart A—General

##### § 436.1 What is the Adult Migrant Farmworker and Immigrant Education Program?

The Adult Migrant Farmworker and Immigrant Education Program provides financial assistance for adult education

programs, services, and activities to meet the special needs of adult migrant farmworkers and immigrants.

(Authority: 20 U.S.C. 1213(a))

##### § 436.2 What activities may the Secretary fund?

The Secretary provides awards for planning, developing, and evaluating projects that are designed to provide adult education programs, services, and activities to meet the special needs of adult migrant farmworkers and immigrants.

(Authority: 20 U.S.C. 1213(a))

##### § 436.3 Who is eligible for an award?

(a) The following entities are eligible for a direct grant under the Adult Migrant Farmworker and Immigrant Education Program:

(1) A State educational agency (SEA).

(2) A local educational agency (LEA).

(3)(i) A public or private nonprofit agency, organization, or institution.

(ii) The nonprofit agency, organization, or institution shall consult the LEA in the area proposed to be served by the applicant and give that LEA an opportunity to comment on the application.

(iii) The nonprofit agency, organization, or institution shall respond to the LEA's comments and attach the comments and responses to the application.

(4)(i) An LEA or public or private nonprofit agency, organization or institution may apply on behalf of a consortium that includes a for-profit agency, organization, or institution that can make a significant contribution to attaining the objectives of the Act.

(ii) The LEA or public or private nonprofit agency, organization, or institution shall enter into a contract with the for-profit agency, organization, or institution for the establishment or expansion of programs.

(b)(1) To be eligible for a grant, the applicant must propose a project of the type described in the State's plan as appropriate for meeting the educational needs of adult migrant farmworkers and immigrants.

**Cross-Reference:** See 34 CFR 426.12(e).

(2)(i) An applicant other than an SEA shall obtain from the SEA a certification that the proposed project meets the requirements of paragraph (b)(1) of this section and forward that certification to the Secretary with the application.

(ii) An SEA that declines to issue a certification for a proposed project shall provide the applicant and the Secretary a written statement of its reasons for withholding certification.

(Authority: 20 U.S.C. 1203a(a) (1), (2) and 1213(a))

**§ 436.4 What regulations apply?**

The following regulations apply to the Adult Migrant Farmworker and Immigrant Education Program:

- (a) The regulations in this Part 436.
- (b) The regulations in 34 CFR Part 425.

(Authority: 20 U.S.C. 1213(a))

**§ 436.5 What definitions apply?**

The definitions in 34 CFR 425.4 apply to this part.

(20 U.S.C. 1213(a))

**Subpart B—[Reserved]**

**Subpart C—How Does the Secretary Make an Award?**

**§ 436.20 What priorities may the Secretary establish?**

(a) The Secretary may announce through one or more notices published in the Federal Register the priorities for this program, if any, from the types of projects described in paragraph (b) of this section.

(b) Priority may be given to projects that meet the special needs of—

- (1) Adult migrant farmworkers; or
- (2) Adult immigrants.

(Authority: 20 U.S.C. 1213(a))

**§ 436.21 How does the Secretary evaluate an application?**

(a) The Secretary evaluates an application on the basis of the criteria in § 436.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 436.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the Federal Register, the Secretary may assign the reserved points among the criteria in § 436.22.

(Authority: 20 U.S.C. 1213(a))

**§ 436.22 What selection criteria does the Secretary use?**

The Secretary uses the following criteria to evaluate an application:

(a) *Need.* (15 points) (1) The Secretary reviews each application to determine how it addresses the literacy training needs of adult migrant farmworkers' adult immigrants, or both.

(2) The Secretary looks for information that describes—

(i) The literacy training needs of adults to be served by the project; and

(ii) The number and characteristics of the adults to be served by the project.

(b) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective plan of management that ensures proper and efficient administration of the project;

(3) A clear description of how the objectives of the project relate to the purpose of the program;

(4) How the applicant plans to use its resources and personnel to achieve each objective; and

(5) A clear description of how the applicant will select participants and ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(c) *Program factors.* (15 points) The Secretary reviews each application to determine the extent to which there is—

(1) A clear description of the services to be offered;

(2) Evidence of past successful performance using the model being proposed, if appropriate;

(3) A complete description of the methodology to be used including some or all of the following components:

(i) A thorough assessment of the needs of individual students.

(ii) Recruitment strategies that are culturally appropriate.

(iii) Flexibility in the manner that services are offered, e.g., the provision of an accessible training site and schedule and the use of aides.

(iv) Individualized treatment.

(v) Counseling; and

(4) Any ongoing and planned activities in the community that will serve the same population as the project; and the extent to which coordination with those activities is planned so that a comprehensive package of services is provided for the project participants and the project does not duplicate existing activities.

(d) *Quality of key personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each one of the key personnel, including the project director, will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment

practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate for the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Identify expected outcomes of the participants and how those outcomes will be measured; and

(4) To the extent possible, include a third party evaluation.

(f) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(g) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(Authority: 20 U.S.C. 1213(a))

**§ 436.23 What additional factor does the Secretary consider?**

In addition to the criteria in § 436.22, the Secretary may consider whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 1213(a))

**Subpart D—What Conditions Must Be Met After an Award?**

**§ 436.30 How must projects that serve adults with limited English proficiency provide for the needs of those adults?**

(a) Projects that serve adults with limited English proficiency or no English proficiency shall provide for the needs of these adults by providing programs designed to teach English and, as appropriate, to allow these adults to progress effectively through the adult

education program or to prepare them to enter the regular program of adult education as quickly as possible.

(b) These programs may, to the extent necessary, provide instruction in the native language of these adults or may provide instruction exclusively in English.

(c) These programs must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

(Authority: 20 U.S.C. 1206a(d) and 1213(a))

8. A new Part 437 is added to read as follows:

## **PART 437—NATIONAL ADULT LITERACY VOLUNTEER TRAINING PROGRAM**

### **Subpart A—General**

Sec.

437.1 What is the National Adult Literacy Volunteer Training Program?

437.2 Who is eligible for an award?

437.3 What activities may the Secretary fund?

437.4 What regulations apply?

437.5 What definitions apply?

### **Subpart B—[Reserved]**

### **Subpart C—How Does the Secretary Make an Award?**

437.20 How does the Secretary evaluate an application?

437.21 What selection criteria does the Secretary use?

437.22 What additional factors does the Secretary consider?

Authority: 20 U.S.C. 1213a, unless otherwise noted.

### **Subpart A—General**

#### **§ 437.1 What is the National Adult Literacy Volunteer Training Program?**

The National Adult Literacy Volunteer Training Program provides financial assistance for projects that train adult volunteers, especially the elderly, who wish to participate as tutors in local adult education programs under the Act.

(Authority: 20 U.S.C. 1213a(a))

#### **§ 437.2 Who is eligible for an award?**

The following entities are eligible for a direct grant or cooperative agreement under the Adult Literacy Volunteer Training Program:

(a) State educational agencies.

(b) Local educational agencies.

(c) Public or private nonprofit agencies, organizations, or institutions.

(Authority: 20 U.S.C. 1213a(a))

#### **§ 437.3 What activities may the Secretary fund?**

The Secretary supports planning, implementation, and evaluation of projects designed to train adult volunteers, especially the elderly, who wish to participate as tutors in local adult education programs under the Act.

(Authority: 20 U.S.C. 1213a(a))

#### **§ 437.4 What regulations apply?**

The following regulations apply to the National Adult Literacy Volunteer Training Program:

(a) The regulations in this Part 437.

(b) The regulations in 34 CFR Part 425.

(Authority: 20 U.S.C. 1213a)

#### **§ 437.5 What definitions apply?**

(a) The definitions in 34 CFR 425.4 apply to this part.

(b) The following definition also applies to this part:

"Elderly" means an individual 60 years of age or older.

(Authority: 20 U.S.C. 1213a(a))

### **Subpart B—[Reserved]**

### **Subpart C—How Does the Secretary Make an Award?**

#### **§ 437.20 How does the Secretary evaluate an application?**

(a) The Secretary evaluates an application on the basis of the criteria in § 437.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 437.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the *Federal Register*, the Secretary may assign the reserved points among the criteria in § 437.21.

(Authority: 20 U.S.C. 1213a(a))

#### **§ 437.21 What selection criteria does the Secretary use?**

The Secretary uses the following criteria to evaluate an application:

(a) *Extent of need for the project.* (10 points) The Secretary reviews each application to determine the extent to which the project meets volunteer training needs, including consideration of—

(1) The extent to which the project will train adult volunteers, especially the elderly, who can be placed in an adult education program immediately upon completion of the training program;

(2) The extent to which the project has identified specific training needs for volunteers in the geographical area to be served for which resources are not available; and

(3) How these training needs were identified.

(b) *Project objectives.* (10 points) The Secretary reviews each application to determine the extent to which the project objectives—

(1) Are clearly stated;

(2) Are measurable; and

(3) Will result in appropriate project outcomes.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project including—

(1) The quality of the training design;

(2) The extent to which the participant recruitment and selection plan is effective and is designed to ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(3) The extent to which the plan of operation provides for the effective management and efficient administration of the project; and

(4) The extent to which the training program relates appropriately to any training programs in the community.

(d) *Evaluation.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and are appropriate to the project;

(2) Include a description of the outcomes expected for participants;

(3) Include a description of how these outcomes will be measured; and

(4) Include a plan, as a part of the project, to follow up the trainees' placement as tutors in adult education programs.

(e) *Quality of key personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of trainers and other key personnel;

(iii) The appropriateness of, and time allotted to, each of the assigned tasks; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel will be selected without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (e)(1) (i) and (ii) of this section, the Secretary considers—

- (i) Experience and training in fields related to the objectives of the project;
- (ii) Experience and training in project management; and
- (iii) Any other qualifications that pertain to the quality of the project.

(f) *Institutional commitment.* (10 points) The Secretary reviews each application to determine the extent to which the applicant's agency, organization, or institution—

- (1) Has experience in providing literacy services to adults;
- (2) Will provide adequate training facilities; and
- (3) Will provide other appropriate resources.

(g) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

- (1) The budget is adequate to support the project; and
- (2) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1213a(a))

**§ 437.22 What additional factors does the Secretary consider?**

In addition to the criteria in § 437.21, the Secretary may consider the following factors in making an award:

(a) *Geographic distribution.* The Secretary may consider whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

(b) *Variety of approaches.* The Secretary may consider whether funding a particular applicant would contribute to the funding of a variety of approaches.

(Authority: 20 U.S.C. 1213a(a))

9. A new Part 438 is added to read as follows:

**PART 438—STATE PROGRAM ANALYSIS ASSISTANCE AND POLICY STUDIES PROGRAM**

**Subpart A—General**

Sec.

438.1 What is the State Program Analysis Assistance and Policy Studies Program?

438.2 Who is eligible for an award?

438.3 What activities may the Secretary fund?

438.4 What regulations apply?

438.5 What definitions apply?

**Subpart B—[Reserved]**

**Subpart C—How Does the Secretary Make an Award?**

438.20 How does the Secretary evaluate an application?

438.21 What selection criteria does the Secretary use?

438.22 What additional factors does the Secretary consider?

Authority: 20 U.S.C. 1213b(a), unless otherwise noted.

**Subpart A—General**

**§ 438.1 What is the State Program Analysis Assistance and Policy Studies Program?**

The State Program Analysis Assistance and Policy Studies Program assists States in evaluating the status and progress of adult education in achieving the purposes of the Act.

(Authority: 20 U.S.C. 1213b(a))

**§ 438.2 Who is eligible for an award?**

(a) Public or private nonprofit agencies, organizations, or institutions are eligible for a grant or cooperative agreement under this program.

(b) Business concerns or public or private nonprofit agencies, organizations, or institutions are eligible for a contract under this program.

(Authority: 20 U.S.C. 1213b(a))

**§ 438.3 What activities may the Secretary fund?**

The Secretary may support the following directly or through awards:

(a) An analysis of State plans and of the findings of evaluations conducted in accordance with section 352 of the Act, with suggestions to State educational agencies for improvements in planning or program operation.

(b) The provision of an information network (in conjunction with the National Diffusion Network) on the results of research in adult education, the operation of model or innovative programs (including efforts to continue activities and services under the program after Federal funding has been discontinued), successful experiences in the planning, administration, and conduct of adult education programs, advances in curriculum and instructional practices, and other information useful in the improvement of adult education.

(c) Any other activities, including national policy studies, which the Secretary may designate, that assist States in evaluating the status and progress of adult education in achieving the purposes of the Act.

(Authority: 20 U.S.C. 1213b(a))

**§ 438.4 What regulations apply?**

The following regulations apply to the State Program Analysis Assistance and Policy Studies Program:

(a) The Federal Acquisition Regulation (FAR) in 48 CFR Chapter 1

and the Department of Education Acquisition Regulation (EDAR) in 48 CFR Chapter 34 (applicable to contracts).

(b) The regulations in this Part 438.

(c) The regulations in 34 CFR Part 425.

(Authority: 20 U.S.C. 1213b(a))

**§ 438.5 What definitions apply?**

The definitions in 34 CFR 425.4 apply to this part.

(Authority: 20 U.S.C. 1213b(a))

**Subpart B—[Reserved]**

**Subpart C—How Does the Secretary Make an Award?**

**§ 438.20 How does the Secretary evaluate an application?**

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 438.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 438.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the *Federal Register*, the Secretary may assign the reserved points among the criteria in § 438.21.

(Authority: 20 U.S.C. 1213b(a))

**§ 438.21 What selection criteria does the Secretary use?**

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews each application to determine how well the objectives of the proposed project will assist States in evaluating the status and progress of their adult education programs.

(b) *Extent of need for the project.* (10 points) The Secretary reviews each application to determine the extent to which the proposed project meets specific needs, including consideration of—

- (1) The needs addressed by the project;
- (2) How the applicant identified those needs;
- (3) How those needs relate to project objectives; and
- (4) The benefits to be gained by meeting those needs.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of

operation for the proposed project, including—

- (1) The quality of the design of the project;
  - (2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;
  - (3) How well the objectives of the project relate to the purpose of the program; and
  - (4) The quality of the applicant's plan to use its resources and personnel to achieve each objective.
- (d) *Quality of key personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the proposed project, including—
- (i) The qualifications and experience of the project director, if one is to be used;
  - (ii) The qualifications and experience of each of the other key personnel to be used on the project;
  - (iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and
  - (iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.
- (2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—
- (i) Experience and training in fields related to the objectives of the project;
  - (ii) Experience and training in project management; and
  - (iii) Any other qualifications that pertain to the quality of the project.
- (e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—
- (1) The budget is adequate to support the proposed project activities; and
  - (2) Costs are necessary and reasonable in relation to the objectives of the project.
- (f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—
- (1) Are appropriate for the project; and
  - (2) To the extent possible, are objective and produce data that are quantifiable.
- (g) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to

devote to the project, including facilities, equipment, and supplies.

- (h) *Dissemination plan.* (10 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including—
- (1) The extent to which the project is designed to yield outcomes that can be readily disseminated;
  - (2) A description of the types of materials the applicant plans to make available and the methods for making the materials available; and
  - (3) Provisions for publicizing the findings of the project at the local, State, and national levels, as appropriate.
- (Authority: 20 U.S.C. 1213b(a))

**§ 438.22 What additional factors does the Secretary consider?**

In addition to the criteria in § 438.21, the Secretary may consider the following factors in making an award:

- (a) *Geographic distribution.* The Secretary may consider whether funding a particular applicant would improve the geographical distribution of projects funded under this program.
- (b) *Variety of approaches.* The Secretary may consider whether funding a particular applicant would contribute to the funding of a variety of approaches to assisting States in evaluating the status and progress of their adult education programs.

(Authority: 20 U.S.C. 1213b(a))

10. A new Part 441 is added to read as follows:

**PART 441—ADULT EDUCATION FOR THE HOMELESS PROGRAM**

**Subpart A—General**

Sec.

- 441.1 What is the Adult Education for the Homeless Program?  
 441.2 Who may apply for an award?  
 441.3 What activities may the Secretary fund?  
 441.4 What regulations apply?  
 441.5 What definitions apply?

**Subpart B—[Reserved]**

**Subpart C—How Does the Secretary Make an Award?**

- 441.20 How does the Secretary evaluate an application?  
 441.21 What selection criteria does the Secretary use?  
 441.22 What additional factor does the Secretary consider?

**Subpart D—What Conditions Must Be Met After an Award?**

- 441.30 How may an SEA operate the program?  
 Authority: 42 U.S.C. 11421, unless otherwise noted.

**Subpart A—General**

**§ 441.1 What is the Adult Education for the Homeless Program?**

The Adult Education for the Homeless Program provides financial assistance to State educational agencies (SEAs) to enable them to implement, either directly or through contracts or subgrants, a program of literacy training and basic skills remediation for adult homeless individuals within their State.  
 (Authority: 42 U.S.C. 11421(a))

**§ 441.2 Who may apply for an award?**

State educational agencies in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands may apply for an award under this program.  
 (Authority: 42 U.S.C. 11421(d))

**§ 441.3 What activities may the Secretary fund?**

The Secretary provides grants or cooperative agreements for projects that implement a program of literacy training and basic skills remediation for adult homeless individuals. Projects must—

- (a) Include a program of outreach activities; and
- (b) Coordinate with existing resources such as community-based organizations, VISTA recipients, the adult basic education program and its recipients, and nonprofit literacy-action organizations.

(Authority: 42 U.S.C. 11421(a))

**§ 441.4 What regulations apply?**

The following regulations apply to the Adult Education for the Homeless Program:

- (a) The Education Department General Administrative Regulations (EDGAR) as follows:
  - (1) 34 CFR Part 75 (Direct Grant Programs).
  - (2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).
  - (3) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).
  - (4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements for State and Local Governments) for grants, including cooperative agreements, to State and local governments, including Indian tribal governments.
  - (5) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this Part 441.

(Authority: 42 U.S.C. 11421)

**§ 441.5 What definitions apply?**

(a) *Definitions in the Act.* The following terms used in this part are defined in sections 103 and 702(d), respectively, of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, 42 U.S.C. 11301 *et seq.*):

Homeless or homeless individual  
State

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant  
Application  
Award  
Contract  
EDGAR  
Grant  
Grantee  
Local educational agency  
Nonprofit  
Private  
Project  
Public  
Secretary  
State educational agency

(c) *Other definitions.* The following definitions also apply to this part:

"Act" means the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, 42 U.S.C. 11301 *et seq.*).

"Adult" means an individual who has attained 16 years of age or who is beyond the age of compulsory school attendance under the applicable State law.

"Basic skills remediation" and "literacy training" mean adult education for homeless adults whose inability to speak, read, or write the English language constitutes a substantial impairment of their ability to get or retain employment commensurate with their real ability, that is designed to help eliminate this inability and raise the level of education of those individuals with a view to making them less likely to become dependent on others, to improving their ability to benefit from occupational training and otherwise increasing their opportunities for more productive and profitable employment, and to making them better able to meet their adult responsibilities.

"Eligible recipients" means public or private agencies, institutions, or organizations, including religious or charitable organizations, eligible to apply for a contract from a state educational agency to operate projects, services, or activities.

"Outreach" means activities designed to—

(1) Identify and inform adult homeless individuals of the availability and benefits of the Adult Education for the Homeless Program; and

(2) Assist those homeless adults, by providing active recruitment and reasonable and convenient access, to participate in the program.

(Authority: 42 U.S.C. 11421)

**Subpart B—[Reserved]**

**Subpart C—How Does the Secretary Make an Award?**

**§ 441.20 How does the Secretary evaluate an application?**

(a) The Secretary evaluates an application on the basis of the criteria in § 441.21.

(b) The Secretary awards up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 441.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the *Federal Register*, the Secretary may assign the reserved points among the criteria in § 441.21.

(Authority: 42 U.S.C. 11421)

**§ 441.21 What selection criteria does the Secretary use?**

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (25 points) The Secretary reviews each application to determine the extent to which—

(1) The program design is tailored to the literacy and basic skills needs of the specific homeless population being served (for example, designs to address the particular needs of single parent heads of households, substance abusers, or the chronically mentally ill);

(2) Cooperative relationships with other service agencies will provide an integrated package of support services to address the most pressing needs of the target group at, or through, the project site. Support services must be designed to bring members of the target group to a state of readiness for instructional services or to enhance the effectiveness of instructional services. Examples of appropriate support services to be provided and funded through cooperative relationships include, but are not limited to—

(i) Assistance with food and shelter;

(ii) Alcohol and drug abuse counseling;

(iii) Individual and group mental health counseling;

(iv) Health care;

(v) Child care;

(vi) Case management;

(vii) Job skills training;

(viii) Employment training and work experience programs; and

(ix) Job placement;

(3) The SEA's application provides for individualized instruction, especially the use of individualized instructional plans or individual education plans that are developed jointly by the student and the teacher and reflect student goals;

(4) The program's activities include outreach services, especially interpersonal contacts at locations where homeless persons are known to gather, and outreach efforts through cooperative relations with local agencies that provide services to the homeless; and

(5) Instructional services will be readily accessible to students, especially the provision of instructional services at a shelter or transitional housing site.

(b) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs in section 702 of the Act, including consideration of—

(1)(i) An estimate of the number of homeless persons/expected to be served and the number of homeless adults to be served within each school district of the State.

(ii) For the purposes of the count in paragraph (b)(1)(i) of this section, an eligible homeless adult is an individual who has attained 16 years of age or who is beyond the age of compulsory attendance under the applicable State law; who does not have a high school diploma, a GED, or the basic education skills to obtain full-time meaningful employment; and who meets the definition of "homeless or homeless individual" in section 103 of the Act;

(2) How the numbers in paragraph (b)(1) of this section were determined;

(3) The extent to which the target population of homeless to be served in the project needs and can benefit from literacy training and basic skills remediation;

(4) The need of that population for educational services, including their readiness for instructional services and how readiness was assessed; and

(5) How the project would meet the literacy and basic skills needs of the specific target group to be served.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The establishment of written, measurable goals and objectives for the project that are based on the project's overall mission;

(2) The extent to which the program is coordinated with existing resources

such as community-based organizations, VISTA recipients, adult basic education program recipients, nonprofit literacy action organizations, and existing organizations providing shelters to the homeless:

(3) The extent to which the management plan is effective and ensures proper and efficient administration of the project;

(4) How the applicant will ensure that project participants otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(5) If applicable, the plan for the local application process and the criteria for evaluating local applications submitted by eligible applicants for contracts or subgrants.

(d) *Quality of key personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of key personnel the State plans to use on the project, including—

(i) The qualifications of the State coordinator/project director;

(ii) The qualifications of each of the other key personnel to be used by the SEA in the project;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel

are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section. The Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience in providing services to homeless populations;

(iii) Experience and training in project management; and

(iv) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The budget is presented in enough detail for determining paragraphs (e)(i) and (ii) of this section.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Objectively, and to the extent possible, quantifiably measure the success, both of the program and of the participants, in achieving established goals and objectives;

(2) Contain provisions that allow for frequent feedback from evaluation data provided by participants, teachers, and community groups in order to improve the effectiveness of the program; and

(3) Include a description of the types of instructional materials the applicant plans to make available and the methods for making the materials available.

(Authority: 42 U.S.C. 11421)

**§ 441.22 What additional factor does the Secretary consider?**

In addition to the criteria in § 432.21, the Secretary may consider whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

(Authority: 42 U.S.C. 11421)

**Subpart D—What Conditions Must be Met After an Award?**

**§ 441.30 How may an SEA operate the program?**

An SEA may operate the program directly, award subgrants, or award contracts to eligible recipients. If an SEA awards contracts, the SEA shall distribute funds on the basis of the State-approved contracting process.

(Authority: 42 U.S.C. 11421(a))

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# Proposed Rule

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**Wednesday  
April 12 1989**

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## **Part IV**

# **Department of Justice**

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**Office of Juvenile Justice and  
Delinquency Prevention**

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**28 CFR Part 31  
OJJDP Formula Grants Regulation;  
Proposed Rule and Request for Public  
Comment**

## DEPARTMENT OF JUSTICE

Office of Juvenile Justice and  
Delinquency Prevention

## 28 CFR Part 31

## OJJDP Formula Grants Regulation

**AGENCY:** Office of Justice Programs,  
Office of Juvenile Justice and  
Delinquency Prevention.

**ACTION:** Proposed rule and request for  
public comment.

**SUMMARY:** The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing for public comment, a proposed revision of the existing Formula Grants Regulation (28 CFR Part 31), which implements part B of title II of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1988, (subtitle F of title VII of the Anti-Drug Abuse Act of 1988, Pub. L. 100-690, 102 Stat. 4181, November 18, 1988). The 1988 Amendments reauthorize and modify the Federal assistance program of grants to State and local governments and private not-for-profit agencies for juvenile justice and delinquency prevention improvements authorized under part B of title II of the JJDP Act (42 U.S.C. 5611 *et seq.*). The proposed revisions to the existing Regulation provide guidance to States in the formulation, submission, and implementation of State formula grant plans.

**DATE:** Interested persons are invited to submit written comments on or before May 12, 1989.

**ADDRESS:** Address all comments to Ms. Diane M. Munson, Acting Administrator, Office of Juvenile Justice and Delinquency Prevention (OJJDP), 633 Indiana Avenue, NW., Room 1142, Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** Emily C. Martin, Director, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention (OJJDP), 633 Indiana Avenue, NW., Room 768, Washington, DC 20531; (202) 724-5921.

**SUPPLEMENTARY INFORMATION:****Statutory Amendments**

The 1988 reauthorization of the JJDP Act resulted in statutory amendments that impact the Formula Grants Program. These statutory changes include: A modified formula grant fund allocation minimum for participating States and Territories; a funding pass-through requirement for Indian tribes; a plan requirement related to assessing

and addressing the overrepresentation of minority juveniles in all types of secure facilities; extension through 1998 of the non-MSA exception to the jail and lockup removal requirement; an alternative substantial compliance standard for jail and lockup removal; and, a provision for the Administrator to waive termination of funding eligibility for States that have failed to achieve substantial or full compliance with the jail and lockup removal requirement. The proposed regulation details revised procedures and requirements for States participating in the Formula Grants Program resulting from the 1988 amendments to the JJDP Act.

**Description of Major Changes***Formula Grant Allocations*

Section 222(a) of the JJDP Act was amended to raise the minimum Formula Grant allocation from \$225,000 per State and \$56,250 per Territory. The minimum allocations are now \$325,000 per State and \$75,000 per Territory if the title II appropriation is less than \$75 million (other than part D). If the title II appropriation is more than \$75 million (other than part D), the minimum allocations are \$400,000 per State and \$100,000 per Territory. State and Territory allocations will be reduced prorata to the extent necessary to ensure that no State receives less than it was allotted in Fiscal Year 1988.

*Indian Pass-Through*

Section 223(a)(5) of the JJDP Act was amended to require that a portion of each participating State's 66% percent Formula Grant pass-through be made available to fund programs of Indian tribes that perform law enforcement functions, and that agree to attempt to comply with the deinstitutionalization of status offenders, separation, and jail and lockup removal requirements of the JJDP Act. The proportion of pass-through funds made available for these programs must be the same as that proportion of the State's population under 18 years of age which resides in those geographical areas where Indian tribes perform such law enforcement functions. Each year, the Secretary of the Interior will provide OJJDP with an updated list of those tribes within States that perform law enforcement functions. The initial list will be published as an appendix to the Final Regulation.

A related provision, section 223(a)(8)(A) of the JJDP Act, was amended to require that each State's juvenile crime analysis, which is submitted annually as part of the Formula Grant Application and Plan, include an assessment of juvenile crime

problems and prevention needs within the geographical areas in which Indian tribes perform law enforcement functions.

*Minority Overrepresentation in Secure Facilities*

Section 223(a)(23) of the JJDP Act was amended to require that each participating State's Formula Grant Plan address efforts to reduce the proportion of juveniles who are members of minority groups detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups, if such proportion exceeds the proportion such groups represent in the general population.

Pursuant to section 223(a)(8) of the JJDP Act, and the 1988-1990 Formula Grants Application Kit, States are required to collect and analyze a broad range of juvenile crime data.

*Jail Removal*

Section 223(a)(14) of the JJDP Act was amended to continue the non-MSA (low population density) exception to the jail and lockup removal requirement through 1993. The statutory criteria outlined in section 223(a)(14) (A), (B) and (C) that must be satisfied for a State to use this exception remain the same (28 CFR 31.303(f)(4)).

Section 223(c) of the JJDP Act was amended to create an alternative substantial compliance standard for those states unable to achieve a 75 percent reduction in jail and lockup removal violations, but which nevertheless have made sufficient progress to merit continued funding. The new standard establishes four criteria which, if satisfied, may be used in lieu of achieving a 75 percent numerical reduction to demonstrate substantial compliance. The four criteria require that the State has: (1) Removed all status and nonoffender juveniles from adult jails and lockups; (2) made meaningful progress in removing other juveniles from adult jails and lockups; (3) diligently carried out the State's jail and lockup removal plan; and (4) has historically expended and continues to expend an appropriate and significant share of Formula Grant resources to comply with section 223(a)(14) of the JJDP Act. As with the 75 percent reduction standard, for a State to be eligible for a finding of substantial compliance under this alternative standard the State must demonstrate an unequivocal commitment to achieving full compliance within a reasonable time, not to exceed three additional years, after the December 8, 1985, statutory deadline for achieving

substantial compliance with the jail and lockup removal requirement.

The statutory deadlines for substantial and full compliance with section 223(a)(14) of the JJDP Act were *not* changed by the 1988 Amendments. Each participating State and Territory's 1987 and 1988 Monitoring Reports (due by December 31, 1987, and December 31, 1988, respectively) must demonstrate either substantial or full compliance with the jail and lockup removal requirement in order for the State to be eligible (absent a waiver of termination) for the FY 1989 and 1990 Formula Grant awards, respectively. Each participating State and Territory's 1989 Monitoring Report (due by December 31, 1989), must demonstrate full compliance with section 223(a)(14) in order for the State to be eligible (absent a waiver of termination) for the FY 1991 Formula Grant award, and all subsequent awards.

Section 223(c) of the JJDP Act was also amended to provide the Administrator of OJJDP with the discretion to waive termination of funding eligibility for those States and Territories that have not achieved substantial or full compliance with the jail and lockup removal requirement, provided that the State or Territory agrees to expend all of its Formula Grant resources, except planning and administration, advisory group set aside, and Indian tribe pass-through funds, to achieve compliance with section 223(a)(14). The proposed changes to the Formula Grants Regulation set forth standards that a State must demonstrate it meets in order to be considered by the Administrator for a waiver of the termination sanction. A State which satisfies these standards qualifies for a waiver on the basis that: (1) It has made significant progress to date; and (2) additional funding is likely to produce further progress toward compliance.

#### Executive Order 12291

This notice does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of \$100 million or more, (b) a major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

#### Regulatory Flexibility Act

This proposed regulation, if promulgated, will not have a "significant" economic impact on a substantial number of small "entities", as defined by the Regulatory Flexibility Act (Pub. L. 96-354).

#### Paperwork Reduction Act

No collection of information requirements are contained in or effected by this regulation (See the Paperwork Reduction Act, 44 U.S.C. 3504(h)).

#### Intergovernmental Review of Federal Programs

In accordance with Executive Order 12372 and the Department of Justice's implementing regulation 28 CFR Part 30, States must submit formula grant applications to the State "Single Point of Contact," if one exists. The State may take up to 60 days from the application date to comment on the application.

#### List of Subjects in 28 CFR Part 31

Grant programs—law, juvenile delinquency, Grant programs.

For the reasons set out in the preamble, it is proposed to revise the OJJDP Formula Grants Regulation, 28 CFR Part 31, as follows:

#### PART 31—[AMENDED]

1. The authority citation for Part 31 will continue to read as follows:

**Authority:** Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5601 et seq.).

#### § 31.301 [Amended]

2. Paragraph (a) in § 31.301, will be amended by revising the first two sentences to read as follows:

\* \* \* \* \*

(a) Allocation to States. Each State receives a base allocation of \$325,000, and each Territory receives a base allocation of \$75,000 when the title II appropriation is less than \$75 million (other than Part D). When the title II appropriation equals or exceeds \$75 million (other than Part D), each State receives a base allocation of \$400,000, and each Territory receives a base allocation of \$100,000. To the extent necessary, each State and Territory's base allocation will be reduced proportionately to ensure that no State receives less than it was allocated in Fiscal Year 1988. \* \* \*

\* \* \* \* \*

3. Paragraph (b) in § 31.301, will be revised to read as follows:

\* \* \* \* \*

(b) Funds for local use. At least two-thirds of the formula grant allocation to the State (other than the section 222(d) State Advisory Group set aside) must be used for programs by local government, local private agencies, and eligible Indian tribes, unless the State applies for and is granted a waiver by the OJJDP. The proportion of pass-through

funds to be made available to eligible Indian tribes shall be based upon that proportion of the Indian population under 18 years of age, in those tribes performing law enforcement functions, in relation to the states' general youth population under 18 years of age. Pursuant to section 223(a)(5)(C) of the JJDP Act, each of the standards set forth in paragraphs (b)(1) (i) through (iii) of this section must be met in order to establish the eligibility of Indian tribes to receive pass-through funds:

(1)(i) The tribal entity must be recognized by the Secretary of the Interior as an Indian tribe that performs law enforcement functions as defined in paragraph (b)(2) of this section;

(ii) The tribal entity must agree to attempt to comply with the requirements of section 223(a)(12)(A), (13), and (14) of the JJDP Act; and

(iii) The tribal entity must identify the juvenile justice needs to be served by these funds within the geographical area where the tribe performs law enforcement functions.

(2) "Law enforcement functions" are deemed to include those activities pertaining to crime prevention, control, reduction, or the enforcement of the criminal law, including, but not limited to, police efforts to prevent, control, or reduce crime and delinquency or to apprehend criminal and delinquent offenders.

(3) To carry out this requirement, OJJDP will annually provide each State with the most recent Bureau of Census statistics on the number of persons under age 18 living within the State, and the number of persons under age 18 who reside in geographical areas where Indian tribes perform law enforcement functions.

(4) Pass-through funds available to tribal entities under section 223(a)(5)(C) shall be made available within States to Indian tribes, combinations of Indian tribes, or to an organization or organizations designated by such tribe(s), that meet the standards set forth in paragraph (b)(1) (i)-(iii) of this section. Where the relative number of persons under age 18 within a single Indian tribe is too small to warrant an individual subgrant or subgrants, the State may, after consultation with the eligible tribe(s), make pass-through funds available to a combination of eligible tribes within the State, or to an organization or organizations designated by and representing a group of qualifying tribes, or target the funds on larger tribal jurisdictions.

(5) Consistent with section 223(a)(4) of the JJDP Act, the State must provide for consultation with Indian tribes or a

combination of eligible tribes within the State, or an organization or organizations designated by qualifying tribes, in the development of a State plan which adequately takes into account the juvenile justice needs and requests of those Indian tribes within the State.

§ 31.303 [Amended]

4. A new paragraph (f)(4)(vi) will be added to § 31.303 to read as follows:

(f) \* \* \*  
(4) \* \* \*

(vi) Pursuant to section 223(a)(14) of the JJDP Act, the non-MSA (low population density) exception to the jail and lockup removal requirement described in paragraphs (f)(4) (i) through (v) of this section shall remain in effect through 1993.

5. Paragraph (f)(6)(iii) in § 31.303 will be revised to read as follows:

(f) \* \* \*  
(6) \* \* \*

(iii)(A) *Substantial compliance* with section 223(a)(14) requires:

(1) The achievement of a 75% reduction in the number of juveniles held in adult jails and lockups after December 8, 1985; or

(2) That a State demonstrate it has met each of the standards set forth in paragraphs (f)(6)(iii)(A)(2) (i)-(iv) of this section:

(i) Removed all status and nonoffender juveniles from adult jails and lockups. Compliance with this standard requires that the last submitted monitoring report demonstrate that no status offender (including those accused of or adjudicated for violating a valid court order) or nonoffender juveniles were securely detained in adult jails or lockups for any length of time; or, that all status offenders and nonoffenders securely detained in adult jails and lockups for any length of time were held in violation of an enforceable State law and did not constitute a pattern or practice within the State;

(ii) Made meaningful progress in removing other juveniles from adult jails and lockups. Compliance with this standard requires the State to document a significant reduction in the number of jurisdictions securely detaining juvenile criminal-type offenders in violation of section 223(a)(14) of the JJDP Act; or, a significant reduction in the number of facilities securely detaining such juveniles; or, a significant reduction in the number of juvenile criminal-type offenders securely detained in violation

of section 223(a)(14) of the JJDP Act; or, a significant reduction in the average length of time each juvenile criminal-type offender is securely detained in an adult jail or lockup; or, that State legislation has recently been enacted and taken effect and which the State demonstrates will significantly impact the secure detention of juvenile criminal-type offenders in adult jails and lockups.

(iii) Diligently carried out the State's jail and lockup removal plan approved by OJJDP. Compliance with this standard requires that actions have been undertaken to achieve the State's jail and lockup goals and objectives within approved timelines, and that the State Advisory Group, required by section 223(a)(3) of the JJDP Act, has maintained an appropriate involvement in developing and/or implementing the State's plan;

(iv) Historically expended and continues to expend an appropriate and significant share of its Formula Grant funds to comply with section 223(a)(14). Compliance with this standard requires that, based on an average from two (2) Formula Grant awards, a minimum of 40 percent of the program funds was expended to support jail and lockup removal programs; or that the State provides a justification which supports the conclusion that a lesser amount constituted an appropriate and significant share because the State's existent jail and lockup removal barriers did not require a larger expenditure of Formula Grant Program funds; and

(3) The State has made an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance within a reasonable time but in no event may such time extend beyond December 8, 1988.

(B) *Full compliance* is achieved when a State demonstrates that the last submitted monitoring report, covering 12 months of actual data, demonstrates that no juveniles were held in adult jails or lockups in circumstances that were in violation of section 223(a)(14).

(C) *Full compliance with de minimis exceptions* is achieved when a State demonstrates that it has met the standard set forth in either of paragraphs (f)(6)(iii)(C) (1) or (2) of this section:

(1) *Substantive de minimis standard*. To comply with this standard the State must demonstrate that each of the following requirements have been met:

(i) State law, court rule, or other statewide executive or judicial policy clearly prohibits the detention or confinement of all juveniles in

circumstances that would be in violation of section 233(a)(14);

(ii) All instances of noncompliance reported in the last submitted monitoring report were in violation of or departures from, the State law, rule, or policy referred to in paragraph (f)(6)(iii)(C)(1)(i) of this section;

(iii) The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances;

(iv) Existing mechanisms for the enforcement of the State law, rule or policy referred to in paragraph (f)(6)(iii)(C)(1)(i) of this section are such that the instances of noncompliance are unlikely to recur in the future; and

(v) An acceptable plan has been developed to eliminate the noncompliant incidents and to monitor the existing mechanism referred to in paragraph (f)(6)(iii)(C)(1)(i) of this section.

(2) *Numerical de minimis standard*. To comply with this standard the State must demonstrate that each of the following requirements under paragraph (f)(6)(iii)(C)(2) (i) and (ii) of this section have been met:

(i) The incidents of noncompliance reported in the State's last submitted monitoring report do not exceed an annual rate of 9 per 100,000 juvenile population of the State; and

(ii) An acceptable plan has been developed to eliminate the noncompliant incidents through the enactment or enforcement of State law, rule, or statewide executive or judicial policy, education, the provision of alternatives, or other effective means.

(iii) *Exception*. When the annual rate for a State exceeds 9 incidents of noncompliance per 100,000 juvenile population, the State will be considered ineligible for a finding of full compliance with de minimis exceptions under the numerical de minimis standard unless the State has recently enacted changes in State law which have gone into effect and which the State demonstrates can reasonably be expected to have a substantial, significant and positive impact on the State's achieving full (100%) compliance or full compliance with de minimis exceptions by the end of the monitoring period immediately following the monitoring period under consideration.

(iv) *Progress*. Beginning with the monitoring report due by December 31, 1990, any State whose prior full compliance status is based on having met the numerical de minimis standard set forth in paragraph (f)(6)(iii)(C)(2)(i) of § 31.303, must annually demonstrate, in its request for a finding of full compliance with de minimis exceptions,

continued and meaningful progress toward achieving full (100%) compliance in order to maintain eligibility for a continued finding of full compliance with de minimis exceptions.

(v) *Request submission.*

Determinations of full compliance and full compliance with de minimis exceptions are made annually by OJJDP following submission of the monitoring report due by December 31 of each calendar year. Any State reporting less than full (100%) compliance with any annual monitoring report may request a finding of full compliance with de minimis exceptions under paragraph (f)(6)(iii)(C) (1) or (2) of this section. The request may be submitted in conjunction with the monitoring report, as soon thereafter as all information required for a determination is available, or be included in the annual State plan and application for the State's Formula Grant Award.

(D) *Waiver.* (1) Failure to achieve substantial compliance as defined in this section shall terminate any State's eligibility for Formula Grant funds unless the Administrator of OJJDP waives termination of the State's eligibility. In order to be eligible for a waiver of termination, a State must submit a waiver request which demonstrates that it meets the standards set forth in paragraph (f)(6)(iii)(D)(1) (1)-(v) of this section:

(i) Agrees to expend all of its Formula Grant award except planning and administration, advisory group set aside, and Indian-tribe pass-through funds, to achieve compliance with section 223(a)(14); and

(ii) Has diligently carried out the State's jail and lockup removal plan as set forth in paragraph (f)(6)(iii)(A)(2)(iii) of this section; and

(iii) Has submitted or will submit an acceptable plan, based on an assessment of current jail and lockup removal barriers within the State, to eliminate the noncompliant incidents; and

(iv) Has achieved compliance with section 223(a)(15) of the JJDP Act; and

(v) Demonstrates a commitment through appropriate executive or legislative action, to achieving full compliance.

(2) Failure to achieve full compliance as defined in this section shall terminate any State's eligibility for Formula Grant funds unless the Administrator of OJJDP waives termination of the State's eligibility. In order to be eligible for this waiver of termination, a State must request a waiver and demonstrate that it meets the standards set forth in paragraph (f)(6)(iii)(D)(2) (i)-(vii) of this section:

(i) Agrees to expend all of its Formula Grant award except planning and administration, advisory group set aside, and Indian tribe pass-through funds, to achieve compliance with section 223(a)(14); and

(ii) Removed all status and nonoffender juveniles from adult jails and lockups as set forth in paragraph (f)(6)(iii)(A)(2)(i) of this section; and

(iii) Made meaningful progress in removing other juveniles from adult jails and lockups as set forth in paragraph (f)(6)(iii)(A)(2)(ii) of this section; and

(iv) Diligently carried out the State's jail and lockup removal plan as set forth in paragraph (f)(6)(iii)(A)(2)(iii) of this section; and

(v) Submitted an acceptable plan, based on an assessment of current jail and lockup removal barriers within the State, to eliminate the noncompliant incidents; and

(vi) Achieved compliance with section 223(a)(15) of the JJDP Act; and

(vii) Demonstrates a commitment, through appropriate executive or legislative action, to achieving full compliance.

(E) *Waiver maximum.* A State may receive a waiver of termination of eligibility from the Administrator under paragraphs (f)(6)(iii)(D) (1) and (2) of this section for a combined maximum of three Formula Grant Awards. No additional waivers will be granted.

\* \* \* \* \*

6. Introductory text of paragraph (g) in § 31.303 will be revised to read as follows:

\* \* \* \* \*

(g) *Juvenile crime analysis.* Pursuant to section 223(a)(8) (A) and (B), the State must conduct an analysis of juvenile crime problems, including juvenile gangs that commit crimes, and juvenile justice and delinquency prevention needs within the State, including those geographical areas in which an Indian tribe performs law enforcement functions.

\* \* \* \* \*

7. Paragraph (j) in § 31.303 will be revised to read as follows:

\* \* \* \* \*

(j) *Minority detention and confinement.* Pursuant to section 223(a)(23) of the JJDP Act, States must address efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population. It is important for states to approach this in a comprehensive manner. Compliance with this provision

is achieved when a State has met the requirements set forth in paragraph (j)(1)-(3) of this section:

(1) Provide documentation in the State Plan Juvenile Crime Analysis to indicate whether minority juveniles are disproportionately detained or confined in secure detention or correctional facilities, jails, or lockups in relation to their proportion of the general youth population, using the appropriate comparison population;

(2) Where documentation is unavailable, or demonstrates that minorities are disproportionately detained or confined in relation to their proportion in the general youth population, states must provide a strategy for addressing the disproportionate representation of minority juveniles in the juvenile justice system, including but not limited to:

(i) Assessing the differences in arrest, diversion, and adjudication rates, court dispositions other than incarceration, and the rates and periods of commitment to secure facilities of minority youth and non-minority youth in the juvenile justice system;

(ii) Increasing the availability and improving the quality of diversion programs for minorities who come in contact with the juvenile justice system such as police diversion programs;

(iii) Providing support for prevention programs in communities with a high percentage of minority residents with emphasis upon support for community-based organizations that serve minority youth;

(iv) Providing support for reintegration programs designed to facilitate reintegration and reduce recidivism of minority youths;

(v) Initiate or improve the usefulness of relevant information systems and disseminate information regarding minorities in the juvenile justice system.

(3) Each State is required to submit a supplement to the 1988 Multi-Year Plan for addressing the extent of disproportionate representation of minorities in the juvenile justice system. This supplement, which will be submitted as a component of the 1989 Formula Grant Application and Multi-Year Plan Update, must include the State's assessment of disproportionate minority representation, and a workplan for addressing this issue programmatically, or where data is insufficient to make an assessment, a workplan for improving the information collection systems. The workplan, once approved by OJJDP, is to be implemented as a component of the State's 1990 Formula Grant Plan.

(4) For purposes of this plan requirement, minority populations are defined as members of the following groups: Asian Pacific Islanders; Blacks; Hispanics; and, American Indians.

\* \* \* \* \*

· 8. A new paragraph (k), will be added in § 31.303 to read as follows:

\* \* \* \* \*

(k) Pursuant to section 223(a)(24) of the JJDP Act, States shall agree to other terms and conditions as the Administrator may reasonably prescribe to assure the effectiveness of programs assisted under the Formula Grant.

**Diane M. Munson,**

*Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc: 89-8472 Filed 4-11-89; 8:45 am]

**BILLING CODE 4410-19-M**



**DEPARTMENT OF EDUCATION****National Institute on Disability and Rehabilitation Research; Final Funding Priority for Fiscal Year 1989****AGENCY:** Department of Education.**ACTION:** Notice of final funding priority for fiscal year 1989.

**SUMMARY:** The Secretary of Education announces a final funding priority for a research activity to be supported under the Rehabilitation Research and Training Center (RRTC) program of the National Institute on Disability and Rehabilitation Research (NIDRR) in fiscal year 1989.

**FOR FURTHER INFORMATION CONTACT:**

Betty Jo Berland, National Institute on Disability and Rehabilitation Research (Telephone: (202) 732-1139). Deaf and hearing-impaired individuals may call (202) 732-1198 for TDD services.

**EFFECTIVE DATE:** This priority takes effect either 45 days after publication in the *Federal Register* or later if Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

**SUPPLEMENTARY INFORMATION:** On January 5, 1989, a proposed priority for an RRTC in pediatric rehabilitation was published for public comment in the *Federal Register* at 54 FR 378. No substantive comments were received in response to the proposed priority, and the Secretary adopts the proposed priority without any substantive changes.

The publication of this final funding priority does not bind the Department of Education to fund projects under this priority, except as otherwise provided by statute.

Authority for the Rehabilitation Research and Training Centers (RRTC) program of NIDRR is contained in section 204(b)(1) of the Rehabilitation Act of 1973, as amended. Under the RRTC program, awards are made to institutions of higher education, or to public and private organizations, including Indian tribes and tribal organizations, that are affiliated with institutions of higher education.

RRTC's conduct programmatic, multidisciplinary, and synergistic research, training, and information dissemination in designated areas of high priority. NIDRR's regulations authorize the Secretary to establish research priorities by reserving funds to support particular research activities (see 34 CFR 352.32).

In the 1989 Appropriations for the Departments of Health and Human Services, Labor, and Education Act

(Pub. L. 100-436), Congress earmarked funds for an RRTC in pediatric rehabilitation.

A program of RRTCs has been established to conduct coordinated and advanced programs of rehabilitation research and to provide training to rehabilitation personnel engaged in research or the provision of services. RRTCs must be operated in collaboration with institutions of higher education and must be associated with rehabilitation service programs. Each Center conducts a synergistic program of research, evaluation, and training activities focused on a particular rehabilitation problem area. Each Center is encouraged to develop practical applications for all of its research findings. Centers generally disseminate and encourage the utilization of new rehabilitation knowledge through such means as writing and publishing undergraduate and graduate texts and curricula and publishing findings in professional journals. All materials that the Centers develop for dissemination training must be accessible to individuals with a range of handicapping conditions. RRTCs also conduct programs of in-service training for rehabilitation practitioners, education at the pre-doctoral and post-doctoral levels, and continuing education. Each RRTC must conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research. Centers must also conduct state-of-the-art studies in relevant aspects of their priority areas. Each RRTC must also provide training to individuals with disabilities and their families in managing and coping with disabilities.

NIDRR will conduct, not later than three years after the establishment of any RRTC, one or more reviews of the activities and achievements of the Center. Continued funding depends at all times on satisfactory performance and accomplishment, in accordance with the provisions of 34 CFR 75.253(a).

**Priority***Rehabilitation of Infants, Children, and Youth With Disabilities or Chronic Illness*

One of the landmark studies of children with special needs, the Project on the Classification of Exceptional Children sponsored by the Department of Health, Education, and Welfare, led to the publication in 1975 of *The Future of Children* by the late Nicholas Hobbs

and colleagues. There are still many priority areas set forth in that report that have not been addressed adequately. In addition, new research issues concerning psychosocial development, service delivery, and policy have emerged from the integration of infants, children, and adolescents with disabilities and chronic illnesses into their communities.

Policy issues include alternatives to institutionalization or long-term hospitalization for children whose families cannot care for them physically or financially, and age-appropriate, integrated models of child care that will enable parents of children with disabilities or chronic illnesses to continue employment or to have respite services. At an individual level, there is a need for studies of the impact of a disability or chronic illness on a child's social and emotional development and on the efforts of schools and other institutions to prevent the development of secondary adjustment problems in these children.

NIDRR expects to fund a Center that will focus on the full age range from birth to fifteen years and will conduct all research activities in integrated community settings. Such a Center must involve older children with disabilities or chronic illnesses and parents of those children in planning and evaluating the research. The Center must provide for collaborative research and training among at least three geographically distributed sites, and must coordinate activities with other relevant RRTCs, Parent Networks, national organizations representing disability concerns, and University Affiliated Facilities.

An absolute priority is announced for an RRTC to:

- Investigate alternatives to long-term hospitalization and institutionalization for children in families that are physically and financially limited in their abilities to provide care, and develop and test strategies for use by State and other agencies to implement alternative solutions that will promote the psychosocial development of children with disabilities and chronic illnesses;

- Identify and evaluate integrated, age-appropriate models of child care that will facilitate normalized psychosocial development for children and youth with disabilities and chronic illnesses;

- Investigate the patterns of social and emotional development in children and youth with different chronic illness or disabilities;

- Develop and evaluate appropriate interventions to promote physical

restoration, and social and psychological development;

- Investigate the impact of disability and chronic illness on minority children, particularly as they affect family attitudes toward, and relationships with, these children and the types of services these children receive, and develop culturally sensitive interventions to enhance the psychosocial development of minority children with disabilities and chronic illnesses;

- Develop and evaluate strategies to enable older children and adolescents with disabilities or chronic illnesses to participate effectively in goal-setting and service planning decisions, and develop training programs for service providers as well as for youth themselves that will enhance the role of youth in these processes; and

- Identify, develop, and evaluate curricula, practices, and materials used with educators, service providers, and parents to enhance the psychosocial

development of children and youth who have disabilities or chronic illnesses.

Authority: 29 U.S.C. 762(b)(1).

Dated: March 30, 1989.

**Lauro F. Cavazos,**  
*Secretary of Education.*

(Catalog of Federal Domestic Assistance No. 84.133B, National Institute on Disability and Rehabilitation Research)

[FR Doc. 89-8647 Filed 4-11-89; 8:45 am]

**BILLING CODE 4001-01-M**



Federal Register

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Wednesday  
April 12, 1989

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**Part VI**

**Department of  
Education**

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**34 CFR Part 345  
State Grants Program for Technology-  
Related Assistance for Individuals With  
Disabilities; Notice of Proposed  
Rulemaking**

**DEPARTMENT OF EDUCATION****34 CFR Part 345**

RIN 1820-AA84

**State Grants Program for Technology-Related Assistance for Individuals With Disabilities****AGENCY:** Department of Education.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes regulations to implement the Technology-Related Assistance for Individuals With Disabilities Act of 1988. The proposed regulations implement Title I of the Act, a program of state grants for the development of consumer-responsive statewide programs of technology-related assistance for individuals with disabilities. The proposed rules state the purposes of the program, the types of activities that may be supported, application requirements, the selection criteria by which the Secretary evaluates applications, and the requirements that must be met by States that receive grants under the program.

**DATE:** Comments must be received on or before May 12, 1989.

**ADDRESSES:** Comments should be addressed to: Betty Jo Berland, National Institute on Disability and Rehabilitation Research, Department of Education, 400 Maryland Avenue SW., Switzer Building, Room 3422, Washington, DC 20202-2016.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Betty Jo Berland; Telephone: (202) 732-1139; deaf or hearing-impaired persons who use telecommunication devices for the deaf (TDD) may call (202) 732-1198.

**SUPPLEMENTARY INFORMATION:** In August 1988, Congress passed, and the President signed, the Technology-Related Assistance for Individuals With Disabilities (Pub. L. 100-407). The Act is based upon the finding that advances in modern technology can enable some persons with disabilities to have greater control over their lives, to enhance their participation in education, employment, family, and community activities, and to otherwise benefit from opportunities that are commonly available to individuals who do not have disabilities. Title I of the Act, the subject of this Notice of Proposed Rulemaking (NPRM), authorizes financial assistance to States to help each State develop a consumer-

responsive, statewide program of technology-related assistance for individuals with disabilities.

The proposed regulations incorporate the seven statutory purposes of the program and provide that a State must address each of these purposes in its consumer-responsive, comprehensive statewide program. This notice of proposed rulemaking (NPRM) further provides that, in accordance with the statutory requirements, the Governor must designate a single responsible entity to apply for a grant and administer the activities under the grant, and must designate a public agency to receive and disburse the funds and maintain fiscal controls.

From time to time, the Secretary will publish in the *Federal Register* requesting applications for development grants. In an application for a development grant, a State must provide, among other things, a preliminary assessment of its need for technology-related assistance and a description of its existing efforts to establish a consumer-responsive, comprehensive statewide system for the delivery of technology-related assistance. Each State must also state the goals and objectives of its proposed program under the development grant. A development grant will be awarded for a three-year period.

The Secretary will refer complete applications to one or more groups of expert peer reviewers, which will evaluate the applications according to the selection criteria in § 345.31. The Secretary will appoint as members of the peer review groups individuals who have expertise, by reason of training or experience, in such areas as the provision of technology-related services or assistive devices; public administration; development and implementation of public systems; evaluation of service delivery programs; education, training, and public information; development and maintenance of information systems; provision of services to individuals with disabilities and their families; health care and benefits administration; personal use of assistive technology; and other relevant and appropriate areas.

The proposed selection criteria for applications for development grants, which are detailed in this NPRM at § 345.31, include the extent to which a State: demonstrate a comprehensive assessment of the need for a statewide, consumer-responsive program; presents measurable goals and objectives that address the stated needs; present a plan of activities that is likely to accomplish the goals and objectives; presents an

adequate management plan, including staffing, resource deployment, and coordination; presents an adequate plan of evaluation; describes substantive roles for individuals with disabilities or their families representatives in the development and implementation of the State's program under the grant; and describes extensive coordination among appropriate State, public, and private agencies in all phases of the project.

In the third year of its development grant, a State may apply for an extension grant. In its application for an extension grant, a State must include a followup needs assessment and a description of the activities and accomplishments under the development grant. States are required to collect data and document the extent to which they have made progress toward the goals specified in the application for the development grant. An application for an extension grant also must include an assessment of the degree of satisfaction of individuals with disabilities, their families or representatives, public and private service providers, employers, and other appropriate individuals with the activities under the development grant and with their involvement in the development and implementation of the statewide program of technology-related assistance under the grant.

The Secretary may award extension grants to States that have made significant progress under the development grant. Applications for extension grants will be evaluated based on the application that is submitted and the Secretary's assessment of the extent to which the State made significant progress toward achieving the goals and objectives under its development grant. The proposed regulations provide that the Secretary will base the assessment of progress on the results of a site visit to the State's program and the documentation of progress the State has presented in its extension grant application.

The proposed rules clarify the obligations of a grantee with respect to fiscal accountability, reporting, and cooperation with the Secretary in the discharge of the Secretary's responsibilities under this program.

Finally, the proposed rules outline the penalties to which a State may be subject if it violates the requirements of this part. There are no program-specific appeals procedures in this part because general Department of Education procedures governing the withholding and recovery of funds apply to any State that is found to be in noncompliance with the requirements of this program as

a result of an onsite visit or failure to supply relevant information that the Secretary requires.

The Department of Education's responsibilities under this Act will be administered by the National Institute on Disability and Rehabilitation Research (NIDRR), created under Title II of the Rehabilitation Act of 1973, as amended by Public Laws 95-602, 98-221, and 99-506. The administration of the program will be governed generally by the Education Department General Administrative Regulations (EDGAR), with certain specific exceptions. In specifying the regulations that apply to this program, the Secretary proposes to exclude 34 CFR 80.32(a) and 34 CFR 80.33(a) because the statute specifically encourages transfer of title to equipment and supplies, and § 75.618 because the statute authorizes grantees to lease equipment.

#### Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

#### Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Because these proposed regulations would affect only States and entities designated to act on behalf of States, the regulations would not have an impact on small entities. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

#### Paperwork Reduction Act of 1980

Sections 345.20, 345.21, 345.31, 345.40, 345.41, 345.43, and 345.46 contain information collection requirements. As required by section 3504(b) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

#### Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is

to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

#### Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed priorities will be available for public inspection, during and after the comment period, in Room 3422 of the Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

#### List of Subjects in 34 CFR Part 345

Administrative practice and procedure, Education, Educational research, Grant programs—education, Handicapped, Reporting and recordkeeping requirements.

Dated: March 10, 1989.

Lauro F. Cavazos,  
Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.224, National Institute on Disability and Rehabilitation Research)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 345, to read as follows:

### PART 345—STATE GRANTS PROGRAM FOR TECHNOLOGY-RELATED ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES

#### Subpart A—General

- Sec.
- 345.1 What is the State grants program for technology-related assistance for individuals with disabilities?
- 345.2 What are the purposes of the State grants program for technology-related assistance for individuals with disabilities?

- Sec.
- 345.3 What are the types of awards under this program?
- 345.4 Who is eligible to receive assistance under this program?
- 345.5 What regulations apply to this program?
- 345.6 What definitions apply to this program?

#### Subpart B—What Kinds of Activities Does the Department Support Under This Program?

- 345.10 What are the functions of projects funded under this program?
- 345.11 What types of activities are authorized under this program?

#### Subpart C—How Does a State Apply for a Grant?

- 345.20 What is the content of an application for a development grant?
- 345.21 What is the content of an application for an extension grant?

#### Subpart D—How Does the Secretary Make a Grant?

- 345.30 How does the Secretary evaluate an application for a development grant under this program?
- 345.31 What selection criteria are used for development grants under this program?
- 345.32 What other factors does the Secretary take into consideration in making development grant awards under this program?
- 345.33 What is the review process for an application for an extension grant?

#### Subpart E—What Conditions Must Be Met After an Award?

- 345.40 What are the reporting requirements for the recipient of a development grant?
- 345.41 What are the reporting requirements for the recipient of an extension grant?
- 345.42 Who retains title to technology devices provided under this program?
- 345.43 What are the requirements for grantee participation in the Secretary's progress assessments?
- 345.44 What are the restrictions on the use of funds under this program?
- 345.45 What is the relation between this program and related assistance under other programs?
- 345.46 What are the requirements for participation in the Secretary's evaluation of this program?

#### Subpart F—What Compliance Procedures May the Secretary Use?

- 345.50 Who is subject to a corrective action plan?
- 345.51 What penalties may the Secretary impose on a grantee that is found not to be in compliance?

Authority: 29 U.S.C. 2201-2271, unless otherwise noted.

#### Subpart A—General

§ 345.1 What is the State grants program for technology-related assistance for individuals with disabilities?

This program provides financial assistance to States to assist each State to develop and implement a consumer-

responsive, comprehensive statewide program of technology-related assistance for individuals with disabilities that accomplishes the purposes described in § 345.2.

(Authority: 29 U.S.C. 2211(a))

**§ 345.2 What are the purposes of the State grants program for technology-related assistance for individuals with disabilities?**

The purpose of this program is to create and support consumer-responsive, comprehensive, statewide programs of technology-related assistance that are designed to increase—

(a) Awareness of the needs of individuals with disabilities for assistive technology devices and assistive technology services;

(b) Awareness of policies, practices, and procedures that facilitate or impede the availability or provision of assistive technology devices and assistive technology services;

(c) The availability of and funding for the provision of assistive technology devices and assistive technology services for individuals with disabilities;

(d) Awareness and knowledge of the efficacy of assistive technology devices and assistive technology services among individuals with disabilities, their families or representatives, individuals who work for public agencies and private entities that have contact with individuals with disabilities (including insurers), employers, and other appropriate individuals;

(e) The capacity of public and private entities to provide technology-related assistance, particularly assistive technology devices and assistive technology services, and to pay for the provision of assistive technology devices and assistive technology services;

(f) Coordination among State agencies and public and private entities that provide technology-related assistance, particularly assistive technology devices and assistive technology services; and

(g) The probability that individuals of all ages with disabilities will, to the extent appropriate, be able to secure and maintain possession of assistive technology devices as they make the transition between services offered by human service agencies or between settings of daily living.

(Authority: 29 U.S.C. 2201(b)(1))

**§ 345.3 What are the types of awards under this program?**

Under this program, the Secretary—

(a) Awards three-year development grants to assist States in developing and implementing statewide programs that accomplish the purposes in § 345.2; and

(b) May award a two-year extension grant to any State that demonstrates significant progress under the development grant in developing and implementing a statewide program that accomplishes the purposes in § 345.2.

(Authority: 29 U.S.C. 2212(a) and 2213(a))

**§ 345.4 Who is eligible to receive assistance under this program?**

(a) A State is eligible to receive a grant under this program, providing that the Governor has designated—

(1) An office, agency, entity, or individual to be responsible for preparing the application and carrying out the purposes and activities of the program under the grant; and

(2) A public agency to be responsible for receiving and disbursing to that office, agency, entity, or individual the funds received under the program and maintaining fiscal accountability and responsibility.

(b) A State that is receiving funding for a third year under a development grant may apply for an extension grant, pursuant to § 345.21.

(Authority: 29 U.S.C. 2212(a) and (e)(1) and 2213(a))

**§ 345.5 What regulations apply to this program?**

The following regulations apply to the States Grants Program for Technology-Related Assistance for Individuals with Disabilities:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs) except § 75.618, Part 77 (Definitions That Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), except §§ 80.32(a) and 80.33(a), and Part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this Part 345.

(Authority: 29 U.S.C. 2201–2271)

**§ 345.6 What definitions apply to this program?**

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant  
Application  
Award  
Department  
EDGAR

Fiscal year  
Grant period  
Nonprofit  
Nonpublic  
Private  
Project  
Project period  
Public

(b) *Definitions in the Technology-Related Assistance for Individuals with Disabilities Act of 1988.* The following terms used in this part are defined in section 3 of the Act:

Assistive technology device  
Assistive technology service  
Individual with disabilities  
Institution of higher education  
Secretary  
State  
Technology-related assistance  
Underserved group

(c) *Other definitions.* The following definition also applies to this part:

“Major life functions” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(Authority: 29 U.S.C. 2201–2271)

**Subpart B—What Kinds of Activities Does the Department Support Under This Program?**

**§ 345.10 What are the functions of projects funded under this program?**

The following functions may be carried out by States in accomplishing the purposes described in § 345.2:

(a) Identification of individuals with disabilities, including individuals from underserved groups, residing in the State, and an ongoing assessment of the needs of those individuals with disabilities for technology-related assistance, which may be based on existing data.

(b) Identification and coordination of Federal and State policies, resources, and services related to the provision of technology-related assistance to individuals with disabilities, including entering into interagency agreements.

(c) Provision to individuals with disabilities of assistive technology devices and services that will mitigate the effects of those disabilities, and payment for these devices and services.

(d) Dissemination of information about technology-related assistance and funding sources for assistive technology devices and services to individuals with disabilities, their families or representatives, employers, individuals who work for public agencies or private entities that have contact with individuals with disabilities (including

insurers), and other appropriate individuals.

(e) Provision of training and technical assistance related to assistive technology devices and services to individuals with disabilities, their families or representatives, employers, and individuals who work for public agencies or private entities that have contact with individuals with disabilities (including insurers), and other appropriate individuals.

(f) Conduct of a public awareness program focusing on the efficacy and availability of assistive technology services and devices for individuals with disabilities.

(g) Provision of assistance to statewide and community-based organizations that provide assistive technology services to individuals with disabilities.

(h) Support for the establishment or continuation of partnerships and cooperative initiatives between public agencies and both nonprofit and for-profit entities to facilitate the development and implementation of a statewide program of technology-related assistance for individuals with disabilities.

(i) Actions to develop standards, or, as appropriate, apply existing standards to ensure the availability of qualified personnel.

(j) Compilation and evaluation of appropriate data relating to the program.

(k) The establishment of procedures providing for the active involvement of individuals with disabilities, their families or representatives, and other appropriate individuals in the development and implementation of the program, and for the active involvement, to the maximum extent appropriate, of individuals with disabilities who use assistive technology devices and assistive technology services in decisions relating to these assistive technology devices and assistive technology services.

(1) Any other functions approved by the Secretary that further the purposes in § 345.2.

(Authority: 29 U.S.C. 2211(b))

**§ 345.11 What types of activities are authorized under this program?**

In carrying out the purposes described in § 345.2 and the functions described in § 345.10, a State may undertake one or more of the following activities:

(a) Develop and implement model systems for the delivery of assistive technology devices and services to individuals with disabilities that, if successful, could be replicated or made generally applicable, and that may include—

(1) The purchase, lease, or other acquisition of assistive technology devices and services, or payment for the provision of assistive technology devices and services;

(2) The provision of counselors, including peer counselors, to assist individuals with disabilities and their families to obtain assistive technology devices and services;

(3) Provisions for the involvement of individuals with disabilities or, if appropriate, their families or representatives in the development and operation of the model delivery system; and

(4) The evaluation of the efficacy of the model service delivery system.

(b) Conduct a statewide needs assessment, which may be based on existing data and may include—

(1) Estimates of the number of individuals with disabilities within the State, categorized by residence, type and extent of disabilities, age, race, gender, and ethnicity;

(2) A description of the efforts during fiscal year 1987 to provide technology-related assistance to individuals with disabilities, including the devices and services provided and the number and types of individuals receiving appropriate devices and services;

(3) An estimate of the number of individuals with disabilities who are in need of assistive technology devices and services and a description of the types of assistance needed;

(4) An estimate of the cost of providing technology-related assistance to all individuals with disabilities who need technology-related assistance;

(5) A description of State and local public and private resources, including insurance, available to establish a statewide program of technology-related assistance;

(6) The identification of State and Federal policies that facilitate or interfere with the operation of a statewide system of technology-related assistance;

(7) A description of alternative State-financed systems to subsidize the provision of technology-related assistance, including loans for assistive technology devices, a low-interest loan fund, a revolving fund, a loan insurance program, or a partnership with private entities for the purchase, lease, or other acquisition of assistive technology devices and services, and a description of the eligibility criteria under these alternative systems;

(8) A description of the State's procurement policies and the extent to which those policies will ensure, to the extent practicable, the compatibility of assistive technology devices supplied as

a result of this program with technology designed for general use by the nondisabled population; and

(9) An inquiry into whether it is advantageous for either a State agency or a task force comprised of representatives from both the State and the private sector to study the practices of private companies offering health and disability insurance in the State with regard to the purchase, lease, or other acquisition of assistive technology devices and use of assistive technology services.

(c) Conduct or support a public awareness program designed to provide information on the efficacy and availability of assistive technology devices and services to individuals with disabilities, their families or representatives, individuals who work for public agencies and private entities that have contact with individuals with disabilities, (including insurers), employers, and other appropriate individuals, that may include—

(1) The development and dissemination of information relating to the nature of assistive technology devices and services including their cost, appropriateness, availability, and means of access, and the efficacy of assistive technology devices and services in enhancing the capacities of individuals with disabilities;

(2) Procedures for providing direct communication between public and private providers, including employers, of assistive technology devices and services; and

(3) The development and dissemination of information relating to the use of the public awareness program by individuals with disabilities, their family members or representatives, professionals who work in the field of technology-related assistance, and other appropriate individuals, and the nature of the inquiries these individuals have made.

(d) Encourage the creation of or support for the maintenance of a program of support groups among statewide or community-based organizations or systems that assist individuals with disabilities to use assistive technology devices and services disabilities.

(e) Provide or support a program of training and technical assistance relating to the use of assistive devices and assistive technology services to individuals with disabilities, their families or representatives, individuals who work for public agencies or private entities that have contact with individuals with disabilities, insurers,

employers, and other appropriate individuals.

(f) Develop, operate, or expand a system for public access to information about technology-related assistance that may—

(1) Include information about assistive technology devices and services, and about the availability, costs, and sources of funds, and the individuals, organizations, and agencies capable of providing technology-related assistance to individuals with disabilities;

(2) Identify and classify existing funding sources, conditions of and criteria for access to those sources, including any funding mechanisms or strategies developed by the State;

(3) Develop, compile, and categorize a catalog of print, braille, audio, video, captioned video, and other materials in various media that contain the information described in § 345.11(f)(1) so as to ensure accessibility to individuals with sensory and cognitive disabilities;

(4) Identify existing support groups and systems available to assist individuals with disabilities to make effective use of technology-related assistance; and

(5) Maintain a record of the extent to which citizens of the State use or make inquiries of this information system, and the nature of their inquiries.

(g) Develop cooperative agreements with other States to expand the capacity of the States to assist individuals of all ages with disabilities to learn about, acquire, use, maintain, adapt, and upgrade assistive technology devices and assistive technology services that these individuals need at home, school, work, or in other environments that are part of daily living.

(h) Conduct any other activities necessary to developing, implementing, or evaluating the statewide program of technology-related assistance.

(Authority: 29 U.S.C. 2211(c))

### Subpart C—How Does a State Apply for a Grant?

#### § 345.20 What is the content of an application for a development grant?

(a) Applicants for development grants under this program shall include the following information on their applications:

(1) The designation by the Governor of the State of the office, agency, entity, or individual responsible for preparing the application; administering and supervising the use of amounts made available under the grant; planning and developing the statewide program of technology-related assistance; ensuring coordination between public and private agencies, including the entering into of

interagency agreements; ensuring active, timely, and meaningful participation by individuals with disabilities and their families or representatives, and other appropriate individuals with respect to performing functions and carrying out activities under the grant; and delegating any of these responsibilities to one or more appropriate agencies, entities, or individuals.

(2) A description of the nature and extent of involvement of various State agencies in the preparation of the application and of their continuing role in the development of the statewide program of technology-related assistance.

(3) A description of the nature and extent of involvement of individuals not employed by any State agency, including individuals with disabilities, their families or representatives, and other appropriate individuals in the development of the application and the continuing role of these individuals in the development of the statewide program under the grant.

(4) A preliminary assessment of the needs of individuals with disabilities in the State, including individuals from underserved groups, and individuals in various geographic areas of the State for assistive technology services, devices, and support.

(5) A description of the State's current and previous efforts to develop a statewide program of technology-related assistance and an assessment of the effectiveness of those efforts.

(6) A description of the objectives, functions, goals, and activities planned under the grant and the expected outcomes at the end of the grant period with respect to a consumer-responsive statewide program consistent with the purposes of the program stated in § 345.2.

(7) A description of the State's and other resources that can be committed to the development of the statewide program.

(8) A description of the procedures used for compiling information for the application and of the procedures that the State will use to collect information and conduct evaluations of progress and accomplishments under the grant.

(9) A description of State policies and procedures governing contracts, grants, and other arrangements with public and private entities and individuals for the purpose of developing a statewide system and providing assistive technology devices and services under the grant that will indicate that a State's policies and procedures are adequate to assure appropriate fiscal accounting, recordkeeping and reporting, and

program accountability by all parties receiving funds under the grant.

(b) Applicants for development grants shall include the following assurances in their applications:

(1) An assurance that, to the extent practicable, devices and services provided under the grant will be equitably distributed among all geographic areas of the State.

(2) An assurance that title to devices purchased with grant funds, including through subgrants or contracts, will be held by public agencies or will be transferred to the disabled individual or to a family member or guardian in accordance with the provisions of § 345.43.

(3) An assurance that funds received under the grant—

(i) Will be expended in accordance with the provisions of this program and the specific grant;

(ii) Will be used to supplement amounts available from other sources for technology-related assistance;

(iii) Will not be used to pay a financial obligation for technology-related devices or services that would otherwise have been paid from other sources, unless that payment is made to prevent a delay in receipt of technology-related assistance by an individual and is subsequently reimbursed in full; and

(iv) Will not be used to supplant related assistance available under the Social Security Act (Title II, V, XVI, XVIII, XIX, or XX), the Education of the Handicapped Act, the Rehabilitation Act of 1973, as amended, or laws pertaining to veterans' benefits.

(4) An assurance that the State will adopt such fiscal control and accounting procedures as may be necessary to ensure proper disbursement of and accounting for funds under the grant, and that a public agency will control and administer all funds received under the grant and will not commingle monies received under the grant with State or other funds.

(5) An assurance that the State will make available information concerning technology-related assistance to individuals with disabilities and their families or representatives in a form that will enable those individuals to make effective use of the information; and in preparing information for dissemination, will consider the needs of individuals with sensory and cognitive impairments; and will consider the provision of information through a variety of formats, including audio cassettes and braille materials, and visual materials such as captioned video cassettes and discs.

(6) An assurance that the State will prepare reports to the Secretary in such

form and containing such information as the Secretary may require to carry out the Secretary's functions under this program, and will keep such records, and allow access to those records as the Secretary may require to ensure the correctness and verification of information provided by the State in its application.

(c) Applicants for development grants shall provide any other related information and assurances that the Secretary may reasonably require.

(Authority: 29 U.S.C. 2212(e))

**§ 345.21 What is the content of an application for an extension grant?**

A State that seeks an extension grant shall include the following in an application:

(a) A description of the needs of individuals with disabilities, their families or representatives, including individuals from underserved groups and other appropriate individuals within the State for assistive technology devices and services.

(b) A description of the specific activities carried out under the development grant and the relationship of these activities to the creation of a statewide system of technology-related assistance.

(c) Documentation of the progress made under the development grant toward development of a statewide program of technology-related assistance.

(d) A description of the actions the State has taken to determine the degree of satisfaction of individuals with disabilities and their families or representatives, public and private service providers, employers, and other appropriate individuals, with the degree of their ongoing participation in the development and implementation of the statewide system, with the specific activities carried out under the development grant, and the progress made under the grant toward a consumer-responsive statewide system. That description must include—

(1) A description of the involvement of individuals with disabilities and their families or representatives in the activities carried out under the development grant and of their continuing involvement in the extension grant; and

(2) A description of the involvement of State agencies, other public agencies, and private organizations, including service providers and employers, in the activities under the development grant and in the resultant statewide system, and their continuing roles under the extension grant.

(e) A summary of comments on the State's programs and progress under the development grant that the State has solicited from relevant parties, including persons with disabilities and their families or representatives, public and private service providers, employers, and other appropriate individuals and organizations and a summary of the State's response to those comments.

(f) Information and assurances as described in § 345.20.

(g) An assurance that the State will comply with the guidelines established under section 508 of the Rehabilitation Act of 1973 in making electronic equipment accessible to individuals with disabilities.

(Authority: 29 U.S.C. 2213(c))

**Subpart D—How Does the Secretary Make a Grant?**

**§ 345.30 How does the Secretary evaluate an application for a development grant under this program?**

(a) The Secretary evaluates each application using the selection criteria in § 345.31.

(b) The Secretary awards each application a value of zero to five (0-5) for each of seven (7) criteria listed in § 345.31. These values are based on how well the application addresses each criterion, as follows—Outstanding (5); Superior (4); Satisfactory (3); Marginal (2); Poor (1); or not addressed in the application (0). In this way, each criterion is judged according to a uniform scale.

(c) Because the Secretary considers certain criteria to be more important than others, the Secretary has weighted each criterion as indicated in § 345.31. The value awarded to each criterion in a State's application is multiplied by the standard weight accorded to that criterion in § 345.31.

(d) The final score for each application is determined by totaling the scores computed for each criterion.

(e) The maximum score for each application is 100 points.

(Authority: 29 U.S.C. 2212 and 2213)

**§ 345.31 What selection criteria are used for development grants under this program?**

(a) The Secretary rates each application to determine the degree to which—

(1) *Needs assessment* (Weight: 4; Total Points: 20) The application demonstrates a comprehensive assessment of the need for a statewide, consumer-responsive program of technology-related assistance that includes—

(i) A preliminary assessment of the needs of individuals with disabilities for assistive technology devices and services, including the needs of individuals from underserved groups and in various geographic areas of the State, that includes a description of how these estimates were obtained;

(ii) An assessment of existing efforts in the State to provide technology-related assistance to individuals with disabilities, including a description of the type, extent, and level of technology-related assistance activities, the public and private agencies and individuals involved in these activities and the nature of their involvement, and an assessment of the effectiveness of these activities; and

(iii) An assessment of the current unmet needs in the State that would have to be met in order to accomplish each of the seven purposes of the program as described in § 345.2;

(2) *Goals and objectives* (Weight: 4; Total Points: 20) The application identifies goals and objectives that—

(i) Address each of the unmet needs in the State described in § 345.31(a)(1); and

(ii) Are clearly measurable, with both milestones of progress and indicators of success;

(3) *Plan of activities* (Weight: 3; Total Points: 15) The application presents a plan of activities that—

(i) Indicates a likelihood that the proposed activities will accomplish the goals of objectives as set forth in § 345.31(a)(2) and will result in the development and implementation of a comprehensive, consumer-responsive, statewide system of technology-related assistance;

(ii) Is consistent with the authorized purposes, functions, and activities of the program; and

(iii) Provides, to the extent feasible, for equitable distribution of amounts received under the grant in all geographic areas of the State, and effectively considers the needs of underserved groups;

(4) *Evaluation plan* (Weight: 2; Total Points: 10) The application presents an effective plan for evaluating the progress made toward accomplishment of the goals and objectives of the State's project that—

(i) Specifies adequate indicators of accomplishment for each of the goals and objectives;

(ii) Specifies appropriate measures to be used and the data elements needed for these measures that will result in an adequate evaluation;

(iii) Specifies appropriate sources of data and feasible and appropriate data

collection methods to be used for each measure;

(iv) Describes acceptable methods of data analysis that are likely to yield objective and meaningful evaluation results; and

(v) Allocates sufficient resources, including personnel, funds, and administrative priority, to the evaluation to ensure that the evaluation will meet the requirements of this part;

(5) *Management plan* (Weight: 2; Total Points: 10) The application presents a plan for management of the activities under the grant that—

(i) Includes an adequate number of staff with appropriate backgrounds of training and experience to implement the activities under the project grant;

(ii) Presents an appropriate plan to manage and account for the fiscal resources of the project, consistent with the requirements of the program, including §§ 345.4, 345.20, 345.45, and 345.46;

(iii) Presents a detailed internal management plan for the management of the resources under the grant, including specification of responsibilities and administrative authority and provision for internal monitoring of progress;

(iv) Presents realistic timeline for the implementation of project activities so as to ensure accomplishment of proposed goals and objectives within the time period proposed in the application; and

(v) Allots sufficient and appropriate resources from the grant or other sources for the accomplishment of the proposed activities;

(6) *Inclusion of individuals with disabilities and their families or representatives* (Weight: 3; Total Points: 15) The application describes substantive roles for individuals with disabilities and their families or representatives in—

(i) The development of the application, including the assessment of needs;

(ii) The establishment of goals and objectives for the project;

(iii) The planning and implementation of the functions and activities to be carried out under the project grant; and

(iv) The evaluation of activities under the grant and the assessment of the progress that the State has made toward the accomplishment of the project's goals and objectives; and

(7) *Coordination* (Weight: 2; Total Points: 10) The application describes adequate coordination among appropriate State, public, and private agencies and organizations in—

(i) The development of the application, including the assessment of

needs and description of current related activities in the State;

(ii) The identification of goals and objectives for the projects to be conducted under the grant;

(iii) Participation in the proposed functions and activities to be conducted under the grant;

(iv) The development and implementation of interagency activities, including interagency agreements, if appropriate, that will result in the broad scale participation and exchange of information necessary to implement a statewide program of technology-related assistance; and

(v) The evaluation of the project and of the progress made toward the development of a consumer-responsive, statewide system.

(Authority: 29 U.S.C. 2212(e), 2214(a) and 2217(c))

**§ 345.32 What other factors does the Secretary take into consideration in making development grant awards under this program?**

In making development grants under this program, the Secretary takes into consideration, to the extent feasible—

(a) Achieving a balance among States that have differing levels of development of statewide programs of technology-related assistance; and

(b) Achieving a geographically equitable distribution of the grants.

(Authority: 29 U.S.C. 2212(d) (1) and (2))

**§ 345.33 What is the review process for an application for an extension grant?**

The Secretary may award an extension grant to a State that demonstrates to the Secretary that it has made significant progress in developing and implementing a consumer-responsive, statewide program of technology-related assistance under a development grant. The Secretary bases the decision to make an award on—

(a) The State's application for an extension grant as described in § 345.21; and

(b) The report of the site visit team, which is composed of peers from other participating States and other qualified individuals, and which visits the State's project during the final year of the development grant, concerning the extent to which the State has made significant progress in developing a consumer-responsive statewide program of technology-related assistance.

(Authority: 29 U.S.C. 2213(c) and 2215(a))

**Subpart E—What Conditions Must Be Met After an Award?**

**§ 345.40 What are the reporting requirements for the recipient of a development grant?**

States receiving development grants shall submit the following reports, and shall make these reports readily available to the public at no extra cost:

(a) An annual progress report that, at a minimum, describes—

(1) Activities completed under the grant;

(2) Progress made toward achieving the goals and objectives of the development of a consumer-responsive, statewide program of technology-related assistance;

(3) A description, to the extent appropriate, of the impact of the program activities on individuals with disabilities, public agencies, financial resources committed to technology-related assistance for individuals with disabilities, community-based organizations, and employers, and examples of the impact on the lives of individuals with disabilities;

(4) A description of the problems, if any, that were encountered in carrying out the proposed activities under the grant;

(5) Activities planned for the following year to rectify problems encountered in implementing grant activities; and

(6) Revisions, if any, to the measurable goals and objectives specified in the original grant application, based on experiences under the grant and revisions, if any, to the plan for measuring achievement of those goals and objectives.

(b) Any other reports that the Secretary may reasonably require to carry out the Secretary's functions under this program.

(Authority: 29 U.S.C. 2212(e)(13) and 2214(a))

**§ 345.41 What are the reporting requirements for a recipient of an extension grant?**

In addition to meeting the reporting requirements specified in § 345.40, recipients of extension grants shall include in their annual reports a description of the types of assistance provided under the grant, the settings in which the assistance was provided, the effects of that assistance, especially with respect to individuals with disabilities, and the methods by which the information required for the annual report was obtained.

(Authority: 29 U.S.C. 2214(b))

**§ 345.42 Who retains title to technology devices provided under this program?**

Title to devices purchased with grant funds under this part, either directly or through any contract or subgrant, must be held by a public agency or by an individual with disabilities who is the beneficiary of the device. If the disabled individual does not have legal status to hold title, the title may be retained by a parent or legal guardian.

(Authority: 29 U.S.C. 2212(e)(12))

**§ 345.43 What are the requirements for grantee participation in the Secretary's progress assessments?**

Recipients of development grants shall participate in the Secretary's assessment of the extent to which States are making significant progress by—

(a) Participating in the on-site monitoring visits that will be made to each grantee during the final year of the development grant; and

(b) Providing written evaluations of the State's progress toward fulfilling its goals and the objectives of the project, and such other documents as the Secretary may reasonably require to complete the required assessment.

(Authority: 29 U.S.C. 2215(a))

**§ 345.44 What are the restrictions on the use of funds under this program?**

(a) States receiving funds under this part shall—

(1) Place control of and administrative responsibility for the funds under a public agency;

(2) Avoid commingling funds under the grant with funds from any other source;

(3) Use funds under the grant to supplement rather than replace amounts available from other sources for technology-related assistance; and

(4) Not use funds under this part to pay financial obligations for technology-related assistance that would otherwise have been paid from amounts available

from other sources, unless payment is only to prevent a delay in the receipt of technology-related assistance by an individual with disabilities and the amount used to pay the financial obligation is reimbursed in full by the responsible agency or entity.

(b) A State receiving a grant may make contracts or subgrants with public or private nonprofit and for-profit agencies to carry out activities under the grant, provided that—

(1) A designated public agency maintains fiscal responsibility and accountability; and

(2) All appropriate provisions related to data collection, record keeping, and cooperation with the Secretary's evaluation and program monitoring efforts are applied to all subcontractors and subgrantees as well as to the agency receiving the grant.

(Authority: 29 U.S.C. 2201(b)(1)(E), 2211(b) (7) and (8), and (c)(2)(G), (3), and (5), and 2212(e)(8), (11), (12)(A) and (14))

**§ 345.45 What is the relation between this program and related assistance under other programs?**

No State or Federal agency may, by reason of this program, reduce medical or other assistance available to or alter eligibility under—

(a) Titles II, V, XVI, XVIII, XIX, or XX of the Social Security Act;

(b) The Education of the Handicapped Act;

(c) The Rehabilitation Act of 1973; or

(d) Laws relating to veterans' benefits.

(Authority: 29 U.S.C. 2215(c))

**§ 345.46 What are the requirements for participation in the Secretary's evaluation of this program?**

States receiving grants under this program shall—

(a) Cooperate with the Secretary in the development of an information system that can be used to compile

qualitative and quantitative descriptions of the impact of the program on—

(1) The lives of individuals with disabilities, particularly with respect to—

(i) Greater control over their own lives;

(ii) Greater participation in home, school, work, and community activities;

(iii) More extensive interactions with nondisabled individuals; and

(iv) Enhanced benefits from opportunities generally available to individuals who do not have disabilities;

(2) Public agencies, community-based organizations, and employers; and

(3) Fiscal resources committed to technology-related assistance for individuals with disabilities; and

(b) Provide to the Secretary such other information as may be necessary to complete the required national evaluation.

(Authority: 29 U.S.C. 2217 (b) and (c))

**Subpart F—What Compliance Procedures May the Secretary Use?****§ 345.50 Who is subject to a corrective action plan?**

Any State that fails to comply with the requirements of this part is subject to a corrective action plan.

(Authority: 29 U.S.C. 2215(b)(1))

**§ 345.51 What penalties may the Secretary impose on a grantee that is found not to be in compliance?**

A State that fails to comply with the requirements of this part may be subject to penalties such as—

(a) Partial or complete termination of funds;

(b) Ineligibility to participate in the grant program in the following year; or

(c) Reduction in funding for the following year.

(Authority: 29 U.S.C. 2215(b)(2))

[FR Doc. 89-8646 Filed 4-11-89; 8:45 am]

BILLING CODE 4000-01-M



**Final Regulations**

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**Wednesday  
April 12, 1989**

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**Part VII**

**Department of  
Education**

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**34 CFR Part 690  
Pell Grant Program; Final Regulations**

**DEPARTMENT OF EDUCATION****34 CFR Part 690****Pell Grant Program****AGENCY:** Department of Education.**ACTION:** Final regulations.

**SUMMARY:** In response to recent legislation, the Secretary issues regulations prescribing those special conditions under which a special calculation of a student's expected family contribution is to be made.

**EFFECTIVE DATE:** These regulations take effect either May 30, 1989, or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. The Department will publish a document specifying the effective date if it is delayed by Congressional action.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Leibovitz, U.S. Department of Education, 400 Maryland Avenue SW., (Regional Office Building 3, Room 4318), Washington, DC 20202-5444. Telephone (202) 732-4888.

**SUPPLEMENTARY INFORMATION:** The Department of Education Appropriations Act, 1989 (Pub. L. 100-436), signed by President Reagan on September 20, 1988, make changes to the determination of a student's expected family contribution (EFC), also called the Student Aid Index (SAI) under the Pell Grant Program, for the 1989-90 award year. For award year 1988-89, a financial aid administrator (FAA) has the authority under section 479A of the Higher Education Act of 1965, as amended (HEA), to make individual adjustments, based on adequate documentation, to a student's EFC for all the programs of student financial assistance authorized by Title IV of the Higher Education Act (Title IV programs). For the 1989-90 award year, the Department's Appropriations Act rescinds that authority for the Pell Grant Program. This rescission applies only to the Pell Grant Program and is effective only for the 1989-90 award year. The FAA's authority to make adjustments to a student's EFC in the other Title IV programs remains unchanged. Also, an FAA's authority to make a determination that a student is independent by reason of documented unusual circumstances under section 411F(12)(B)(vii) of the HEA for all of the Title IV programs remains unchanged.

The new legislation provides that in those instances where special conditions exist (as determined by the Secretary), the student's SAI for the Pell

Grant Program shall be based upon expected year income instead of base year income. That is, any student whose family circumstances meet a special condition criterion shall have his or her SAI calculated using the expected income for the 1989 calendar year instead of by the standard procedure of using the base year income for the 1988 calendar year. This use of expected year income in the Pell Grant formula is identical to the use of expected year income in the Pell Grant formula for award years prior to 1988-89.

The purpose of these regulations is to provide a list of the special conditions under which a computation of a student's SAI, using expected year data, would be performed. The special conditions are the same as those used in the Pell Grant Program in the 1987-88 award year. In award years previous to 1988-89, if a student qualified for a special calculation because of a special condition (previously referred to as an "extraordinary circumstance"), the student completed and filed a supplemental application called a "Special Condition Form." Because the statute was amended to require special condition calculations for the 1989-90 award year so close to the beginning of the 1989-90 processing year, the Department is unable to provide a Special Conditions Form.

To ensure that students know that they may be eligible to have their awards calculated on the basis of special conditions, a message will be printed on each Student Aid Report (SAR) indicating that a student who believes that he or she qualifies for a special condition calculation should contact his or her FAA. Students meeting a special condition criterion will provide the data needed for the special calculation on either the Correction Application for Federal Student Assistance (Correction AFSA) or on the SAR. In either case the document will be forwarded to the Federal processor where a computation based on the expected year data will be made and a new SAR generated.

As in award year 1988-89, a student's eligibility for the simplified needs test (SNT) is determined using base year information. If a student qualifies for the SNT and also qualifies for a special condition calculation, that special condition calculation is made using full expected year information.

**Waiver of Notice of Proposed Rulemaking**

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5

U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, under the Department of Education Appropriations Act, 1989 (Public Law 100-436) the Secretary is required to apply regulatory criteria governing special condition calculation for the 1989-90 award year. The processing cycle for the 1989-90 award year began in January 1989. If the Secretary were to delay implementation of these regulations in order to follow notice and comment rulemaking proceedings, the Secretary would be prevented from the due and required execution of this law. Moreover, it would be contrary to the public interest to follow these rulemaking procedures because in the absence of immediate implementation of these regulations needy students would be prevented from obtaining the full amount of Pell Grant assistance for which they are eligible under the special conditions prescribed by the Secretary. The public is also unlikely to object to these regulations because they contain special conditions that are virtually identical to those contained in the regulations that were in effect for the 1987-88 award year and were the product of notice and comment rulemaking. Since the regulations are effective for the current award cycle only, the delay occasioned by taking public comment would result in the nonapplication of the Appropriations Act provision to many of the students to whom it was intended to apply. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary, impracticable, and contrary to the public interest under 5 U.S.C. 553(b)(B).

**Executive Order 12291**

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

**Paperwork Reduction Act of 1980**

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

**Assessment of Education Impact**

The Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects in 34 CFR Part 690**

Administrative practice and procedure, Education, Education of disadvantaged, Grant programs—education, student aid.

Dated: March 27, 1989.

Lauro F. Cavazos,  
Secretary of Education.

The Secretary amends Part 690 of Title 34 of the Code of Federal Regulations as follows:

**PART 690—PELL GRANT PROGRAM**

1. The authority citation for Part 690 continues to read as follows:

**Authority:** 20 U.S.C. 1070a through 1070a-6, unless otherwise noted.

2. A new Subpart C is added to read as follows:

**Subpart C—Expected Family Contributions for Students With Special Conditions**

Sec.

690.31 Special conditions affecting the expected family contribution determination for an independent student.

690.32 Special conditions affecting the expected family contribution determination for a dependent student.

**Subpart C—Expected Family Contributions for Students With Special Conditions****§ 690.31 Special conditions affecting the expected family contribution determination for an independent student.**

(a) For the 1989-90 award year, an independent student qualifies to have his or her expected family contribution determined using expected income data from 1989 if—

(1) The student was employed full-time in 1988 (at least 35 hours per week for a minimum of 30 weeks during 1988) and is no longer employed full-time;

(2) A spouse whose 1988 income from work must be reported under sections 411F(1) and 411(d)(2) of the Higher Education Act of 1965, as amended (HEA) has lost his or her job and remained unemployed for at least 10 weeks during 1989;

(3) The student or spouse whose 1988 income from work must be reported under sections 411F(1) and 411(d)(2) of the HEA has been unable to pursue normal income-producing activities for

at least 10 weeks during 1989 because of the occurrence in 1988 or 1989 of—

(i) A disability; or

(ii) A natural disaster;

(4) The student or spouse whose income must be reported under sections 411F(1) and 411(d)(2) of the HEA received unemployment compensation or nontaxable income in 1988 (that would be used in the calculation of the student's expected family contribution) and had a complete loss for at least 10 weeks in 1989 of one of those benefits. A nontaxable benefit, for purposes of this paragraph, must be paid by a public or private agency, a company, or a person because of a court order. Types of nontaxable benefits would include welfare and court ordered child support;

(5) The student has become separated or divorced after he or she submitted his or her application;

(6) A spouse whose 1988 income must be reported under sections 411F(1) and 411(d)(2) of the HEA has died after the student has submitted his or her application; or

(7) The student's last surviving parent with whom the student had a dependency relationship, by virtue of not meeting the independent student criteria in section 411F(12)(A) of the HEA, has died after the student has submitted his or her application.

(b) If an independent student qualifies under one of the conditions in paragraph (a) of this section, the student's annual adjusted family income (AAFI) as defined in section 411F(1) of the HEA is determined using expected income data from 1989 instead of the sum received in the year immediately preceding the award year.

(Authority: Pub. L. 100-436)

**§ 690.32 Special conditions affecting the expected family contribution determination for a dependent student.**

(a) For the 1989-90 award year, a dependent student qualifies to have his or her expected family contribution determined using expected income data from 1989, if—

(1) A parent or stepparent whose 1988 income from work must be reported has lost his or her job and remained unemployed for at least 10 weeks during 1989;

(2) A parent or stepparent whose 1988 income from work must be reported

under sections 411F(1) and 411(d)(2) of the HEA has been unable to pursue normal income-producing activities for at least 10 weeks during 1989 because of the occurrence in 1988 or 1989 of—

(i) A disability; or

(ii) A natural disaster;

(3) A parent or stepparent whose income must be reported under sections 411F(1) and 411(d)(2) received unemployment compensation or nontaxable income in 1988 (that would be used in the calculation of the student's expected family contribution) and had a complete loss for at least 10 weeks in 1989 of one of those benefits. A nontaxable benefit, for purposes of this paragraph, must be paid by a public or private agency, a company, or a person because of a court order. Types of nontaxable benefits would include such items as Social Security benefits, welfare, and court ordered child support;

(4) The parent or parents of the student have become separated or divorced after the student submitted his or her application. If such a separation or divorce is between a parent and a stepparent, the stepparent's income must have been reportable on the previous application under sections 411F(1) and 411(d)(2) of the HEA for this condition to apply; or

(5) A parent or stepparent whose 1988 income must be reported under section 411F(1) of the HEA has died after the student has submitted his or her application. However, if the parent referred to in this paragraph is the last surviving parent with whom the student had a dependency relationship, by virtue of not meeting the independent student criteria in section 411F(12)(A) the student must file an application under § 690.31(a)(7) if he or she wishes to use income data from 1989.

(b) If a dependent student qualifies under one of the conditions in paragraph (a) of this section, the student's annual adjusted family income (AAFI), as defined in section 411F(1) of the HEA is determined using expected income data from 1989 instead of the sum received in the year immediately preceding the award year.

(Authority: Pub. L. 100-436)

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**H.R. 829/P.L. 101-11**

Wildfire Suppression Assistance Act. (Apr. 7, 1989; 103 Stat. 15; 1 page) Price: \$1.00