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# federal register

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# Presidential Documents

Title 3—

The President

**Proclamation 6657 of March 18, 1994**

## National Agriculture Day, 1994

**By the President of the United States of America**

**A Proclamation**

The early days of spring mark the time when nature quickens its pace from winter to begin another season of vigorous growth. A green carpet of emerging leaves and sprouting crops unfolds from the shores of the Gulf of Mexico across the rest of this great land, as the advancing springtime sun gently warms the earth. We Americans owe much to this annual season of renewal, and citizens around the world join with us in eager anticipation of our land's rich harvest.

Our Nation's 20 million farmers, farmworkers, harvesters, processors, shippers, marketers, retailers, and equipment providers help to sustain our country's reputation as the breadbasket of the Earth. In 1992, American agriculture accounted for 18.5 percent of international agricultural trade, reflecting the quality and productivity that has made our produce the finest in the world. Hard-working Americans have long helped to place food on the tables of the hungry. Last year alone, the United States donated over $2 billion worth of food aid to those in need around the globe.

In addition to meeting the demands of the planet's vast population, our prodigious agricultural team contributes much to our national life, creating jobs and shaping the daily experiences of millions of Americans. Our Nation was built by farmers' steady hands, and we are forever indebted to these dedicated pioneers for their diligence and persistence.

National Agriculture Day is a celebration of the ongoing partnership between humanity and nature. Each day, we embrace new innovations in agricultural products and tools that widen consumer choice, create jobs, strengthen rural areas, and help to make the United States more competitive in the global economy. We express our deep appreciation to the agriculture community and, together, we hope for another bountiful season.

The Congress, by Senate Joint Resolution 163, has designated March 20, 1994, as "National Agriculture Day," and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim March 20, 1994, as National Agriculture Day. I call on the people of the United States to recognize the members of our national food and fiber team, whose hard work has helped our Nation to grow and prosper. I encourage all Americans to show their appreciation for our plentiful and dependable food supplies through appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of March, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94-6940
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# Rules and Regulations

Federal Register
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Wednesday, March 23, 1994

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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

RIN 3206–AF82

### Prevailing Rate Systems; Rockingham, NH, NAF Wage Area

**AGENCY:** Office of Personnel Management.

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

**SUMMARY:** The Office of Personnel Management is issuing an interim regulation to redefine the Rockingham, New Hampshire, Federal Wage System nonappropriated fund (NAF) wage area for pay-setting purposes. After this change, a new wage area, York, Maine, will include the same three counties, with York County, Maine, designated as the survey area and Rockingham County, New Hampshire, and Windsor County, Vermont, designated as areas of application. With the closing of Pease Air Force Base, there are no longer enough NAF wage employees in Rockingham County to satisfy the requirements established by regulation for a survey county.

**DATES:** This interim rule becomes effective on March 23, 1994. Comments must be received by April 22, 1994.

**ADDRESSES:** Send or deliver comments to Barbara L. Fiss, Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 6H31, 1900 E Street NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Paul Shields, (202) 606–2848.

**SUPPLEMENTARY INFORMATION:** The Rockingham, New Hampshire, NAF wage area is presently composed of three counties: Rockingham County, New Hampshire (survey area); York County, Maine (area of application); and Windsor County, Vermont (area of application). After this change, a new wage area, York, Maine, will include the same three counties, with York County designated as the survey area and Rockingham County and Windsor County designated as areas of application.

This change was made necessary by the closing of Pease Air Force Base, which left only two NAF employees in Rockingham County. By regulation (5 CFR 532.219) there must be a minimum of 26 NAF wage employees in the survey area, and a local activity in the area must have the capability to conduct the survey. Neither of these conditions can now be met by Rockingham County. However, York County does not meet the minimum requirements to be the survey area. The Portsmouth Naval Shipyard has 58 NAF employees and has the capability to conduct the survey. York County also meets the other regulatory requirement of a minimum of 1,800 private enterprise employees in establishments within survey specifications. There are approximately 23,025 such employees in York County. The remaining employees in the wage area are the 8 Veterans Administration employees of the White River Junction Medical Center and Regional Office in Windsor County, Vermont, bringing the total wage area employment to 68.

The full-scale surveys will continue to be ordered in September of even numbered fiscal years—e.g., in September 1994. The Federal Prevailing Rate Advisory Committee (FPRAC) reviewed this request and by consensus recommended approval.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because preparations for September 1994 surveys must begin immediately.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

### List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

**Lorraine A. Green,**

*Deputy Director.*

Accordingly, OPM is amending 5 CFR part 532 as follows:

## PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; 532.707 also issued under 5 U.S.C. 552.

### Appendix B to Subpart B [Amended]

2. Appendix B to subpart B is amended by removing the wage area listing for Rockingham, New Hampshire, and by inserting "York....September....Even." after the Cumberland, Maine, listing.

3. Appendix D to subpart B is amended by removing New Hampshire which contains Rockingham and by adding after the Cumberland, Maine, definition, a new York, Maine, wage area definition to read as follows:

### Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas.

* * * * *

Maine

* * * * *

York

*Survey Area*

Maine:
York

*Area of Application: Survey Area Plus*

New Hampshire:
Rockingham
Vermont:
Windsor

* * * * *

[FR Doc. 94–6460 Filed 3–22–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54

[No. LS-93-006]

RIN 0581-AB07

## Changes in Fees for Federal Meat Grading and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is revising the hourly fee rates for voluntary Federal meat grading and acceptance services. The hourly fees will be adjusted to incorporate new program costs and ensure that the Federal meat grading program is operated on a financially self-supporting basis as required by law. The new program costs are the result of a congressional budget action which requires the Agency to recover the costs of livestock and meat standardization activities.

EFFECTIVE DATE: March 23, 1994.

FOR FURTHER INFORMATION CONTACT: Larry R. Meadows, Chief, Meat Grading and Certification Branch, 202/720-1246.

SUPPLEMENTARY INFORMATION:

### Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule is not intended to have preemptive effect with respect to any State or local laws, regulations, or policies that do not conflict with this final rule. This final rule is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to this final rule or the application of its provisions.

### Regulatory Impact Analysis

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

### Effect on Small Entities

This final rule was reviewed under the Regulatory Flexibility Act (RFA) (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*). The changes to the hourly fees are necessary to recover directly related costs of livestock and meat standardization activities. The per-hour increase translates to a $.000031 increase in the per-pound unit cost of meat grading and certification services. However, the unit cost for providing meat grading and certification services to all applicants—including the cost to fund directly related livestock and meat standardization activities—has been reduced by cost-reduction actions in both the program and the meat industry to approximately $.0009 per pound. Accordingly, the Administrator of AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined by the RFA.

### Paperwork Reduction Act

The provisions of the Paperwork Reduction Act do not apply to this rulemaking as it does not require the collection of any information or data.

### Background

The Secretary of Agriculture is authorized under the Agricultural Marketing Act (AMA) of 1946, as amended, 7 U.S.C. 1621 *et seq.*, to provide voluntary Federal meat grading and acceptance services to facilitate the orderly marketing of meat and meat products and to enable consumers to obtain the quality of meat they desire. The AMA also provides for the collection of fees from users of Federal meat grading and acceptance services, which is approximately equal to the costs of providing these services. Program operating costs for fiscal year (FY) 1993 and previous years have included graders' salaries, fringe benefits, supervision, travel, training, and administrative costs. When the program incurs increases in operating costs which are beyond its control, such cost increases must be recovered through increases in the fee rate charged to users of meat grading and acceptance services so that the program can remain financially self-supporting.

The recent appropriations bill HR 2493, requires collection of fees for standardization activities for FY 1994 and subsequent years as established by regulation pursuant to law (31 U.S.C. 9701). Standardization programs and activities include, but are not limited to, the development, maintenance, and demonstration of the official U.S. standards for carcass grades, live animal grades, and wool and mohair grades and specifications for livestock, meat, and meat products. The congressional action places the obligation of funding standardization programs and activities on those individuals or groups that benefit from such programs or activities. For the livestock and meat industry, those portions of the total costs for standardization activities which support the meat grading and acceptance services or otherwise provide a service to the meatpackers and processors will be recovered through increases in fees charged to users of meat grading and acceptance services. Prior to FY 1994, the total cost to operate the livestock and meat standardization program was funded entirely by congressionally-appropriated funds. However, as a result of the new congressional mandate, all funds appropriated for standardization programs and activities must be reimbursed to the U.S. Treasury beginning with FY 1994 and for each FY thereafter. Based upon an analysis of standardization programs, activities, and related staffing levels, the Agency has determined that for 1994 the projected costs to operate the livestock and meat standardization program is $885,000, of which $610,500 are attributable to the meatpacking and processing industries. Accordingly, this amount must be recovered through the fees charged to users of meat grading and acceptance services. The remaining portions of the standardization costs not attributable to the meat grading and acceptance services or otherwise not identifiable as providing a service to the meatpacking and processing industry (i.e., wool and mohair standards, a portion of the live standards) will be (1) Reimbursed by direct transfers of funds from those programs whose services are supported or dependent on those standards; or (2) terminated if the costs incurred cannot be recovered. The amount to be reimbursed through the meat grading and acceptance user fees includes (1) The costs for the development and maintenance of carcass standards; (2) a portion of the costs for live animal standards; (3) a portion of the costs for the development and maintenance of specifications; and (4) related administrative and management overhead costs.

The Agency recognizes the impact of any user-fee increase on the meat industry. This increase in the user fees implemented by this rule is due to the congressional budget action that requires the Agency to recover the costs of funding standardization programs and activities. Accordingly, the Agency has taken action to minimize the amount of the increase in the hourly fee rate necessary to recover the costs for standardization programs and activities which support the meat grading, acceptance, or related services provided to the meatpacking and processing industry. These actions include projected cost reductions in the review and evaluation functions and in employee training and development related to conduct of the meat grading and acceptance services. Additionally, the Agency will continue to review

standardization programs and activities which support the meat grading, acceptance, or related services provided to the meatpacking and processing industry to effect further cost reductions wherever possible.

Comments

On December 9, 1993, the Agency published in the **Federal Register** (58 FR 64669) an interim final rule increasing the fees for Federal meat grading and certification services. On January 13, 1994, the Agency published in the **Federal Register** (59 FR 1890) a correction to make the interim rule effective on December 9, 1993. This rule was implemented on an interim basis without prior proposal because increased revenues were needed to cover the increased cost of providing service. The interim rule was published with request for comments as a means of providing full public participation in the rulemaking process. Comments were requested by February 7, 1994. During the 60-day comment period the Agency received no letters responsive to the interim final rule.

In view of the foregoing considerations, the Agency will increase the base hourly rate for commitment applicants for voluntary Federal meat grading and acceptance services from $35.20 to $36.60. A commitment applicant is a user of the service who agrees, by commitment or agreement memorandum, to the use of meat grading and acceptance services for 8 consecutive hours per day, Monday through Friday, between the hours of 6 a.m. and 6 p.m., excluding legal holidays. The base hourly rate for noncommitment applicants for voluntary Federal meat grading and acceptance services will increase from $37.60 to $39.00, and will be charged to applicants who utilize the service for 8 hours or less per day, Monday through Friday, between the hours of 6 a.m. and 6 p.m., excluding legal holidays. The premium hourly rate for all applicants will be increased from $43.20 to $44.60, and will be charged to users of the service for the hours worked in excess of 8 hours per day between the hours of 6 a.m. and 6 p.m., and for hours worked from 6 p.m. to 6 a.m., Monday through Friday, and for any time worked on Saturday and Sunday, except on legal holidays. The holiday rate for all applicants will be increased from $70.40 to $73.20, and will be charged to users of the service for all hours worked on legal holidays.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not delaying the effective action until 30 days after publication of this final rule in the **Federal Register**. Therefore, this final rule will be effective on March 23, 1994.

List of Subjects in 7 CFR Part 54

Food grades and standards, Food labeling, Meat and meat products.

For the reasons set forth in the preamble, 7 CFR part 54 is amended as follows:

## PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for part 54 continues to read as follows:

Authority: 7 U.S.C. 1622 and 1624.

2. Accordingly, the interim rule amending 7 CFR part 54 which was published at 58 FR 64669 on December 9, 1993, is adopted as a final rule without change.

Dated: March 15, 1994.

**Lon Hatamiya,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 94–6544 Filed 3–22–94; 8:45 am]

BILLING CODE 3410–02–P

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## 7 CFR Part 1011

**[DA–94–07]**

## Milk in the Tennessee Valley Marketing Area; Temporary Revision of Rule

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

**ACTION:** Temporary revision of rule.

**SUMMARY:** This document revises certain provisions of the Tennessee Valley Federal milk order (Order 11) for the months of March through July 1994. The action was requested by Armour Food Ingredients Company (Armour), which operates a proprietary supply plant pooled under Order 11. This revision is necessary to prevent the uneconomical movement of milk and to ensure that producer milk associated with the market in the fall will continue to be pooled in the spring and summer months.

**EFFECTIVE DATE:** March 1, 1994, through July 31, 1994.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Memoli, Marketing Specialist, USDA/AMS/Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Temporary Revision: Issued February 8, 1994; published February 16, 1994 (59 FR 7665).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the provisions of § 1011.7(b) of the Tennessee Valley order.

Notice of proposed rulemaking was published in the **Federal Register** (59 FR 7665) concerning a proposed relaxation of the supply plant shipping requirement.

The revision was proposed to be effective for the months of March 1, 1994, through July 31, 1994. The public was afforded the opportunity to comment on the proposed notice by

submitting written data, views and arguments by February 23, 1994. No comments were received.

**Statement of Consideration**

This rule revises from 40 to 30 percent the supply plant shipping requirement for the period of March through July 1994. The Tennessee Valley order requires that a supply plant ship a minimum of 60 percent of the total quantity of milk physically received at the supply plant during the months of August through November, January, and February, and 40 percent in each of the other months. The order also provides authority for the Director of the Dairy Division to increase or decrease this supply plant shipping requirement by up to 10 percentage points if such a revision is necessary to obtain needed shipments of milk or to prevent uneconomic shipments.

Armour states that it would have to make uneconomical shipments of milk to meet the 40 percent supply plant shipping requirement to continue its pool status. Additionally, the proponent states that its inability to meet the 40 percent requirement could jeopardize the continued association of its producers with the market.

The reduction in the supply plant shipping requirement by 10 percentage points will enable a supply plant operator to qualify its plant as a pool plant without making inefficient and uneconomical shipments of milk. The revision will also allow producers who supplied the market in the fall to continue their association with the market during the flush production months.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found and determined that the supply plant shipping percentage set forth in § 1011.7(b) should be reduced from 40 to 30 percent for the months of March through July 1994.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that: (a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of March through July 1994;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given to interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision. No comments were received.

Therefore, good cause exists for making this temporary revision effective less than 30 days from the date of publication in the **Federal Register**.

**List of Subjects in 7 CFR part 1011**

Milk marketing orders.

For the reasons set forth in the preamble, the following provision in title 7, part 1011, is amended as follows:

## PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

1. The authority citation for 7 CFR part 1011 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**§ 1011.7 [Amended]**

2. Effective March 1, 1994, through July 31, 1994, in § 1011.7, paragraph (b), the phrase "40 percent" is revised to read "30 percent".

Dated: March 16, 1994.

**Richard M. McKee,**

*Acting Director, Dairy Division.*

[FR Doc. 94–6652 Filed 3–22–94; 8:45 am]

BILLING CODE 3410–02–P

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**7 CFR Part 1098**

**[DA–93–10]**

## Milk in the Nashville, Tennessee, Marketing Area; Order Terminating the Remaining Provisions of the Order

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

**ACTION:** Termination of rules.

**SUMMARY:** This document terminates the remaining administrative provisions of the Nashville, Tennessee, Federal milk marketing order (Order 98), effective upon publication in the **Federal Register**. All of the monthly operating provisions were terminated as of midnight July 31, 1993, following a producer referendum in which the order, as amended, was not approved by at least two-thirds of the dairy farmers who voted.

**EFFECTIVE DATE:** March 23, 1994.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding:

Advance Notice of Proposed Rulemaking: Issued March 29, 1990; published April 3, 1990 (55 FR 12369).

Notice of Hearing: Issued July 11, 1990; published July 17, 1990 (55 FR 29034).

Extension of Time for Filing Briefs and Reply Briefs: Issued March 28, 1991; published April 3, 1991 (56 FR 13603).

Recommended Decision: Issued November 6, 1991; published November 22, 1991 (56 FR 58972).

Extension of Time for Filing Exceptions: Issued December 24, 1991; published January 6, 1992 (57 FR 383).

Final Decision: Issued February 5, 1993; published March 5, 1993 (58 FR 12634).

Extension of Time for Conducting Referendum on Proposed Amended Order: Issued March 11, 1993; published March 17, 1993 (58 FR 14344).

Proposed Termination of the Order: Issued April 20, 1993; published April 27, 1993 (58 FR 25577).

Termination of the Order: Issued June 25, 1993; published July 1, 1993 (58 FR 35361).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a final rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. It simply terminates the remaining administrative provisions of the Nashville order.

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

This final rule also has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action does not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in

which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

**Determinations**

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601, et seq.), and of the current order regulating the handling of milk in the Nashville, Tennessee, marketing area (7 CFR Part 1098), it is hereby found and determined that:

(a) Section 1098.1, the remaining provision of the order, no longer tends to effectuate the declared policy of the Act.

A public hearing that considered proposed amendments to all Federal milk orders was held in September, October, and November 1990, pursuant to notice thereof issued July 11, 1990 (55 FR 29034). Following the issuance of a recommended decision and the opportunity for filing exceptions, the Acting Assistant Secretary for Marketing and Inspection Services on February 5, 1993, issued a final decision on the issues considered at the hearing. In a referendum held following the issuance of the final decision, the proposed amended Nashville order was not approved by at least two-thirds of the order's producers who voted. The Act requires that an order, as amended, be approved by at least two-thirds of the producers who voted in the referendum or by producers who, during the representative period, produced at least two-thirds of the volume of milk marketed.

On the basis of the record of the public hearing, the comment received in response to the proposed termination of Order 98, and the results of the producer referendum, the Department issued a termination order, effective midnight July 31, 1993. The order terminated the monthly operating provisions of the Nashville, Tennessee, order, but left intact certain administrative provisions that were embodied, by reference, in § 1098.1 of the order.

The market administrator, in his capacity as the order's liquidating agent, has completed the disbursement of all of the money remaining in the administrative, producer-settlement, and marketing service funds established under the order. Hence, the remaining provisions of the order should be terminated.

(b) Notice of proposed rulemaking and public procedure thereon, and 30 days notice of the effective date are impracticable, unnecessary, and contrary to the public interest because all of the business related to the operation of the order has been concluded.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

**Order**

*It is therefore ordered*, That the remaining provisions of Part 1098 represented by § 1098.1, which incorporates the General Provisions, are hereby terminated, and Part 1098 is vacated effective upon publication of this order in the **Federal Register**. Termination of the remaining provisions of the said order shall not affect or waive any right, obligation, duty, or liability under the said order with respect to milk delivered prior to the date of publication in the **Federal Register** or release or extinguish any violations of the said order, or affect or impair any right or remedy of the United States, the Secretary of Agriculture, or any other person with respect to any such violation which has arisen or occurred or which may arise or occur prior to the time that termination of such remaining provisions becomes effective.

**List of Subjects in 7 CFR Part 1098**

Milk marketing orders.

For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 601–674, 7 CFR part 1098 is removed.

Dated: March 17, 1994.

**Patricia Jensen,**

*Acting Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 94–6735 Filed 3–22–94; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 93–NM–144–AD; Amendment 39–8846; AD 94–05–08]**

### Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes, that requires modification of the electrical power supply system. This amendment is prompted by a report that a single phase fault current can cause sequential failure of all onboard main electrical generators. The actions specified by this AD are intended to prevent such failures and subsequent loss of electrical power sources onboard the airplane.

**DATES:** Effective April 22, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 22, 1994.

**ADDRESSES:** The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** William Schroeder, Aerospace Engineer, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes was published in the **Federal Register** on October 13, 1993 (58 FR 52929). That action proposed to require modification of the electrical power supply system.

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 supports the proposal.

Another commenter notes that a statement in the preamble to the notice, which indicated that the cause of the subject single phase fault currents "had not been determined," was inaccurate. This commenter advises that, following the original incident, an investigation by the airplane manufacturer revealed that the cause was due to the loosening of an adjustment locking nut in a remote control circuit breaker (RCCB) that caused one phase of the 3-phase power supply to remain energized. Replacement of the RCCB's was recommended by British Aerospace

Service Bulletin SB.24–69–70484A, Revision 1, which was the subject of AD 91–04–07, Amendment 39–6899 (56 FR 5751, February 13, 1991). Therefore, the cause of the original failure has been determined and rectified. However, there may be other fault causes that have not been identified; it is for this reason that the proposed modification of the generator control unit (GCU) is necessary so that the GCU can better handle failures of this type without causing the loss of all primary electric power sources. The FAA acknowledges this information.

This same commenter also points out that certain wording in the preamble to the notice that described the addressed unsafe condition could be misinterpreted. The statement indicates that a single fault in one phase of a 3-phase power supply can cause "sequential failure of all onboard main electrical generators and subsequent loss of electrical power sources onboard the airplane." The commenter states that it is unlikely that all generated power will be lost, however, since these airplanes have a hydraulically-driven standby generator that could provide essential AC and DC current if all main generators fail. The FAA concurs with this observation. However, since loss of all main generators has been determined to be an unsafe condition, the requirements of this rule are intended to address that condition.

This commenter also states that the description of the referenced British Aerospace service bulletin in the preamble to the notice was incomplete. This commenter states that, while British Aerospace Service Bulletin SB.24–91–70488B&C does describe installation Modification HCM70488B, which is the only modification referenced in the proposed AD for mandatory installation, it also describes two other modifications: Modification HCM70488C (which must be installed concurrently with Modification HCM70488B) deletes the neutral connection from the Vickers electrically-driven hydraulic pump; and Modification HCM01321A, although not classified as mandatory, introduces into the GCU's improved standard components that have a higher reliability. The commenter also notes that Modification HCM70488B adds an unbalanced current detector circuit into the GCU's, in addition to replacing the lowest phase detector type undervoltage protection circuit with an average voltage sensing detector circuit. The FAA acknowledges this information.

This same commenter requests that the proposed compliance time of 3,100 hours time-in-service be revised to "December 15, 1995," since the referenced British Aerospace service bulletin recommends that airplanes be modified by that date. The manufacturer of the required modification parts has estimated that it will take until that date to accomplish the modification of all of the affected GCU's worldwide. In light of this, the commenter states that it is possible that operators who accumulate 3,100 hours prior to December 15, 1995, may not be able to obtain the required modified units. The FAA does not concur that a change to the compliance time is necessary. It is the FAA's normal policy to use a calendar date as a compliance time only when a direct analytical relationship can be established between that date and failure of subject component. In developing an appropriate compliance times for AD actions, the FAA normally takes into account the safety implications, the fleet's average utilization rate, logistical support considerations (parts availability, repair facility availability), normal maintenance schedules for timely accomplishment of the modification, and parameters to which failure of subject component is related. The FAA took into account all of these factors, as well as the manufacturer's recommended time for modification installation, and has determined that 3,100 flight hours is the appropriate compliance time interval. Since the average operating time for most of the affected U.S.-registered Model BAe 146 series airplanes is 148 hours per month, most U.S. operators will have accumulated 3,100 flight hours by approximately December 15, 1995.

This commenter also requests that the proposed rule be revised to cite the latest revision of the referenced service bulletin. British Aerospace has issued Service Bulletin SB.24–91–70488B&C, Revision 2, dated July 19, 1993, which provides additional details concerning the effectivity listing in the service bulletin. This revision also specifies that the Model BAe 146RJ series of airplanes are not affected by the service bulletin. The FAA concurs and has revised the final rule to include this later revision of the referenced service bulletin as an additional source of service information.

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 change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 49 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $10,780, or $220 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**94-05-08 British Aerospace:** Amendment 39-8846. Docket 93-NM-144-AD.

*Applicability:* Model BAe 146-100A, -200A, and -300A series airplanes, on which Modification HCM70488B has not been accomplished, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent sequential failure of all onboard main electrical generators and subsequent loss of electrical power sources onboard the airplane, accomplish the following:

(a) Within 3,100 hours time-in-service after the effective date of this AD, modify the electrical power supply system by installing Modification HCM70488B in accordance with British Aerospace Service Bulletin SB.24-91-70488B&C, Revision 1, dated March 29, 1993, or Revision 2, dated July 19, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with British Aerospace Service Bulletin SB.24-91-70488B&C, Revision 1, dated March 29, 1993; or British Aerospace Service Bulletin SB.24-91-70488B&C, Revision 2, dated July 19, 1993, which contains the following list of effective pages:

| Page No. | Revision level shown on page | Date shown on page |
|---|---|---|
| 1 | 2 | July 19, 1993 |
| 2 | 2 | (none) |
| 3-10 | 1 | (none) |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 22, 1994.

Issued in Renton, Washington, on February 25, 1994.

**Darrell M. Pederson,**

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

[FR Doc. 94-4835 Filed 3-22-94; 8:45 am]

BILLING CODE 4910-13-U

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## 14 CFR Part 71

**[Airspace Docket No. 93-ANE-34]**

## Alteration of VOR Federal Airways; ME

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

**ACTION:** Final rule.

**SUMMARY:** This rule modifies Federal Airways V-93 and V-451 located in Maine. Modifying V-93 and V-451 is necessary because a segment of the description for each airway utilizes the Navy Brunswick, ME, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility which is scheduled to be decommissioned on April 28, 1994. This action also corrects an inadvertent error in the description of V-451: "Calverton, RI" should read "Calverton, NY."

**EFFECTIVE DATE:** 0901 UTC, April 28, 1994.

**FOR FURTHER INFORMATION CONTACT:** Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

**SUPPLEMENTARY INFORMATION:**

### History

On January 12, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify V-93 and V-451 (59 FR 1686). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The airways listed in this document will be published subsequently in the Order.

### The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies V-93 and V-451. A segment of the description for each airway utilizes the Navy Brunswick (NHZ) VORTAC which is scheduled to be decommissioned on April 28, 1994. This action becomes effective concurrent with the decommissioning of the Navy Brunswick VORTAC. This action also corrects an inadvertent error in the description of V-451: "Calverton, RI" should read "Calverton, NY."

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (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 will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

*Paragraph 6010(a)—Domestic VOR Federal Airways*

* * * * *

**V–93 [Revised]**

From Patuxent River, MD, INT Patuxent 013° and Baltimore, MD, 122° radials; Baltimore; INT Baltimore 004° and Lancaster, PA, 214° radials; Lancaster; Wilkes-Barre, PA; Lake Henry, PA; INT Lake Henry 078° and Kingston, NY, 270° radials; Kingston; Pawling, NY; Chester, MA, 12 miles 7 miles wide (4 miles E and 3 miles W of centerline); Keene, NH; Concord, NH; Kennebunk, ME; INT Kennebunk 045° and Bangor, ME, 220° radials; Bangor; Princeton, ME; INT Princeton 057° radial and the United States/ Canadian border.

* * * * *

**V–451 [Revised]**

From LaGuardia, NY; INT LaGuardia 063° and Hampton, NY, 289° radials; INT Hampton 289° and Calverton, NY, 044° radials; INT Calverton 044° and Groton, CT, 243° radials; Groton; INT Groton 064° and Sandy Point, RI, 031° radials; INT Sandy Point 031° and Kennebunk, ME, 180° radials; INT Kennebunk 180° and Pease, NH, 093° radials.

* * * * *

Issued in Washington, DC, on March 14, 1994.

**Harold W. Becker,**

*Manager, Airspoce-Rules and Aeronautical Information Division.*

[FR Doc. 94–6796 Filed 3–22–94; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 71**

**[Airspace Docket No. 93–AGL–25]**

## Establishment of Class E Airspace; Oscoda, MI

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

**ACTION:** Final rule.

**SUMMARY:** This action is to establish Class E airspace by correcting the current airspace reference for Oscoda, MI from Class D to Class E2. A Very High Frequency Omnidirectional Range (VOR) standard instrument approach procedure (SIAP) has been developed at Oscoda-Wurtsmith Airport. Controlled airspace to the surface is needed to contain instrument flight rules (IFR) operations at the airport. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the recently established SIAP.

**EFFECTIVE DATE:** 0901 U.T.C., June 23, 1994.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Woodford, Manager, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois, 60018, telephone 708–294–7568.

**SUPPLEMENTARY INFORMATION:**

### History

On December 27, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Oscoda, MI (58 FR 68328). An Automated Weather Observation System (AWOS) has been installed at the Oscoda-Wurtsmith Airport that will continuously provide weather data, and a non-federal VOR SIAP has been established. Controlled airspace to the surface is needed to contain IFR operations at the airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Minor changes were made to the legal description to correct the geographical coordinates for Oscoda-Wurtsmith Airport and to accurately identify this Class E airspace as operating continuously by deleting the last two sentences in referencing to publication of specific hours. Other than these editorial changes, this amendment is the same at that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

### The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E2 airspace at Oscoda, MI, to provide controlled airspace to the surface for aircraft executing the VOR SIAP into the Oscoda-Wurtsmith Airport. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

*Paragraph 6002 Class E airspace areas designated as a surface area for an airport*

* * * * *

**AGL MI E2 Oscoda, MI [New]**

Oscoda-Wurtsmith Airport, MI
(lat. 44°27′09″ N., long. 83°22′49″ W.)
AuSable VORTAC
(lat. 44°26′49″ N., long. 83°24′05″ W.)

Within a 4.5-mile radius of Oscoda-Wurtsmith Airport and within 2.4 miles each side of the AuSable VORTAC 238° radial extending from the 4.5-mile radius to 7 miles southwest of the airport.

* * * * *

Issued in Des Plaines, Illinois, on March 3, 1994.

**John P. Cuprisin,**

*Manager, Air Traffic Division.*

[FR Doc. 94–6797 Filed 3–22–94; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 71**

**[Airspace Docket No. 93–AGL–26]**

## Revision of Class E Airspace; Oconto, WI

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

**ACTION:** Final rule.

**SUMMARY:** This action revises Class E airspace (Class E airspace areas extending upward from 700 feet or more above the surface of the earth) at Oconto Municipal Airport, Oconto, WI, to accomodate Nondirectional Beacon (NDB) Runway 29 Standard Instrument Approach Procedure (SIAP). Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

**EFFECTIVE DATE:** 0901 UTC, June 23, 1994.

**FOR FURTHER INFORMATION CONTACT:** Robert Frink, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

**SUPPLEMENTARY INFORMATION:**

**History**

On Thursday, January 6, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E Airspace at Oconto Municipal Airport, Oconto, WI, to accommodate a Nondirectional Beacon (NDB) Rwy 29 Standard Instrument Approach Procedure (SIAP) (58 FR 706). The proposal was to add controlled airspace extending from 700 feet to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

**The Rule**

This amendment to part 71 of the Federal Aviation Regulations revises Class E airspace at (Class E airspace areas extending upward from 700 feet or more above the surface of the earth) at Oconto Municipal Airport, Oconto, WI, to accommodate Nondirectional Beacon (NDB) Runway 29 Standard Instrument Approach Procedure (SIAP). Controlled airspace extending from 700 to 1200 feet AGL is needed to contain aircraft executing the approach.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (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 will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

**PART 71—[AMENDED]**

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL WI E5 Oconto, WI [Revised]**

Oconto Municipal Airport
(lat. 44°52'25" N, long. 87°54'33" W)
Oconto NDB
(lat. 44°52'33" N, long. 87°54'45" W,

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Oconto Municipal Airport and within 2.5 miles each side of the 118° bearing from the Oconto NDB extending from the 6.3-mile radium to 7 miles southeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on March 4, 1994.

**John P. Cuprisin,**

*Manager, Air Traffic Division.*

[FR Doc. 94–6798 Filed 3–22–94; 8:45 am]

BILLING CODE 4910–13–M

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 178**

**[Docket No. 93F–0112]**

## Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of dimethyldibenzylidene sorbitol as a clarifying agent for polypropylene and high-propylene olefin copolymers intended for use in contact with food. This action is in response to a petition filed by Milliken Chemical.

**DATES:** Effective March 23, 1994; written objections and requests for a hearing by April 22, 1994.

**ADDRESSES:** Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of April 22, 1993 (58 FR 21583), FDA announced that a food additive petition (FAP 2B4341) had been filed by Milliken Chemical, c/o 1001 G St. NW., suite 500 West, Washington, DC 20001, proposing that § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) be amended to provide for the safe use of dimethyldibenzylidene sorbitol as a clarifying agent in polypropylene articles intended for use in contact with food.

Upon further review of the petition, the agency noted that the petitioner had requested use of the additive as a clarifying agent in high-propylene olefin copolymers in addition to its use in polypropylene films. In a notice published in the **Federal Register** of January 4, 1994 (59 FR 307), FDA amended the filing notice of April 22, 1993, to state that the petitioner had requested that the food additive regulations be amended to provide for the safe use of dimethyldibenzylidene sorbitol as a clarifying agent in polypropylene and high-propylene olefin copolymers for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the food additive is safe and that the regulations in § 178.3295 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before (*insert date 30 days after date of publication in the* **Federal Register**), file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 178**

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

## PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

**Authority:** Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.3295 is amended in the table by alphabetically adding a new entry under the headings "Substances" and "Limitations" to read as follows:

**§ 178.3295 Clarifying agents for polymers.**

* * * * *

| Substances | Limitations |
|---|---|
| * * * * * * * | |
| Dimethyldibenzylidene sorbitol (CAS Reg. No. 135861–56–2). | For use only as a clarifying agent at a level not to exceed 0.4 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, items 1.1, 3.1, and 3.2, where the copolymers complying with items 3.1 and 3.2 contain not less than 85 weight percent of polymer units derived from polypropylene; in contact with all food types under conditions of use B, C, D, E, F, G, and H, described in Table 2 of § 176.170(c) of this chapter. |
| * * * * * * * | |

Dated: March 14, 1994.

L. Robert Lake,

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 94-6764 Filed 3-22-94; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing—Federal Housing Commissioner

### 24 CFR Parts 880, 881, 883, 884, 886

[Docket No. R-94-1664; FR-3413-F-02]

RIN 2502-AF41

### Income Eligibility for Tenancy in New Construction Units

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the section 8 Housing Assistance Payments program regulations for new construction and substantial rehabilitation to comply with section 151 of the Housing and Community Development Act of 1992. Section 151 requires that the Secretary promulgate regulations to implement section 555 of the National Affordable Housing Act of 1990, which requires that section 8 new construction and substantial rehabilitation projects assisted under section 8(b)(2) as it existed before October 1, 1983, and with a contract for assistance under such section, be reserved for occupancy by low-income and very low-income families.

**EFFECTIVE DATE:** April 22, 1994.

**FOR FURTHER INFORMATION CONTACT:** James J. Tahash, Director, Planning and Procedures Division, Office of Multifamily Housing Management, room 6182, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-3944. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708-4594. (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Section 151 of the Housing and Community Development Act of 1992 (1992 HCD Act) requires that the Secretary promulgate regulations implementing section 555 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (NAHA). Section 555 of NAHA provides that any dwelling unit in any housing constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of the U.S. Housing Act of 1937, as that section existed before October 1, 1983, and with a contract for assistance under that section, be reserved for occupancy by low-income and very low-income families.

As we stated in the proposed rule published on July 1, 1993 (58 FR 35416), the Department administers six section 8 programs that involve newly constructed or substantially rehabilitated housing: (1) The section 8 New Construction Program, 24 CFR part 880; (2) the Section 8 Substantial Rehabilitation Program, 24 CFR part 881; (3) the State Housing Agencies program (insofar as it involves new construction and substantial rehabilitation), 24 CFR part 883; (4) the New Construction Set-Aside for Section 515 Rural Rental Housing Projects Program, 24 CFR part 884; (5) the Section 202 Loans for Housing for the Elderly or Handicapped Program, 24 CFR part 885; and (6) the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects (insofar as it involves substantial rehabilitation), 24 CFR part 886.

Before 1981, owners could rent up to 10 percent (20 percent in the Set-Aside Program for Rural Rental Housing Projects) of assisted units to ineligible families. Moreover, before 1984, and except in the section 202 loan program, the Department's regulations did not require a reduction in assisted units under the contract until rental to ineligibles exceeded 10 percent (20 percent in the Set-Aside Program for Rural Rental Housing Projects).

Section 325(l) of the Housing and Community Development Amendments of 1981 amended section 8(b)(2) of the U.S. Housing Act of 1937 by adding the following provision:

> Each contract to make assistance payments for newly constructed or substantially rehabilitated housing assisted under this section entered into after the date of enactment of the Housing and Community Development Amendments of 1981 shall provide that during the term of the contract the owner shall make available for occupancy by families which are eligible for assistance under this section, at the time of their initial occupancy, the number of units for which assistance is committed under the contract.

As a result of the Housing and Community Development Amendments of 1981, the Department implemented the existing regulations governing section 8 substantial rehabilitation or new construction (except 24 CFR part 885) which require that owners make available all assisted units for eligible families for Housing Assistance Payment (HAP) Contracts entered into pursuant to an Agreement to enter into a HAP Contract (AHAP) executed on or after October 1, 1981. The existing regulations, however, exempt owners who entered into an AHAP prior to October 1, 1981, from the statutory requirement that owners make all assisted units available for leasing by eligible families.

The Department believes that the purpose of section 555 of NAHA was to remove the exemption for owners who entered into an AHAP prior to October 1, 1981. Accordingly, this final rule change requires that owners make available all assisted units for eligible families for all HAP Contracts, regardless of when the Owner entered into the AHAP.

The Section 8 Housing Assistance Program for the Disposition of HUD-owned Projects (24 CFR part 886, subpart C) involves existing housing in addition to substantially rehabilitated housing. The Additional Assistance Program for Projects with HUD-Insured and HUD-Held Mortgages (24 CFR part 886, subpart A) involves only existing housing. Under both subparts, the assistance is project based.

In implementing the existing regulations, the Department previously determined administratively that project-based assistance should be treated similarly to new construction and substantial rehabilitation for the purposes of this rule. As such, any contracts entered into after October 3, 1984 (the effective date of the current regulations) already are subject to the requirement that Owners make available all assisted units for eligible families. Since application of this final rule to an owner of existing housing is not mandated by section 555 of NAHA, this rule would not affect the obligation of a section 8 project owner of existing housing assisted under part 886 who executed a Contract before October 3, 1984.

Finally, this rule does not change the section 202 loan program regulations. The changes in this rule are consistent with the current regulations for the section 202 handicapped housing program, and so no changes are necessary for that program. Moreover, no regulations currently exist on this matter for the Section 202 elderly housing loan program. However, the Department is preparing a separate regulation amending part 885 which, among other matters, will incorporate this amendment into that part.

## II. Discussion of Public Comments

The Department received one public comment from a housing development authority in response to the proposed rule published on July 1, 1993 (58 FR 35416). The commenter suggested that the Department exempt rural housing developments from the 100% occupancy by income eligible families requirement since there is a limited number of 50–80% of median income eligible tenants to fill the units.

The Department appreciates the difficulty that some rural housing developments may experience with regard to filling projects with income eligible families. However, section 555 of NAHA does not provide for an exemption for rural housing developments, and so the Department does not have the discretion to create such an exemption. Moreover, the regulations which allow an owner to rent to an ineligible family if the owner is temporarily unable to fill all units with eligible families remain unchanged by this final rule. Finally, the regulations continue to allow formerly eligible tenants who are currently income ineligible to continue to remain in their units subject to paying the market rent.

## III. Other Matters

*A. Environmental Impact*

At the time of publication of the proposed rule, a finding of no significant impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The proposed rule is adopted by this final rule without change. Accordingly, the initial finding of no significant impact remains applicable, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

*B. Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, the rule is directed to owners of multifamily housing projects, and will not impinge upon the relationship between the Federal Government and State and local governments. As a result, the rule is not subject to review under the order.

*C. Executive Order 12606, the Family*

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

*D. Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule reflects a statutory requirement which applies to all section 8 newly constructed or substantially rehabilitated housing without regard to the size of entities involved.

*E. Regulatory Agenda*

This final rule was listed as sequence number 1543 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56431) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

*F. The Catalog of Federal Domestic Assistance Program Number is 14.156*

**List of Subjects**

*24 CFR Part 880*

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 881*

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 883*

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 884*

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

*24 CFR Part 886*

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 880, 881, 883, 884, and 886 are amended as follows:

## PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

1. The authority citation for 24 CFR part 880 is revised to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 1437f note, and 3535(d).

2. Section 880.504(d) is revised to read as follows:

**§ 880.504 Leasing to eligible families.**

* * * * *

(d) *Applicability.* In accordance with section 555 of the Cranston-Gonzalez National Affordable Housing Act of 1990, paragraphs (a) and (b) of this section apply to all Contracts. An owner who had leased an assisted unit to an ineligible family consistent with the regulations in effect at the time will continue to lease the unit to that family However, the owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

## PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

3. The authority citation for 24 CFR part 881 is revised to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 1437f note, and 3535(d).

4. Section 881.504(d) is revised to read as follows:

**§ 881.504 Leasing to eligible families.**

* * * * *

(d) *Applicability.* In accordance with section 555 of the Cranston-Gonzalez National Affordable Housing Act of 1990, paragraphs (a) and (b) of this section apply to all contracts. An owner who had leased an assisted unit to an ineligible family consistent with the regulations in effect at the time will continue to lease the unit to that family. However, the owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

## PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

5. The authority citation for 24 CFR part 883 is revised to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 1437f note, and 3535(d).

6. Section 883.605(d) is revised to read as follows:

**§ 883.605 Leasing to eligible families.**

* * * * *

(d) *Applicability.* In accordance with section 555 of the Cranston-Gonzalez National Affordable Housing Act of 1990, paragraphs (a) and (b) of this section apply to all contracts. An owner who had leased an assisted unit to an ineligible family consistent with the regulations in effect at the time will continue to lease the unit to that family. However, the owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

## PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

7. The authority citation for 24 CFR part 884 is revised to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 1437f note, and 3535(d).

8. Section 884.223(d) is revised to read as follows:

**§ 884.223 Leasing to eligible families.**

* * * * *

(d) *Applicability.* In accordance with section 555 of the Cranston-Gonzalez National Affordable Housing Act of 1990, paragraphs (a) and (b) of this section apply to all contracts. An owner who had leased an assisted unit to an ineligible family consistent with the regulations in effect at the time will continue to lease the unit to that family. However, the owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

## PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

9. The authority citation for 24 CFR part 886 is revised to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 1437f note, and 3535(d).

10. Section 886.329(d) is revised to read as follows:

**§ 886.329 Leasing to eligible families.**

* * * * *

(d) *Applicability.* In accordance with section 555 of the Cranston-Gonzalez National Affordable Housing Act of 1990, paragraphs (a) and (b) of this section apply to all contracts involving substantial rehabilitation. These paragraphs apply to all other Contracts executed on or after October, 3, 1984. An owner who had leased an assisted unit to an ineligible family consistent with the regulations in effect at the time will continue to lease the unit to that family. However, the Borrower must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

Dated: March 15, 1994.

**Nicolas P. Retsinas,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 94–6754 Filed 3–22–94; 8:45 am]

BILLING CODE 4210–27–P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

**[COTP Pittsburgh 94–005]**

**RIN 2115–AA97**

## Safety Zone; Ohio River

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone on the Ohio River back channel that separates Coraopolis, Pennsylvania from Neville Island, Pennsylvania. This regulation is needed to control vessel traffic in the regulated area during demolition of one main span and a center support pier of a bridge at Ohio River back channel mile 9.6. This regulation will restrict general navigation in the regulated area during demolition operations for the safety of vessel traffic.

**EFFECTIVE DATES:** This regulation is effective at 8 a.m. on March 22, 1994 and will terminate at 4 p.m. on April 10, 1994, unless terminated at a earlier date by the Captain of the Port, Pittsburgh, Pennsylvania.

**FOR FURTHER INFORMATION CONTACT:** LT John Meehan, Port Operations Officer, Captain of the Port, Pittsburgh, Pennsylvania at (412) 644–5808.

**SUPPLEMENTARY INFORMATION:**

### Drafting Information

The drafters of this regulation are LT John Meehan, Project Officer, Marine Safety Office, Pittsburgh, Pennsylvania and LCDR A.O. Denny, Project Attorney, Second Coast Guard District Legal Office.

### Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, a bridge is being removed from a navigable waterway. Bridge removal operations pose inherent risks to the waterway because the structure is progressively weakened as the operation proceeds. Once commenced, such operations should be completed as quickly as possible. Removal operations involving the southern main span of the bridge and various northern span structural supports have already been completed, leaving insufficient time to publish a notice of proposed rulemaking. The Coast Guard deems it to be in the public's best interest to issue a regulation without waiting for a comment period, as immediate implementation of navigation restrictions is needed to ensure the safety of vessels transitting the area and to minimize the time a bridge in a weakened condition remains over the waterway.

### Background and Purpose

The Coraopolis Highway Bridge at mile 9.6 on the Ohio River back channel between Coraopolis, Pennsylvania and Neville Island, Pennsylvania is no longer an active highway bridge and is in the process of being removed. The bridge originally consisted of several small spans that were located over land and two 300 foot main spans that crossed over the waterway and met atop a stone pier at the center of the channel. As part of the overall bridge removal operation, each main span and the center support pier have been scheduled for demolition with explosive charges. The first main span demolition, involving the southern span (Coraopolis side of the back channel) occurred on March 1, 1994. The second main span demolition, involving the northern span (Neville Island side of the back channel) is scheduled for approximately 10 a.m. on March 22, 1994. Steel members and debris from the demolition of this northern span will fall into the sailing line of the channel, creating an unsafe condition for vessels attempting to transit. The contractor will immediately commence clearing operations in the channel, but it will require 3 days to

restore the navigability of this section of the Ohio River back channel. Accordingly, no vessel traffic will be permitted in the safety zone extending from Ohio River back channel mile 9.3 to mile 9.9 during this second demolition and subsequent channel clearing operations from 8 a.m. on March 22, 1994 to 4 p.m. on March 25, 1994. For the remaining period that this safety zone is in effect, vessel traffic will be permitted to proceed without restriction, except during periods when the bridge's center pier is undergoing actual demolition operations. These pier demolition operations are tentatively scheduled for 3 p.m. on March 30, 1994 and 3 p.m. on April 6, 1994, and each will last approximately four hours. During these times, no vessel traffic will be permitted within the safety zone. In the event of unanticipated delays involving the demolitions discussed above, the Captain of the Port Pittsburgh will notify the marine community of schedule changes affecting the duration of vessel traffic restrictions within the safety zone via Marine Safety Information Radio Broadcasts on VHF Marine Band Radio, Channel 22 (157.1 MHz) and via on site broadcast advisories on Channel 13 (156.650 MHz).

**Regulatory Evaluation**

This temporary final rule is not considered a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal due to the relatively short duration of vessel traffic restrictions, the relatively small size of the area regulated, and the infrequency of commercial vessel transits along this section of Ohio River back channel.

**Federalism Assessment**

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environmental Assessment**

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.c. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation as an action required to protect public safety.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeepimg requirements, Security measures, Waterways.

**Temporary Regulation**

In consideration of the foregoing, the Coast Guard is amending subpart C of part 165 of title 33, Code of Federal Regulations, as follows. This is a temporary amendment and will not appear in the Code of Federal Regulations.

**PART 165—[AMENDED]**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary § 165.T02–014 is added to read as follows:

**§ 165.T02–014 Safety Zone: Ohio River.**

(a) *Location.* The Ohio River back channel (channel dividing Coraopolis, Pennsylvania from Neville Island, Pennsylvania) between mile 9.3 and mile 9.9 is established as a safety zone.

(b) *Effective Dates.* This regulation is effective at 8 a.m. on March 22, 1994 and will terminate at 4 p.m. on April 10, 1994, unless terminated at an earlier date by the Captain of the Port, Pittsburgh, Pennsylvania.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port. The Captain of the Port Pittsburgh will notify the marine community of times when vessel traffic will be permitted within the safety zone via Marine Safety Information Radio Broadcasts on VHF Marine Band Radio, Channel 22 (157.1 MHz) and via on site broadcast advisories on Channel 13 (156.650 MHz).

Dated: March 10, 1994.

**M.W. Brown,**

*Commander, U.S. Coast Guard, Captain of the Port, Pittsburgh, Pennsylvania.*

[FR Doc. 94–6811 Filed 3–22–94; 8:45 am]

BILLING CODE 4910–14–M

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 180**

**[PP 3F2966, 1F4011, 3F4232/R2046; FRL 4763–6]**

**RIN 2070–AB78**

## Pesticide Tolerances for Acetochlor

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

**ACTION:** Final rule.

**SUMMARY:** This document establishes tolerances for the combined residues of the herbicide acetochlor (2-chloro-2'-methyl-6-ethyl-*N*-ethoxymethylacetanilide) and its metabolites containing the ethyl methyl aniline (EMA) moiety and the hydroxyethyl methyl aniline (HEMA) moiety, to be analyzed as acetochlor, and expressed as acetochlor equivalents in or on the raw agricultural commodities (RACS) field corn, grain at 0.05 parts per million (ppm); field corn, forage at 1.0 ppm, and field corn fodder at 1.5 ppm, soybean grain at 0.1 ppm, soybean forage at 0.7 ppm, soybean hay at 1.0 ppm, wheat forage at 0.5 ppm, wheat straw at 0.1 ppm, sorghum forage at 0.1 ppm, and sorghum fodder at 0.1 ppm. These rules were requested by the Acetochor Registration Partnership and establish the maximum level for residues of the herbicide in or on these raw agricultural commodities.

**EFFECTIVE DATE:** These regulations become effective March 23, 1994.

**ADDRESSES:** Written objections and hearing requests, identified by the document control number (PP 3F2966, 1F4011, 3F3242/R2046) may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460. In person, bring a copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburg, PA 15251.

**FOR FURTHER INFORMATION CONTACT:** By mail, Robert J. Taylor, Product Manager

(PM) 25, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6800.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of November 30, 1983 (48 FR 4116), EPA issued a notice that announced that Monsanto Co., 1101 17th St., NW., Washington DC 20036, had submitted a petition (PP 3F2966) proposing to establish tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, for residues of the herbicide acetochlor (2-chloro-*N*-(ethoxymethyl)-6-ethyl-o-acetochloride) which proposed tolerances in or on the following raw agricultural commodities: corn fodder and grain at 0.1 part per million (ppm); corn forage and fodder at 0.8 ppm; eggs, milk, and tissue of beef, chicken and hogs at 0.02 ppm; peanuts (hulls) at 2.5 ppm; peanuts (nuts) at 0.4 ppm; soybeans (forage) at 5.0 ppm; soybeans (grain) at 0.4 ppm; soybeans (hay) at 5.0 ppm; grain sorghum (fodder) at 3.0 ppm; grain sorghum (forage) at 3.0 ppm; and grain sorghum at 0.2 ppm.

In the Federal Register of March 11, 1992 (57 FR 8658), EPA issued a notice that stated that ICI Americas, Inc., Agricultural Products, Wilmington, DE 19897, submitted a petition (1F4011) which proposed to amend 40 CFR part 180 by establishing a regulation to permit combined residues of the herbicide acetochlor, 2-chloro-*N*-(ethoxymethyl)-*N*-(ethyl-6-methylphenyl)acetamide in or on corn grain at 0.05 ppm, corn forage at 1.0 ppm, and corn fodder at 1.5 ppm. ICI subsequently changed its name to Zeneca Ag Products.

In the Federal Register of October 21, 1993 (58 FR 54354), EPA issued a notice that announced that Zeneca Ag Products, P.O. Box 751, Wilmington, DE 19897, submitted a petition (3F4232) proposing to amend 40 CFR part 180 by establishing a regulation to permit residues of acetochlor and its metabolites containing the ethyl methyl aniline (EMA) moiety and the hydroxy ethyl methyl aniline (HEMA) moiety, to be analyzed as acetochlor, and expressed as acetochlor equivalents, in or on the raw agricultural commodities soybean grain at 0.1 ppm, soybean forage at 0.7 ppm, soybean hay at 1.1 ppm, wheat forage at 0.5 ppm, wheat straw at 0.1 ppm, sorghum forage at 0.1 ppm, sorghum fodder at 0.1 ppm, sorghum silage at 0.05 ppm and sorghum hay at 0.2 ppm.

No comments were received in response to the notices of filing.

Monsanto Co. and Zencea Ag Products formed a partnership, Acetochlor Registration Partnership (ARP). The ARP revised PP 3F2966 and PP 1F4011 by proposing the establishment of tolerances for residues of acetochlor and its metabolites containing the ethylmethyl aniline (EMA) moiety and the hydroxy ethyl methyl aniline (HEMA) moiety to be analyzed as acetochlor, and expressed as acetochlor equivalents in or on the raw agricultural commodities field corn grain at 0.05 ppm, field corn forage at 1.0 ppm, and field corn fodder at 1.5 ppm.

The company name for the filing notice of October 21, 1993 (58 FR 54354) should have read Acetochlor Registration Partnership instead of Zeneca Ag Products. During the course of review, it was determined that the proposal for PP 3F4232 needed further clarifications. The ARP amended PP 3F44232 by proposing the establishment of tolerances for residues of acetochlor and its metabolites containing the ethyl methyl aniline (EMA) moiety and the hydroxy ethyl methyl aniline (HEMA) moiety to be analyzed as acetochlor, and expressed as acetochlor equivalents, in or on the raw agricultural commodities soybean grain at 0.1 ppm, soybean forage at 0.7 ppm, soybean hay at 1.0 ppm, wheat grain at 0.02 ppm, wheat forage at 0.5 ppm, wheat straw at 0.1 ppm, wheat forage at 0.1 ppm, sorghum grain at 0.02 ppm, sorghum forage at 0.1 ppm, sorghum fodder at 0.1 ppm, sorghum silage at 0.05 ppm, and sorghum hay at 0.2 ppm. The forthcoming update of Table II of the Residue Chemistry Guidelines will not list sorghum silage and sorghum hay as commodities requiring residue data. Therefore, the tolerance proposals of sorghum silage at 0.05 ppm and sorghum hay at 0.2 ppm are being withdrawn, since establishment of tolerances on these commodities is not necessary.

Because the tolerances on wheat grain at 0.02 ppm and sorghum grain at 0.02 ppm were not previously published, EPA will soon publish in the Federal Register a notice of the ARP's petition to establish these tolerances. This document will allow 30 days for public comment on the regulated wheat grain and sorghum tolerances. All other revisions to pesticide petitions 3F2966, 1F4011, and 3F4232 by the ARP involved clarifications of recent rewording of previously published proposals or minor changes, e.g., lowering the soybean hay tolerance to 1.0 ppm from 1.1 ppm; therefore, no additional period of public comment is needed.

The data submitted in the petitions and other relevant material have been evaluated. The acetochlor toxicological data listed below were considered in support of these tolerances.

1. Acute toxicology data submitted place technical acetochlor in toxicity category II for eye irritation, toxicity III for acute oral, acute dermal, and acute inhalation. Technical acetochlor is in category IV for primary skin irritation and is a skin sensitizer.

2. A 3-month feeding study submitted by Monsanto with rats fed dosages of 0, 40, 100, and 300 milligrams /kilograms/ day (mg/kg/day) resulted in a no-observed-effect-level (NOEL) of 40 mg/kg/day based on loss of body weight and decreased food consumption at 100 mg/kg/day.

3. A 3-week dermal study submitted by Monsanto with rabbits fed dosages of 0, 100, 400, and 1,200 mg/kg/day resulted in a NOEL for systemic effects of 6,400 mg/kg/day based on mortality and decreased body weight at 1,200 mg/kg/day, (HDT). The lowest effect level (LEL) for dermal irritation was 100 mg/kg lowest dose test (LDT). A NOEL for dermal irritation was not established.

4. A 3-week dermal study submitted by ICI with rats fed dosages of 0.1, 1.0, 10, or 100 mg/kg/day resulted in minimal to mild skin irritation after 21 days. Signs of systemic toxicity were not apparent at any level. Higher doses were not possible because of severe dermal toxicity at higher doses.

5. In a 1-year feeding study submitted by Monsanto, with dogs fed dosages of 0, 4, 12, and 40 mg/kg/day, the NOEL was 12 mg/kg/day based on decreased body weight gains in males, decreased terminal body weight in females, testicular atrophy with accompanying decreases in absolute and relative testicular weight, increase in relative liver weights in male and females, and clinical chemistry changes at 40 mg/kg/day (HDT).

6. In a 1-year feeding study submitted by ICI, with dogs fed dosages of 0, 2, 10, and 50 mg/kg/day, the NOEL was 2 mg/kg/day based on increased salivation, ornithine carbamyl transferase, and triglyceride values accompanied by decreased blood glucose levels and liver glycogen levels at 10 mg/kg/day. Interstitial nephritis, tubular degeneration of the testes and hypospermia were reported.

7. In a developmental study submitted by Monsanto, with rats fed dosages of 0, 50, 200, and 400 mg/kg/day, acetochlor did not induce developmental toxicity in rats up to 400 mg/kg/day (HDT). The maternal NOEL was 200 mg/kg/day

based on matting and/or staining of the anogenital region, a decrease in mean maternal weight gain during the treatment period, and in adjusted mean weight gain on gestation day 20 at 400 mg/kg/day (HDT).

8. In a developmental study submitted by ICI, with rats fed dosages of 0, 40, 150, and 600 mg/kg/day, the developmental NOEL was 150 mg/kg/day based on increased resorptions, post-implantation loss, and decrease in mean fetal weight at 600 mg/kg/day (HDT). The maternal toxicity for this study was 150 mg/kg/day based on animals sacrificed moribund, clinical observations, and decreased body weight gain at 600 mg/kg/day (HDT).

9. In a developmental study submitted by Monsanto, with rabbits fed dosages of 0, 15, 50, and 190 mg/kg/day, (females) acetochlor did not induce developmental toxicity in rabbits up to 190 mg/kg/day (HDT). The maternal toxicity NOEL was 50 mg/kg/day based on loss of body weight during dosing at 190 mg/kg/day (HDT).

10. In a developmental study subbmitted by ICI, with rabbits fed dosages of 0, 30, 100, and 300 mg/kg/day, acetochlor did not induce either maternal or developmental toxicity up to 300 mg/kg/day (HDT).

11. In a two-generation reproduction study submitted by Monsanto, with rats fed dosages of 0, 30.4, 74.1, and 324.5 mg/kg/day (males) or 0, 44.9, 130.1, and 441.5 mg/kg/day (females), the reproductive NOEL was 30.4 mg/kg/day for males and 44.9 mg/kg/day for females, based on decreased body weight gain of F2b pups at 74.1 mg/kg/day for males and 130.1 mg/kg/day for females. A NOEL for systemic effects was not established.

12. In a two-generation reproduction study submitted by ICI, with rats fed dosages of 0, 1.6, 21, and 160 mg/kg/day, the reproductive NOEL was 21 mg/kg/day based on significant reductions in pup weight at lactational day 21 and total body weight gain during lactation at 160 mg/kg/day (HDT). The parental NOEL was 21 mg/kg/day based on reductions in body weight, accompanied by slight reductions in food consumption and significant increases in relative organ weights at 160 mg/kg/day (HDT).

13. In a chronic feeding/carcinogenicity study submitted by Monsanto with mice fed dosages of 0, 75, 225, and 750 mg/kg/day carcinogenic effects noted included increased incidence of liver carcinomas in high-dose males, total lung tumors in females at all dose levels, carcinomas of lungs in females fed 75 and 750 mg/kg/day, uterine histiocytic sarcomas in females at all dose levels, and total benign ovarian tumors in mid-dose females. Other dose-related changes included (1) increased mortality and decreased mean body weights in both high-dose males and females, (2) decreased red blood cell count, hematocrit, and hemoglobin in high-dose females at terminal sacrifice, (3) increased white blood count in high-dose males at terminal sacrifice, (4) increased platelet count in mid- and high-dose females at terminal sacrifice, (5) increased mean liver weight and liver-to-body-weight ratios at study termination in all dose groups of males and in high-dose females; increased absolute and relative kidney weights in all dose groups of males at termination; increased absolute and relative adrenal weights in all groups of males and in high-dose females at study termination; and (6) increased interstitial nephritis in high-dose males and females.

14. In a chronic feeding/carcinogenicity study submitted by ICI with mice fed dosages 0, 1.1, 11, and 116 mg/kg/day in males and 0, 1.4, 13, and 135 mg/kg/day in females, carcinogenic effects noted included an increase in pulmonary adenoma in both male and females at the high dose. Pulmonary tumors were confirmed as adenomas or carcinomas of the lung parenchyma and were all of the alveolar type. The NOEL for systemic toxicity in females was 13 mg/kg/day based on a significant increase in anterior polar vacuoles in the lens of the eye at 135 mg/kg/day.

15. In a chronic feeding/carcinogenicity study submitted by Monsanto, with rats fed dosages of 0, 22, 69, and 250 mg/kg/day (males) or 0, 30, 93, and 343 mg/kg/day (females), carcinogenic effects noted at 250 mg/kg/day in males and 343 mg/kg/day in females included hepatocellular carcinoma in both sexes and thyroid follicular cell adenoma in males. Nasal papillary adenomas were noted in male rats at 69 mg/kg/day and above and in females at 93 mg/kg/day. A NOEL for chronic effects was not established.

16. In a repeat chronic feeding/carcinogenicity study submitted by Monsanto, in rats fed dosages of 0, 2, 10, and 50 mg/kg/day oncogenic effects noted at 50 mg/kg/day (HDT) included neoplastic nodules of the liver, follicular adenoma/cystadenoma of the thyroids and papillary edema of the mucosa of the nose/turbinates in high dose animals. The NOEL for chronic effects was 10 mg/kg/day based on decreased body weights and body weight gain in both sexes, high cholesterol levels in males, increased absolute and relative kidney and liver weight in males, and increased testicular weights at 50 mg/kg/day (HDT).

17. In a 2-year chronic feeding/carcinogenicity study submitted by ICI, with rats fed dosages of 0, 0.8, 7.9, and 79.6 mg/kg/day, carcinogenic effects noted at 79.6 mg/kg/day (HDT) included a significant increase in nasal epithelial adenomas and thyroid follicular cell adenomas in both sexes at 79.6 mg/kg/day. Also, at that dose nasal carcinoma was present in two males and one female rat at this dose. Rare tumors in the form of benign chondroma of the femur and basal cell tumor of the stomach were also observed at 79.6 mg/kg/day. The systemic NOEL was 7.9 mg/kg/day based on decreased body weight gain, decreased food efficiency, increased organ to body weight ratios, increased plasma GGT and cholesterol at 79.6 mg/kg/day (HDT).

18. In mutagenicity testing, submitted by Monsanto, acetochlor was weakly positive in the CHO/HGPRT gene mutation assay with and without activation in the mouse lymphoma assay. Acetochlor was negative in a DNA damage repair assay in rat hepatocytes, a Salmonella assay, and two (2) *in vivo* chromosomal aberration studies.

19. In mutagenicity tests conducted by ICI, acetochlor induced a reproducible, positive, mutagenic response in strain TA 1538 of Salmonella typhimurium with metabolic activation at 100 ug/plate (however, this was less than the 2 X background mutation, but was significant at p less than 0.05). Significant increases in number of revertant colonies were not induced in strains TA 1535, TA 1537, TA98, and TA100. Acetochlor was not clastogenic in a mouse micronucleus test at doses tested (898 and 1,436 mg/kg in males; 1,075 and 1,719 mg/kg in females). Acetochlor was clastogenic in cultured human lymphocytes both in the presence and absence of 59 mix at 100 ug/ml, and in the absence of 59 mix at 50 ug/ml. Acetochlor induced a weak DNA repair (measured by UDS) in rat hepatocytes derived from animals exposed in vivo at 2,000 mg/kg. In a structural chromosome aberration study, acetochlor at doses 1,000 and 2,000 mg/kg resulted in reduced fertility during weeks 2, 3, and 4 of this study, as shown by reduced pregnancy incidence, decreased implants per pregnancy incidence, increased preimplantion loss, and loss, and decreased time implant per pregnancy. Early late intrauterine deaths were not affected in this study. There was positive evidence of

mutagenicity at the mid- and high-dose levels in this study.

Available testing for acetochlor by Monsanto was referred to the Toxicology Branch Peer Review Committed (PRC) for evaluation on September 12, 1985. Based on available information, the PRC classified acetochlor as a B2 Carcinogen-Probable Human Carcinogen for the following reasons.

1. Increased incidence in rats of hepatocellular carcinomas in both sexes and thyroid follicular cell adenomas in males.

2. An increased incidence in mice of hepatocellular carcinomas in both sexes, lung carcinomas, uterine histiocytic sarcomas, benign ovarian tumors, and kidney adenomas in females.

3. Positive mutagenic data in the CHO/HGPRT and mouse lymphoma assays.

4. Positive carcinogenicity data on structural analogues, alachlor, butachlor, and metolachlor.

After review of the repeat chronic feeding/oncogenicity study in rats and reevaluation of slides from the original rat study, the Health Effects Division Peer Review Committee met February 8, 1989, to discuss acetochlor with special reference to its carcinogenic potential for causing nasal tumors. The PRC cited an increased incidence of nasal adenomas in rats in (2) studies and a stronger analogy to alachlor which also causes tumors. The PRC reaffirmed the classification of acetochlor as a B2 carcinogen (probable human carcinogen) and recommended that the quantitative risk assessment ($Q^{*1}$) be based on the data on nasal turbinate papillary adenomas in male and female rats.

Results of the peer reviews were referred to the FIFRA Scientific Advisory Panel (SAP) on September 28, 1989. The SAP agreed that acetochlor should be classified as a B2 carcinogen.

Available testing for acetochlor, submitted by ICI, was referred to the Health Effects Division Peer Review Committee on October 16, 1991, for discussion and evaluation of the weight-of-the-evidence on acetochlor with particular reference to its carcinogenic potential. The PRC agreed that acetochlor should be classified as a Group B2—Probable Human carcinogen. This was consistent with earlier decisions based on Monsanto data. The combined data strengthens the Group B2 classification. The committee noted that the two data bases on acetochlor from two different registrants were in close agreement with each other concerning the major tumor types.

For the purpose of risk characterization for acetochlor, a low-dose extrapolation model applied to the experimental animal tumor data was used for quantification of human risk ($Q^{1*}$). For quantification, the Committee recommended separate calculations for both sexes of rats using the combined incidence for nasal tumors for each sex. The separate values were then combined using appropriate statistical methods.

The RfD was based on a NOEL of 2.0 mg/kg/day established in a 1-year feeding study with dogs (ICI) and using an uncertainty factor of 100 is calculated to be 0.02 mg/kg/day. The theoretical maximum residue contribution (TMRC) for the general U.S. population for corn uses is $1.7 \times 10^{-3}$ mg/kg/day or 0.1% of the RfD. The TMRC for the soybean, sorghum and wheat rotational crop tolerance is $1.1 \times 10^{-4}$ mg/kg/ kwt/day or 0.5% of the RfD. The total TMRC for all crop tolerances for the general U.S. population is $1.3 \times 10^{-4}$ mg/kg kwt/day or 0.6% of the RfD. For the mostly highly exposed subgroup, nonnursing infants less than 1 year old, the TMRC from the corn uses and rotational crop uses is $4.9 \times 10^{-5}$ mg/kg kwt/day (0.2% of RfD) and $3.6 \times 10^{-4}$ mg/kg kwt/day (2% of the RfD) respectively, for a total of $4.1 \times 10^{-4}$ mg/kg kwt/day or 2% of the RfD. TMRC is calculated assuming that residues are at the established tolerances or at maximum residue limits if the tolerances do not include all metabolites and that 100 percent of the corn crop is treated with acetochlor and that the rotational crops would all be grown in fields where acetochlor-treated corn has been grown. The TMRC discussed here include the commodities wheat grain and sorghum grain being proposed elsewhere in this issue of the **Federal Register**.

Based on a $Q^{*1}$ of 0.017 mg/kg/day, the upper-bound lifetime cancer risk was calculated to be $2.9 \times 10^{-7}$ for field corn tolerances and $1.9 \times 10^{-6}$ for the rotational crop tolerances. The upper-bound carcinogenic risk from corn and the rotational crop tolerances (including sorghum grain and wheat grain which are proposed elsewhere in this issue of the **Federal Register**) was calculated to be $2.2 \times 10^{-6}$.

Data lacking include an unscheduled DNA synthesis in rat hepatocytes (*in vivo* exposure and *in vitro* culture) for metabolite 57, and a cytogenetics assay for aberrations using cultured human lymphocytes for metabolite 57. The petitioner has been notified of these deficiencies and has agreed to submit the studies.

There are currently no regulations against the registration of this chemical for use on corn. Even though acetochlor is classified as a B2- carcinogen, EPA believes that the establishment of these tolerances will not pose an unreasonable risk to humans as a result of dietary exposure. The establishment of these tolerances utilize less than 1% (0.6%) of the RfD. The upper bound carcinogenic risk of $2.2 \times 10^{-6}$ is in the range of $1 \times 10^{-6}$, a level generally presumed to be no greater than a negligible risk. Morever, this estimate is considered worst-case, and it probably overestimates the dietary cancer risk. It is unlikely that the following assumptions made by the Agency, namely, (1) that residues will be at the establised tolerances levels, (2) that 100 percent of the corn crop will be treated with acetochlor, and (3) that all rotational crops will be grown where acetochlor treated corn has been grown, are actually the case.

The pesticide is useful for the purpose for which tolerances are sought. The nature of the residue is adequately understood for the purposes of establishing these tolerances. Adequate analytical methodology (high-pressure liquid chromotography (HPLC) using an oxidative coulometric electrochemical detector (OCED)is available for enforcement purposes. Because of the long lead-time from establishing tolerances to publication, the enforcement methodology is being made available in the interim to anyone interested in pesticide enforcement. Request by mail from Calvin Furlow, Public Response and Program Tesources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460. Office location and telephone number: Rm. 1130A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. No detectable secondary residues are expected in milk; eggs; meat, fat, or meat byproducts of cattle, goats, hogs, horses, sheep or poultry.

Based on the data and the information cited above, the Agency has determined that the establishment of tolerances by amending 40 CFR part 180 will protect the public health. Therefore, EPA is establishing the tolerances as described below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be

submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Adminstrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12866. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that requlations establishing new tolerances or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substanial number of small entities. A certification statement of this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 11, 1994.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. By adding a new § 180.470, to read as follows:

**§ 180.470 Acetochlor; tolerances for residues.**

Tolerances are established for residues of acetochlor, 2-chloro-2'-methyl-6-ethyl-*N*-ethoxymethylacetanilide, and its metabolities containing the ethyl methyl aniline (EMA) moiety and the hydroxyethyl methyl aniline (HEMA) moiety, to be analyzed as acetochlor, and expressed as acetochlor equivalents, in or on the following raw agricultural commodities.

| Commodity | Parts per million |
|---|---|
| Field corn, fodder | 1.5 |
| Field corn, forage | 1.0 |
| Field corn, grain | 0.05 |
| Sorghum, fodder | 0.1 |
| Sorghum, forage | 0.1 |
| Soybean, forage | 0.7 |
| Soybean, grain | 0.1 |
| Soybean, hay | 1.0 |
| Wheat, forage | 0.5 |
| Wheat, straw | 0.1 |

[FR Doc. 94-6838 Filed 3-22-94; 8:45 am]

BILLING CODE 6560-50-F

**40 CFR Part 180**

**[OPP-300310A; FRL-4747-4]**

**RIN 2070-AB78**

## Ronnel; Revocation of Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This document revokes the tolerances for residues of the pesticide ronnel (*O,O*-dimethyl *O*-dimethyl *O*-(2,4,5-trichlorophenyl) phosphorothioate), including its 2,4,5-trichlorophenyl-containing metabolites, in or on all raw agricultural commodities. EPA is taking this action because all registered uses of ronnel on these commodities have been canceled; therefore, there is no need to maintain these tolerances.

**EFFECTIVE DATE:** This regulation becomes effective March 23, 1994.

**ADDRESSES:** Written objections and request for a hearing, identified by the document control number, [OPP-300310A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

**FOR FURTHER INFORMATION CONTACT:** By mail: Jeff Morris, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Crystal Station #1, 3rd Floor, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8029.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of November 17, 1993 (58 FR 60573), EPA issued a rule that proposed to revoke tolerances established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for residues of the insecticide ronnel, including its 2,4,5-trichlorophenyl-containing metabolites, in or on the commodities listed in 40 CFR 180.177. EPA proposed this because the insecticide ronnel is no longer registered in the United States for any food or animal feed crops (the sole manufacturer of ronnel, Dow Chemical Co., ceased all production of ronnel in 1979 and in 1986 voluntarily canceled its ronnel technical registration), and a tolerance is generally not necessary for a pesticide chemical that is not registered for a particular food use.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted relevant to the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance revocation will protect the public health. Therefore, the tolerance revocation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the

regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 4, 1994.

**Victor J. Kimm,**

*Acting Assistant Administrator for Pesticides and Toxic Substances.*

Therefore, 40 CFR part 180 is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

**§ 180.177 [Removed]**

2. Section 180.177 *Ronnel; tolerances for residues* is removed.

[FR Doc. 94-6278 Filed 3-22-94; 8:45 am]
BILLING CODE 6560-50-F

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**40 CFR Part 180**

[PP 2F4089/R2036; FRL-4753-2]

RIN 2070-AB78

## Polyhedral Occlusion Bodies of Autographa Californica Nuclear Polyhedrosis Virus; Exemption from the Requirement of a Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes an exemption from the requirement of a pesticide tolerance for residues of the microbial pest control agent *Autographa californica* nuclear polyhedrosis virus in or on all raw agricultural commodities. The product Gusano is an insecticidal virus product containing the polyhedral occlusion bodies of the naturally occurring *Autographa californica* nuclear polyhedrosis virus (Family: Baculoviridae). This tolerance exemption was requested by Crop Genetics International. This regulation eliminates the need to establish a maximum permissible level for residues of *Autographa californica* nuclear polyhedrosis virus.

**EFFECTIVE DATE:** This regulation becomes effective March 23, 1994.

**ADDRESSES:** Written objections, identified by the document control number, [PP 2F4089/R2036], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

**FOR FURTHER INFORMATION CONTACT:** By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7690.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of June 10, 1992 (57 FR 24645), EPA issued a notice that it had received PP 2F4089 from Espro, Inc., requesting that 40 CFR part 180 be amended to establish a tolerance for acal (the company and product, renamed "Gusano," have since been acquired by Crop Genetics International, 10150 Old Columbia Rd., Columbia, MD 21046). Gusano contains the polyhedral occlusion bodies of *A. californica* nuclear polyhedrosis virus and is proposed for use in or on all raw agricultural commodities when used to control the alfalfa looper.

No comments were received in response to the notice of filing.

**Residue Chemistry Data**

Although Gusano bioinsecticide will be applied on a variety of vegetable and silvaculture crops at rates varying from 5 to 50 grams per acre, residue chemistry data were not required. Such data were determined to be necessary only if the submitted toxicology studies indicate that additional Tier II or III toxicology data would be required as specified in 40 CFR 158.165(e). The submitted toxicology data for this use indicate that the product is of low mammalian toxicity; therefore, Tier II or III data were not required.

**Toxicology Data**

Toxicology data requirements in support of this exemption from the requirement of a tolerance were satisfied via data waivers from the open scientific literature. These waivers include literature from an acute oral toxicity/pathogenicity study in the rat, an acute pulmonary toxicity/pathogenicity study in the rat, an acute dermal toxicity study in the rabbit, and a primary eye irritation study in the rabbit. Findings from the open scientific literature showed no toxic, pathogenic, or adverse effects.

Reference Dose (RfD) and maximum permissible intake (MPI) considerations are not relevant to this petition because of the low toxicity and lack of pathogenicity or infectivity as reported in the open scientific literature.

Based on the information cited above, the Agency has determined that the potential acute toxicity/pathogenicity of *Autographa californica* nuclear polyhedrosis virus is sufficiently low to support the proposed exemption from the requirement of a tolerance on all raw agricultural commodities. Thus, a tolerance for the active ingredient *Autographa californica* nuclear polyhedrosis virus is not necessary to protect the public health. Therefore, 40 CFR part 180 is amended as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 9, 1994.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1125, to read as follows:

**§ 180.1125 Polyhedral occlusion bodies of Autographa californica nuclear polyhedrosis virus; exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for the microbial pest control agent *Autographa californica* nuclear polyhedrosis virus in or on all raw agricultural commodities.

[FR Doc. 94-6837 Filed 3-22-94; 8:45 am]

BILLING CODE 6560-50-F

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 93-68; RM-8130]**

### Radio Broadcasting Services; Paradise Valley, AZ

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 290C3 for Channel 290A at Paradise Valley, Arizona, and modifies the authorization for Station KXLL(FM) to specify operation on the higher powered channel, as requested by Scottsdale Talking Machine & Wireless Company, Inc. See 58 FR 17816, April 6, 1994. Coordinates for Channel 290C3 at Paradise Valley are 33-32-30 and 111-57-12. Paradise Valley is located within 320 kilometers (199 miles) of the Mexican border, and therefore, concurrence of the Mexican government to this proposal was obtained. With this action, the proceeding is terminated.

**EFFECTIVE DATE:** May 2, 1994.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 93-68, adopted March 9, 1994, and released March 16, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, located at 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 290A and adding Channel 290C3 at Paradise Valley.

Federal Communications Commission.

Victoria M. McCauley,

*Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 94–6773 Filed 3–22–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 84–231; RM–5094, RM–5381, RM–5604, RM–6405, RM–6706, RM–7325, RM–7372, RM–7459]

## Radio Broadcasting Services; Shreveport, Bastrop, Homer, Mansfield, Ruston, Vivian and Jonesboro, LA, El Dorado and Stamps, AK, Atlanta, Henderson, Hooks and San Augustine, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for extraordinary relief.

SUMMARY: This document dismisses a Petition for Extraordinary Relief filed by DeSoto Broadcasting Corporation directed to the Third Report and Order in this proceeding. See 57 FR 2843 (January 24, 1992). With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order in MM Docket No. 84–231, adopted March 3, 1994, and released March 16, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 94–6772 Filed 3–22–94; 8:45 am]

BILLING CODE 6712–01–M

## DEPARTMENT OF JUSTICE

48 CFR Part 2801

[Justice Acquisition Circular 94–1]

## Amendment to the Justice Acquisition and Regulations (JAR) Regarding: Contracting Authority and Responsibilities, Definitions, Competition Advocates, and Acquisition Planning; Correction

AGENCY: Office of the Procurement Executive, Justice Management Division, Justice.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the final regulation (JAC 94–1,) which was published Wednesday, December 29, 1993, (58 FR 68774). The corrected provision sets forth the Department of Justice system for selection, appointment and termination of appointment of contracting officers.

EFFECTIVE DATE: March 23, 1994.

FOR FURTHER INFORMATION CONTACT: W. L. Vann, Procurement Executive, Justice Management Division (202) 514–6868.

SUPPLEMENTARY INFORMATION: The final regulation that is the subject of this correction, sets forth, among other things, the Department of Justice system for selection, appointment, and termination of appointment of contracting officers. As published, the final regulation contains an error which may prove to be misleading and is in need of clarification.

List of Subjects in 48 CFR Part 2801

Government procurement.

Accordingly, 48 CFR part 2801 is corrected by making the following correcting amendment:

1. The authority citation for 48 CFR part 2801 continues to read as follows:

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

§ 2801.603–2 [Corrected]

2. Beginning on page 68777, at the bottom of the third column, paragraph (d)(3) of section 2801.603–2 is corrected to read as follows:

(3) The qualification standards cited under 2801.603–2(d) (1) and (2) are not applicable to management officials of the Department and its components who have contracting officer authority for goods and services by virtue of their organizational placement at a level above the chief of the contracting officer as defined in JAR 2802.102(F). Nor are the above cited qualification standards applicable to personnel authorized to use the credit card to buy and pay for goods and services for purchases valued at $2,500 or less, or to personnel authorized to conduct or issue imprest fund transactions.

Stephen R. Colgate,

*Assistant Attorney General for Administration.*

[FR Doc. 94–6802 Filed 3–22–94; 8:45 am]

BILLING CODE 4410–01–M

## DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 10

[Docket No. 48438; Amdt. 10–1a]

## Privacy Act; Implementation; Correction

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Correction to final regulation.

SUMMARY: This document contains a correction to the final regulations (Docket 48438) implementing the Privacy Act of 1974 that were published Wednesday, December 22, 1993 (58 FR 67696).

EFFECTIVE DATE: January 21, 1994.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, telephone (202) 366–9154, FAX (202) 366–9170.

SUPPLEMENTARY INFORMATION: The final regulations that are the subject of this correction made amendments to DOT's Privacy Act regulations (49 CFR part 10). The correction concerns appendix A to part 10, wherein DOT exempts various of its record systems from certain provisions of the Privacy Act. The exemption for Coast Guard's Law Enforcement Investigative System and the Federal Aviation Administration's General Air Transportation Records on Individuals was intended to be invoked under 5 USC 552a(k)(2); instead, it was inadvertently invoked under 5 USC 552a(k)(5), thereby affecting the exemption's applicability.

Accordingly, the publication on December 22, 1993 of the final regulations (Docket 48438) that were the subject of FR Doc. 93–31112 is corrected as follows:

**PART 10—[CORRECTED]**

1. On page 67697, amendatory instruction 3. is corrected to read as follows:

3. Part I of Appendix A is revised, and Part II.A. is amended by revising introductory text, paragraph 1, paragraph 12, and concluding text, and adding a new paragraph 13; Part II.B is amended by revising paragraphs B., F.3., and G.1.; and paragraph 3b. to Appendix D is amended by revising all of the subparagraphs to read as follows:

2. On page 67698, in the second column, in section II.B., in the indented paragraph following "B.", in the last line, "5 USC 552a(k)(5)" is corrected to read "5 USC 552a(k)(2)."

This correction is issued pursuant to 49 CFR 1.57(l).

Issued in Washington, DC, on March 8, 1994.

**Stephen H. Kaplan,**

*General Counsel.*

[FR Doc. 94–6695 Filed 3–22–94; 8:45 am]

BILLING CODE 4910–62–M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 675**

**[Docket No. 931100;4043; I.D. 031794A]**

**Groundfish of the Bering Sea and Aleutian Islands Area**

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

**ACTION:** Closure.

**SUMMARY:** NMFS is closing the directed fishery for pollock by vessels catching pollock for processing by the inshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands (BSAI) management area. This action is necessary to prevent exceeding the pollock total allowable catch (TAC) for the inshore component in this area.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), March 18, 1994, through 12 midnight, A.l.t., December 31, 1994.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Fishery Biologist, Fisheries Management Division, NMFS, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the TAC of pollock for vessels catching pollock for processing by the inshore component in the AI was established by the final 1994 initial groundfish specifications (59 FR 7656, February 16, 1994), as 16,838 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the pollock TAC for the inshore component in the AI soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 16,338 mt with consideration that 500 mt will be taken as incidental catch in directed fishing for other species in the AI. Consequently, NMFS is prohibiting directed fishing for pollock by operators of vessels catching pollock for processing by the inshore component in the AI, effective from 12 noon A.l.t., March 18, 1994, through 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

**Classification**

This action is taken under § 675.20.

**List of Subjects in 50 CFR Part 675**

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: March 18, 1994.

**David S. Crestin,**

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

[FR Doc. 94–6784 Filed 3–18–94; 1:57 pm]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 59, No. 56
Wednesday, March 23, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

[Airspace Docket No. 94–ANM–10]

### Proposed Amendment to Class D Airspace; Aurora, CO

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would amend the Aurora, Buckley ANGB Airport, Colorado, Class D airspace. This action would amend the Aurora, Buckley ANGB, Colorado, Class D airspace from full-time to part-time. Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the terms "control zone" for airports with operating control towers, and "air traffic area," replacing them with the designation "Class D airspace." This amendment would bring publications up to date, giving continuous information to the aviation public.

**DATES:** Comments must be received on or before April 30, 1994.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–10, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

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:**

Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 94–ANM–10, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone number: (206) 227–2536.

**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-related aspects of the proposal. Communications should identify the airspace docket number 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. 94–ANM–10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination 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, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class D airspace at Aurora, Colorado, to correct an error in the Class D airspace description. During the airspace reclassification process (57 FR 38962; August 27, 1992) the language designating the Class D airspace as part-time was inadvertently omitted. This action would correct that error. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "control zone," and airspace extending upward from the surface of the earth is now "Class D airspace." The coordinates for this airspace docket are based on North American Datum 83. Class D airspace is published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designation listed in this document would be published subsequently in the Order.

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 "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (Air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—[AMENDED]**

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–

1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporated by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

*Paragraph 5000 General*

* * * * *

**ANM CO D Aurora, CO [Amended]**

Aurora, Buckley ANGB Airport, CO
(lat. 39°42'36" N., long. 104°45'29" W.)

That airspace extending upward from the surface to, but not including, 7,500 feet MSL within a 6-mile radius of the Buckley ANGB Airport excluding that airspace within the Denver, CO, Class B airspace area Subarea A; that Class B airspace north of Interstate 70; and excluding that airspace within the Denver Centennial Airport, CO, Class D airspace area. This Class D airspace shall be effective during the specified dates and times established in advance by a Notice to Airmen. The effective dates and times thereafter will be continuously published in the airport/facility directory.

* * * * *

Issued in Seattle, Washington, on March 10, 1994.

**Temple H. Johnson, Jr.,**

*Manager, Air Traffic Division, Northwest Mountain Region.*

[FR Doc. 94-6793 Filed 3-22-94; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### United States Customs Service

### 19 CFR Part 24

**RIN 1515-AB38**

## Fees Assessed for Defaulted Payments

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the Customs Regulations to authorize the assessment of a $30 fee for any defaulted payment resulting from a check or other monetary instrument returned unpaid by a financial institution, including Automated Clearinghouse defaulted payments, which were presented for duties, taxes and other charges incurred in connection with any commercial or noncommercial importation or other Customs transaction whether or not backed by a Customs bond. At present, Customs authority to assess the $30 fee is limited to returned checks presented with respect to noncommercial importations for which no formal entry was required, and other Customs transactions not backed by a Customs bond. The purpose of the proposed change is to enable Customs to recoup the administrative costs incurred in processing all returned checks and other defaulted payments.

**DATES:** Comments must be received on or before May 23, 1994.

**ADDRESSES:** Comments (preferably in triplicate) must be submitted to U.S. Customs Service, ATTN: Regulations Branch, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229, and may be inspected at the Regulations Branch, 1099 14th Street, NW., suite 4000, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** David Baker, Office of the Comptroller (202-927-0620).

**SUPPLEMENTARY INFORMATION:**

### Background

By a document published in the **Federal Register** as T.D. 92-73 on August 10, 1992 (57 FR 35458), Customs amended its regulations to establish a $30 charge for each check that is returned by a financial institution to Customs unpaid, if that check was presented either for payment of duties or other charges incurred on noncommercial importations for which a formal entry was not required or for payment in connection with any other transaction not backed by a Customs bond (§ 24.1(e), Customs Regulations; 19 CFR 24.1(e)).

However, Customs has not been entirely successful at charging the $30 fee in part because Customs cannot differentiate in a cost effective manner between returned checks made by individuals on noncommercial importations, and those made by commercial entities, which are usually backed by a Customs bond. Moreover, because Customs is only authorized at present to charge the fee in connection with noncommercial importations or other transactions not backed by a Customs bond, Customs is unable to recoup the administrative costs incurred for processing all returned checks and other defaulted payments. In particular, § 24.1(e) does not authorize charging the fee for processing defaulted payments made through the Automated Clearinghouse (ACH) (see § 24.25, Customs Regulations; 19 CFR 24.25).

Section 24.1(e) was made applicable only to noncommercial importations and other transactions not backed by a Customs bond, primarily because of the availability of liquidated damages in cases where checks were returned unpaid in connection with commercial importations and other transactions which were supported by a bond.

However, the assessment of liquidated damages does not recoup the administrative costs connected with processing defaulted payments. All liquidated damages collected by Customs are credited to one of the Treasury Department's miscellaneous receipt accounts which cannot be used to defray the expense of processing defaulted payments. The $30 fee provided for in § 24.1(e), on the other hand, is credited to a Customs account whose purpose is specifically to recoup the administrative costs associated with processing defaulted payments. Thus, because the $30 fee is money usable by Customs in this regard while liquidated damages are not, the two assessments may not properly be considered a duplicate assessment for a single defaulted payment.

Accordingly, against this backdrop, Customs proposes to amend § 24.1(e) so as to permit the application of the $30 fee for all returned checks, other monetary instruments, and ACH defaulted payments, regardless of whether the maker is commercial and/or bonded.

### Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are timely submitted to Customs. All such comments received from the public pursuant to this notice of proposed rulemaking will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, 1099 14th Street, NW., Suite 4000, Washington, DC.

### Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), for the reasons stated in the preamble, it is certified that the proposed amendment would not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 or 604. Nor would the proposed amendment result in a "significant regulatory action" under E.O. 12866.

**Drafting Information**

The principal author of this document was Russell Berger, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 24**

Accounting, Claims, Customs duties and inspection, Imports, Taxes, Wages.

**Proposed Amendment**

It is proposed to amend part 24, Customs Regulations (19 CFR Part 24), as set forth below.

## PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for Part 24 and the specific sectional authority for § 24.1 would continue to read as follows:

**Authority:** 5 U.S.C. 301, 19 U.S.C. 58a–58c, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1624, 31 U.S.C. 9701, unless otherwise noted.

Section 24.1 also issued under 19 U.S.C. 197, 198, 1648;

* * * * *

2. It is proposed to amend § 24.1 by revising paragraph (e) to read as follows:

**§ 24.1 Collection of Customs duties, taxes, and other charges.**

* * * * *

(e) Any person or entity, commercial or noncommercial, who pays by check, Automated Clearinghouse (ACH), or other monetary instrument, any duties, taxes, fees, penalties, or other charges or obligations due Customs shall be assessed a charge of $30 for each defaulted payment (check or monetary instrument returned unpaid by a financial institution for any reason, including ACH defaulted payments), except where it can be shown that the maker of the payment (check, monetary instrument or ACH payment) was not at fault in connection with the defaulted payment. This charge shall be in addition to any unpaid duties, taxes, fees, penalties (including liquidated damages), and other charges.

Approved: February 28, 1994.

**George J. Weise,**

*Commissioner of Customs.*

**John P. Simpson,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 94–6752 Filed 3–22–94; 8:45 am]

BILLING CODE 4820–02–P

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Parts 122, 123, 131, and 132**

**[FRL–4854–2]**

**RIN 2040–AC08**

## Proposed Water Quality Guidance for the Great Lakes System

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of public meeting.

**SUMMARY:** The purpose of this notice is to announce an open public meeting scheduled for April 26, 1994, to express views on written comments submitted by other parties on the proposed Water Quality Guidance for the Great Lakes System.

**DATES:** The open public meeting will be held on April 26, 1994. The meeting will begin at 8:30 a.m. and conclude at 4:30 p.m. or as otherwise arranged.

**ADDRESSES:** The open public meeting will be held in room 331 of the Ralph H. Metcalf Federal Building, 77 West Jackson Blvd., Chicago, Illinois.

Additional information concerning the meeting may also be obtained by calling: (1) Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin (telephone: 800–621–8431); (2) Pennsylvania (telephone: 215–597–6911); and (3) New York (telephone: 716–285–8842).

Materials in the public docket for the proposed Water Quality Guidance for the Great Lakes System are available for viewing by contacting Wendy Schumacher, Water Quality Standards (WQS–16J), EPA, Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604–3590, (telephone: 312–886–0142). Microfiche copies of many of the supporting documents for the proposal, as well as microfiche copies of the comments, are available at the locations listed in the proposal (April 16, 1993; 58 FR 20802).

**FOR FURTHER INFORMATION CONTACT:** John J. O'Grady, Region 5 Team Leader, Great Lakes Water Quality Guidance (WQS–16J), EPA, Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604–3590, (telephone: 312–353–1938).

**SUPPLEMENTARY INFORMATION:** On April 16, 1993, EPA published the proposed Water Quality Guidance for the Great Lakes System in the **Federal Register** (58 FR 20802). The period for receiving public comments on the proposal closed on September 13, 1993. Subsequently, EPA announced the availability of three additional reports that EPA is considering as it develops the final Guidance (August 9, 1993, 58 FR 42266; September 13, 1993, 58 FR 47845). The period for receiving comments on issues raised in the three reports closed on October 13, 1993.

The preamble to the April 16, 1993, proposal described EPA's intent to hold an open public meeting to provide an opportunity to members of the public who wish to express views on the written comments of other parties submitted during the public comment period (58 FR 20823). This meeting will be held on April 26, 1994, at the time and address shown above. Interested parties are welcome to attend the meeting to present their views.

All comments received in the public hearing held August 4 and 5, 1993, and all written comments received during the public comment periods that closed September 13, 1993, and October 13, 1993, will be considered by the Agency in the final rulemaking. The April 26, 1994, meeting is intended to provide an opportunity for those parties who wish to comment on issues raised by other commenters contained in the public docket for the rulemaking. Therefore, interested parties who provided comments on the proposal should not, and do not need to, restate their views at the April 26, 1994, meeting. The public meeting may also include separate concurrent sessions on the elements of the proposed Guidance in order to facilitate the anticipated number of commenters and issues. For further information on the meeting, you may contact the persons identified above.

EPA also invites elected officials and other representatives of State, local, and Tribal governments to attend the meeting. EPA encourages such participation, in accordance with Executive Order 12875, Enhancing the Intergovernmental Partnership, issued October 26, 1993 (58 FR 58093).

Summaries of meetings with EPA that have been held at the request of the Great Lakes States and other parties since the publication of the proposal have been placed in the docket and are available from the address listed above. EPA will place a summary of the open public meeting in the public docket at the address listed above.

Dated: March 14, 1994.

**David A. Ullrich,**

*Acting Regional Administrator, EPA, Region 5.*

[FR Doc. 94–6822 Filed 3–22–94; 8:45 am]

BILLING CODE 6560–50–P

**40 CFR Part 172**

**[OPP–250093; FRL–4767–8]**

## Microbial Pesticides; Experimental Use Permits and Notifications; Notification to the Secretary of Agriculture

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

**ACTION:** Notification to the Secretary of Agriculture.

**SUMMARY:** Notice is given that the Administrator of EPA has forwarded to the Secretary of Agriculture a final rule under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The rule is an amendment to the experimental use permit (EUP) regulations for pesticides that was proposed on January 22, 1993. These regulations clarify the circumstances under which an EUP is presumed not to be required and implement a screening procedure that requires notification to EPA before initiation of small-scale testing of certain microbial pesticides. This action is required by FIFRA section 25(a)(2).

**FOR FURTHER INFORMATION CONTACT:** By mail: Evert K. Byington, Chief, Science Analysis and Coordination Staff, Environmental Fate and Effects Division (7507C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1016A, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–0944).

**SUPPLEMENTARY INFORMATION:** Section 25(a)(2) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any final regulation at least 30 days before signing it for publication in the **Federal Register**. If the Secretary comments in writing regarding the final regulation within 15 days after receiving it, the Administrator shall issue for publication in the **Federal Register**, with the final regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 15 days after receiving the final regulation, the Administrator may sign the regulation for publication in the **Federal Register** anytime thereafter.

**List of Subjects in 40 CFR Part 172**

Environmental protection, Experimental use permits, Intergovernmental relations, Labeling, Pesticides and pests, Recordkeeping and reporting requirements, Research.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: March 15, 1994.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 94–6835 Filed 3–22–94; 8:45 am]

**BILLING CODE 6560–50–F**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**42 CFR Parts 431, 435, 436, 440, and 447**

**[MB–13–P]**

**RIN 0938–AD17**

## Medicaid Program; Low-Income Eligibility Groups and Coverage of Services; Legislative Changes

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the Medicaid regulations to: incorporate categorically needy eligibility groups of pregnant women, infants, and children and aged and disabled individuals with incomes related to the Federal poverty income guidelines; expand the deemed eligibility group of newborn children; expand the eligibility group of qualified children; clarify eligibility of homeless individuals; provide for the continuous eligibility of pregnant women without regard to changes in income; provide for ambulatory prenatal care for certain pregnant women during a limited period of presumptive eligibility, based on income eligibility only; and tie the medical assistance program to the Aid to Families with Dependent Children (AFDC) payment levels in the State.

The amendments would conform the regulations to provisions of the Omnibus Budget Reconciliation Acts of 1990 and 1989, the Medicare Catastrophic Coverage Act of 1988, the Family Support Act of 1988, the Omnibus Budget Reconciliation Acts of 1987 and 1986, and the Homeless Eligibility Clarification Act of 1986.

**DATES:** Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on May 23, 1994.

**ADDRESSES:** Mail written comments (original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: MB–13–P, P.O. Box 7518, Baltimore, Maryland 21207–0518.

Please address a copy of comments on information collection requirements to: Office of Information and Regulatory Affairs, Attn.: Laura Oliven, Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

If you prefer, you may deliver your written comments (original and 3 copies) to one of the following locations:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code MB–13–P. Comments received timely will be available for public inspection as they are received, beginning approximately 3 weeks after publication, in Room 309–G of the Departmental offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (202–690–7890).

**FOR FURTHER INFORMATION CONTACT:** Marinos Svolos, (410) 966–4452 (Eligibility) Robert Wardwell, (410) 966–5659 (Coverage of services).

**SUPPLEMENTARY INFORMATION:**

### I. Background

Under title XIX of the Social Security Act (the Act), generally States with Medicaid programs are required to provide Medicaid eligibility to individuals, children, and families who are receiving, or are deemed to be receiving, cash assistance under the aid to families with dependent children (AFDC) program, the supplemental security income (SSI) program, and the mandatory State supplement program; and to certain other needy pregnant women and children (referred to as the mandatory categorically needy eligibility groups). At State option, States may provide Medicaid to individuals who meet the categorical and financial requirements for the cash assistance programs but, for various reasons, are not receiving such assistance—for example, individuals who are in institutions or have not applied for cash assistance benefits—and to certain other specified needy groups (referred to as the optional categorically needy eligibility groups).

In addition to categorically needy groups, States, at their option, may provide Medicaid to individuals who would be eligible for the cash assistance programs except that they have income

or resources above allowable levels (referred to as the medically needy eligibility group). The medically needy are permitted to reduce their income to the allowed level by deducting (spending down) incurred medical expenses to become eligible for Medicaid.

In recent years, a number of statutes have been enacted that established new eligibility groups, revised existing eligibility groups, or expanded services to certain low-income individuals. On October 21, 1986, Congress passed provisions of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), Public Law 99–509, that amended the Social Security Act to expand the Medicaid eligibility groups. States were given the option of providing Medicaid to certain needy individuals who had incomes up to a certain specified percentage of Federal poverty income guidelines and who previously were not eligible for Medicaid as categorically needy. These individuals included pregnant women, infants, and children (section 9401) and aged and disabled individuals (section 9402). In addition, section 9407 allowed States to provide ambulatory prenatal care to pregnant women during a presumptive eligibility period on the basis of income eligibility only.

OBRA '86 also clarified Medicaid eligibility of homeless individuals who are residents of a State, regardless of whether or not they maintain a home at a fixed address or maintain it permanently (section 9405). In addition, section 11005 of the Homeless Eligibility Clarification Act (title XI of the Anti-Drug Abuse Act of 1986, Public Law 99–570), enacted on October 27, 1986, requires that a State Medicaid plan provide for a method of making medical services eligibility cards available to Medicaid-eligible individuals who do not reside in a permanent dwelling or at a fixed address.

The Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100–203, enacted on December 22, 1987, made further changes in the Social Security Act to expand the optional eligibility groups of low-income pregnant women, infants, and children and the mandatory eligibility group of qualified children under a certain age. OBRA '87 also allowed a State to impose a monthly premium on optional categorically needy pregnant women and infants with incomes between 150 and 185 percent of the Federal poverty level. In addition, section 4105 of OBRA '87 clarified Medicaid coverage of clinic services furnished outside of clinic facilities to homeless individuals.

The Medicare Catastrophic Coverage Act of 1988 (MCCA), Public Law 100–360, enacted on July 1, 1988, also further amended provisions relating to the eligibility groups of individuals with incomes related to the Federal poverty income level. MCCA made some of the low-income pregnant women and infants mandatory Medicaid eligibility groups (those at or below 75 percent of the poverty level and then, a year later, 100 percent of the poverty level) and amended the eligibility criteria for others.

The Family Support Act of 1988 (FSA), Public Law 100–485, enacted on October 13, 1988, made several technical corrections to the Medicaid provisions of the Social Security Act. These corrections related to the description of the eligibility groups of low-income pregnant women, infants, and children.

The Omnibus Budget Reconciliation Act of 1989 (OBRA '89), Public Law 101–239, enacted on December 19, 1989, changed the mandatory eligibility groups of low-income pregnant women and infants by increasing the income criteria to at or below 133 percent (instead of at or below 100 percent) of the Federal poverty income level; and added a new mandatory group of low-income children who are age one but have not attained age 6 who have incomes at or below 133 percent of the Federal poverty level. OBRA '89 mandated a percentage greater than 133 percent of the Federal poverty level for the pregnant women and infants groups if the State had such a greater percentage in its State plan (whether approved or not) as of the date of enactment of OBRA '89, or established under State authorizing legislation or State appropriations as of December 19, 1989, when it covered these pregnant women or infants, or both, as optional categorically needy groups. Low-income children who are age 6 but have not attained age 7, or at State option, age 8 with incomes at or below 100 percent of the Federal poverty level remained an optional categorically needy group. These provisions were effective on April 1, 1990.

The Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101–508, enacted on November 5, 1990, made additional changes to both the mandatory and optional groups of pregnant women, infants, and children. OBRA '90 created a new group of mandatory categorically needy children who are at least age 6 but have not yet reached age 19. These are children born after September 30, 1983 with family income at or below 100 percent of the Federal poverty level. OBRA '90 made corresponding changes to the mandatory eligibility group of qualified children to include children born after September 30, 1983 who have not attained age 19 and to allow States to use an earlier date of birth in order to include older children sooner than is mandated.

In addition, OBRA '90 mandated that a State provide continuous eligibility to pregnant women throughout the pregnancy and postpartum period without regard to changes in income. (This had been a State option.) OBRA '90 also changed the requirement for newborns who are deemed to be eligible as a result of their mothers' eligibility status. Previously, a newborn was considered eligible at birth if the newborn's mother was eligible for and receiving Medicaid. The newborn could remain eligible for as long as a year if the mother remained eligible and the infant was a member of the mother's household. With the OBRA '90 change, a newborn may still remain eligible for as long as a year if the mother loses eligibility but would remain eligible if she were pregnant.

Finally, OBRA '90 made several changes to presumptive eligibility for pregnant women by eliminating the existing time limit on the presumptive period and allowing a pregnant woman to remain presumptively eligible until the State makes a determination on her regular application for Medicaid or, if she does not file a regular application, the last day of the month following the month in which she was determined presumptively eligible. OBRA '90 also provided that the application given to a presumptively eligible pregnant woman could be the application used by the State to determine the regular Medicaid eligibility of low-income pregnant women under section 1902(1)(1)(A).

This document proposes to incorporate provisions of OBRA '86, '87, '89, and '90, the Homeless Eligibility Clarification Act, MCCA, and FSA in the Medicaid regulations, as outlined and discussed in the following section of this document. (Additional related provisions in these laws are being addressed in separate rulemaking documents.)

## II. Discussion of Legislative Provisions and Proposed Amendments to Regulations

### *A. Low-Income Pregnant Women, Infants, and Children*

Section 9401 of OBRA '86 amended the Social Security Act by adding new sections 1902(a)(10)(A)(ii)(IX) and 1902(1) to establish optional

categorically needy groups of pregnant women and women during the 60-day period beginning on the last day of pregnancy, infants, and children up to age 5 whose income does not exceed a State-established standard that is a specified percentage of the Federal nonfarm poverty income guidelines. Under OBRA '86, a State could establish this income standard at a level at or below 100 percent of the Federal poverty guidelines. A State had to cover both pregnant women and infants (it could not cover either group separately) and it had to cover both of these groups in order to cover children.

OBRA '86 also amended section 1902(e) to provide that States that have chosen to cover infants and children under section 1902(1) must continue to cover those infants and children under certain circumstances. Under section 1902(e)(7), if the infants and children are receiving covered inpatient services at the time they reach the age limits under the State plan, the State must cover them until the end of their inpatient stay if they remain otherwise eligible. Also, OBRA '86 specifically exempted the group of individuals described in section 1902(a)(10)(A)(ii)(IX) from the limits on family income which affect a State's Federal financial participation (FFP) under section 1903(f)(4) of the Act.

Later legislation changed the age limit for children and the percentage of the poverty level for the income standard. Specifically, section 4101(c) of OBRA '87 raised the maximum age for low-income children from age 5 up to age 8. Section 4101(a)(1) of OBRA '87 increased the percentage of the poverty guidelines at which the income standard could be set to 185 percent for pregnant women and infants under age 1, effective July 1, 1988. However, for children age 1 up to age 8, section 4101 retained the percentage level at no more than 100 percent of the Federal poverty guidelines (or, if the State had chosen to cover pregnant women and infants with a percentage of income below 100 percent, the percentage for children had to equal the percentage used for the pregnant women and infants). Section 4118 of OBRA '87 also removed the reference to "nonfarm" in the description of the Federal poverty income guidelines to be used. In addition, section 4101(d) of OBRA '87 amended section 1916 of the Act to allow States to charge a premium to optional groups of low-income pregnant women and infants who have family incomes above a specified level.

Section 302 of MCCA added section 1902(a)(10)(A)(i)(IV) to the Social Security Act, which required States to provide mandatory eligibility to groups of pregnant women and infants up to one year of age with incomes at or below 75 percent of the Federal poverty income guidelines, effective July 1, 1989. Those States that, as of enactment of MCCA, offered eligibility to pregnant women and infants with incomes at 100 percent of the poverty level (or at some lower income threshold between 75 percent and 100 percent) were required to continue eligibility at this level. A State had to provide an income level that reflected at least the percentage of poverty specified in an amendment to its State plan to cover these groups (whether the amendment had been approved or not). Even if there was no percentage specified in the State plan, the maintenance of eligibility requirement also applied to percentages established under a State's authorizing legislation or provided for under the State's appropriations in order to provide Medicaid to these individuals before July 1, 1989. MCCA also provided that, effective July 1, 1990, mandatory eligibility was required for groups of pregnant women and infants under age one with incomes at or below 100 percent of the Federal poverty income guidelines. In addition to creating mandatory groups of pregnant women and infants, the MCCA eliminated the requirement in section 1902(1)(4) that States cover both pregnant women and infants in order to cover either group and to cover both groups in order to cover children. We have interpreted this MCCA amendment to allow States to cover optional groups of pregnant women and infants separately and with different income levels. Coverage of groups of pregnant women or infants, or both, with incomes above the mandatory percentages (75 percent, effective July 1, 1989, and 100 percent, effective July 1, 1990) but at or below 185 percent of the poverty level and children age 1 year to age 8 years with incomes at or below 100 percent of the poverty level remained optional under the MCCA provisions.

The MCCA also amended section 1902(e)(7) to provide continued coverage to all of the revised groups of children under section 1902(1) until the end of their inpatient stays. It also amended section 1903(f)(4) to exempt from the FFP income limits all of the redefined mandatory and optional groups in section 1902(1) and specifically made the use of less restrictive income and resource methodologies under section 1902(r)(2) apply to several groups, including the mandatory groups of women and infants in section 1902(a)(10)(A)(i)(IV), and to all optional categorically needy groups, including the optional group of women, infants, and children in section 1902(a)(10)(A)(ii)(IX).

The changes made by section 302 of MCCA applied to payments for medical assistance for calendar quarters beginning on or after July 1, 1989, with respect to eligibility on or after that date. The effective date applied whether or not we had promulgated final rules to interpret the provisions by that date. However, a State could, under certain circumstances, request a delayed implementation date in order to enact State legislation.

Section 6401 of OBRA '89 revised the provisions under MCCA by further amending the eligibility groups of low-income pregnant women, infants, and children up to age 8. First, section 6401 changed the income criteria for the mandatory eligibility groups of low-income pregnant women and infants up to age 1 under section 1902(a)(10)(A)(i)(IV) of the Act by increasing the income level criteria from no less than 100 percent of the Federal poverty income level to no less than 133 percent of the Federal poverty income level, effective April 1, 1990. The law mandates that a State use a percentage greater than 133 percent (but no greater than 185 percent) of the Federal poverty income level if the State had such a higher percentage for optional categorically needy groups of pregnant women and infants as of the date of enactment of OBRA '89 in its State plan (whether approved or not) or established by State authorizing legislation or State appropriations. Second, OBRA '89 established under section 1902(a)(10)(A)(i)(VI) of the Act a new mandatory eligibility group of low-income children age 1 up to age 6. The State was required to establish an income level for this group that equaled 133 percent of the Federal poverty income level. States could continue to cover as optional categorically needy other low-income children age 6 up to age 7 or, at State option, up to age 8 who are born after September 30, 1983. The income level for this group of children age 6 up to age 8 would continue to be established at a level not to exceed 100 percent of the Federal poverty income level.

Section 6401 of OBRA '89 also made conforming changes to section 1902(a)(10)(A)(ii)(IX) (excluding the mandatory group of children in section 1902(a)(10)(A)(i)(VI) from the group of optional categorically needy), other parts of section 1902(1) (changed the descriptions of low-income groups of pregnant women, infants, and children), section 1902(e)(7) (added the new group

of mandatory children to the continuation of inpatient hospital services for infants and children who have reached the maximum age for eligibility), section 1902(r)(2) (made the use of less restrictive income and resource methodologies than cash assistance methodologies apply to the new group of mandatory children), and section 1903(f)(4) (exempted the new group of mandatory children from the limitations on Medicaid payments). In addition, section 6411(i)(3) of OBRA '89 amended section 1925 (a)(3)(C) and (b)(3)(C)(i) to require States to determine if children who would cease to receive extended Medicaid under section 1925 may be eligible for Medicaid under sections 1902(a)(10)(A)(i) (IV) or (VI) or 1902(a)(10)(A)(ii)(IX) before terminating eligibility based on section 1925.

The changes made by section 6401 applied to payments for medical assistance for calendar quarters beginning on or after April 1, 1990, with respect to eligibility on or after that date. The effective date applied whether or not we had promulgated final rules to interpret the provisions by that date. However, a State could, under certain circumstances, request a delayed implementation date in order to enact State legislation. Section 6411(i)(3) was effective as if enacted as part of the Family Support Act of 1988.

Section 4601 of OBRA '90 established a new mandatory group of low-income children under section 1902(a)(10)(A)(i)(VII) of the Act. This group described in 1902(l)(1)(D) of the Act includes children born after September 30, 1983 who have attained age 6 but have not attained age 19. The State must establish an income standard for this group of children which equals 100 percent of the Federal poverty level. Section 4601 made conforming changes to section 1905(n)(2) of the Act which defines qualified children. Children born after September 30, 1983 who have not attained age 19 are now included in the mandatory group of qualified children. In addition, States have the option to choose an earlier date of birth if they wish to phase in this group more quickly. Section 4601 made additional conforming changes to (1) section 1902(r)(2) to allow States to use less restrictive income and resource methodologies than those used under the cash assistance programs in determining financial eligibility of the new group under section 1902(a)(10)(A)(i)(VII); (2) section 1903(f)(4) of the Act to exempt the new group of mandatory children from the limitations on Medicaid payments; and (3) section 1925 of the Act to require that States determine whether a child is eligible under this new mandatory group before terminating eligibility based on section 1925.

The changes made by section 4601 applied to payments for medical assistance for calendar quarters beginning on or after July 1, 1991. The effective date applied whether or not we had promulgated final rules to interpret the provisions by that date. However, a State could, under certain circumstances, request a delayed implementation date in order to enact State legislation.

Section 1902(l) of the Act, as added by section 9401 of OBRA '86 and amended by section 4101 of OBRA '87, section 302 of MCCA, section 608(d)(15) of FSA, section 6401 of OBRA '89, and section 4601 of OBRA '90, specifies the eligibility conditions for the mandatory groups of pregnant women and infants under section 1902(a)(10)(A)(i)(IV), the mandatory group of children age 1 up to age 6 under section 1902(a)(10)(A)(i)(VI), the mandatory group of children age 6 up to age 19 under section 1902 (a)(10)(A)(i)(VII), and the optional categorically needy groups of pregnant women and infants under section 1902(a)(10)(A)(ii)(IX).

1. Income Standard

Eligibility of individuals who fall into one of the mandatory and optional groups of low-income pregnant women, infants, and children is based on these individuals meeting State-established income standards. States must establish their income standards at a level that does not exceed the specified percentage of the Federal poverty income guidelines for a family equal to the size of the family, including the woman, infant, or child. Because the official poverty guidelines are revised annually to adjust for inflation, States will be automatically increasing the income standards established to keep pace with inflation as a result of the changes in the poverty guidelines. (HHS determines official Federal poverty income guidelines and issues them in the **Federal Register** annually, usually during the month of February. See, for example, 58 FR 8287, February 12, 1993.) For optional groups of pregnant women and infants, the agency may establish separate income standards or use a single standard.

Under section 1902(l)(3)(E), as added by OBRA '86 and amended by section 4101(e)(3) of OBRA '87, in determining whether the income of members of the low-income groups of pregnant women, infants, and children meets the established income standards, States must use the same methodologies as applied in determining financial eligibility for AFDC, or for title IV–E as appropriate, except to the extent that the methodologies are inconsistent with section 1902(a)(17)(D) of the Act. Section 4101(e)(3) of OBRA '87 clarified that, in determining family income, States must not use any AFDC methodologies (such as stepparent, grandparent, or sibling deeming) that are inconsistent with the deeming policies specific to Medicaid under section 1902(a)(17)(D) of the Act (H. Rep. 391, 100th Cong., 1st Sess. 446 (1987)). Section 1902(a)(17)(D) of the Act provides, in part, that in determining financial responsibility of relatives, only the income of spouses may be considered as available to spouses, and only the income of parents may be considered as available to a child until the child is 21, unless the child is blind or disabled. The methodologies include, but are not limited to, those used for disregarding income. States also are not permitted to allow individuals whose eligibility is determined based on membership in these low-income groups to spend down; that is, the State may not deduct the costs of incurred medical expenses or any other type of remedial care from income, in determining whether an individual's income meets the income standard established by the State.

The requirements for determining financial eligibility of low-income pregnant women, infants, and children were also affected by section 303(e) of MCCA. Section 303(e) established a new section 1902(r)(2) to permit States, at their option, to use less restrictive income and resource methodologies than those used under the cash assistance programs (e.g., AFDC or SSI), in determining financial eligibility for a number of groups, including the mandatory groups of pregnant women and infants in section 1902(a)(10)(A)(i)(IV) and the optional groups of pregnant women, infants, and children in section 1902(a)(10)(A)(ii)(IX). Section 6401 of OBRA '89 specifically made section 1902(r)(2) applicable to the mandatory group of low-income children age 1 up to age 6 in section 1902(a)(10)(A)(i)(VI). Section 4601 of OBRA '90 specifically made section 1902(r)(2) applicable to the mandatory group of low-income children age 6 up to age 19 in section 1902(a)(10)(A)(i)(VII).

We believe that the specific preclusion of a spenddown in section 1902(l) was not modified by section 1902(r)(2). However, States may use other more liberal methodologies to the extent that they are consistent with section 1902(r)(2).

Section 1902(l)(1) of the Act specifically states that the income standards established by the State must correlate to a family size that includes the woman, infant, or child. The statute does not specifically address whether the pregnant woman's unborn child must be counted in determining family size. However, the legislative history supports counting the pregnant woman as if her child were born and living with her. The language of the 1986 House Committee Report that addressed the section 1902(l)(1) provision states that "in determining a pregnant woman's family income level, the Committee intends that a State would treat the woman as if her child were born and living with her at the time she applied for assistance. Thus, a single woman would be treated as a family of two, a pregnant woman living with a spouse or child as a family of three, and so forth * * *" (H. Rep. No. 727, 99th Cong., 2d Sess. 100 (1986)). The House bill that accompanied this report states that the family size should be equal to "the family including the woman or child." Even though the language is not specific in section 1902(l)(1), we believe the legislative history reveals that Congress intended that the unborn child be included under this provision.

We proposed to specify in these proposed regulations that the family size includes the "unborn child and other members of the Medicaid budgetary unit." Policies relating to the Medicaid budgetary unit were addressed in a final rule with comment period published in the **Federal Register** on January 19, 1993 (58 FR 4908), and are, therefore, not being addressed in this preamble. The effective date of the January 1993 rule has been delayed (58 FR 9120, February 19, 1993; 58 FR 44457, August 23, 1993; and 59 FR 8138, February 18, 1994). We will conform the policies on the Medicaid budgetary unit contained in these proposed regulations with whatever policy is in effect at the time that we issue these proposed regulations as final.

2. Resource Standard

The statute allows States, at their option, to apply a resource standard to the low-income eligibility groups of pregnant women, infants, and children under section 1902(1) of the Act. Section 9401 of OBRA '86 establishes a floor for the resource standard that is a specific and objective standard. If a State chooses to apply a resource standard, the standard may be no more restrictive than that applied under SSI for pregnant women, and than that applied under AFDC, for infants and children. (If Guam, Puerto Rico, and the Virgin Islands elect to apply a resource standard, that standard for pregnant women may be no more restrictive than that applied under SSI under section 1613 of the Act. This is because the reference to the resource standard for pregnant women in the statute is to the standard that is applied under title XVI (that is, SSI) and not to the standard that is applied under the State plan program under title XVI.)

The amendments regarding the different treatment of income and resources for the mandatory and optional groups of low-income pregnant women, infants, and children do not require or permit this different treatment to be applied to other Medicaid eligibility groups under the comparability provisions of section 1902(a)(17) of the Act.

3. Applicability for States With Section 1115 Waivers and for Territories

Section 302(c) of MCCA struck the original section 1902(1)(4)(A) of the Act and section 302(d) of MCCA added a new section 1902(1)(4)(A). Under the new section 1902(1)(4)(A), as amended by section 6401 of OBRA '89 and section 4601 of OBRA '90, States that are providing Medicaid under a waiver granted under section 1115 of the Act must provide mandatory categorically needy eligibility to pregnant women and infants under age 1 with incomes at or below 133 percent of the poverty level under section 1902(a)(10)(A)(i)(IV), children age 1 but under age 6 with incomes at or below 133 percent of the poverty level under section 1902(a)(10)(A)(i)(VI) and children who have attained age 6 but are under age 19 with incomes at or below 100 percent of the poverty level under section 1902(a)(10)(A)(i)(VII) in the same manner as other States. States operating under a waiver granted under section 1115 of the Act must (as all other States must) cover the mandatory groups at higher levels if they have already chosen to use those higher levels. However, Guam, Puerto Rico, the Virgin Islands, American Samoa, and the Northern Mariana Islands retain the option of providing Medicaid to the otherwise mandatory groups of low-income pregnant women, infants, and children. The Territories may establish separate or identical income standards for pregnant women and infants at any percentage of the poverty level at or below 185 percent. However, if a Territory chooses to cover children from age 1 up to age 6, it must cover all such children with incomes at or below 133 percent of the poverty level. Also, if a Territory chooses to cover children born after September 30, 1983 who have attained age 6 but are under age 19, it must cover all such children with incomes at or below 100 percent of the poverty level.

4. Comparability of Services

Section 1902(a)(10) of the Act, as amended by section 9401 of OBRA '86, section 4101 of OBRA '87, and section 302(a)(1)(C) of MCCA, contains an exemption to the comparability of services requirements at section 1902(a)(10)(B) for services furnished to pregnant women described in section 1902(l)(1)(A) of the Act who are eligible as mandatory or optional categorically needy under the provisions of sections 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX). The amended provision (under clause (VII) following what is currently paragraph (F) of section 1902(a)(10)) provides that the services that are available to pregnant women under the section 1902(l) low-income eligibility groups are limited to services relating to pregnancy (including prenatal, delivery, family planning, and postpartum services) and to other conditions that may complicate pregnancy. (Section 4101(e)(1) of OBRA '87 expanded services related to pregnancy to include "family planning.")

The Consolidated Omnibus Budget Reconciliation Act (COBRA), Public Law 99–272, enacted an earlier comparability of services requirement for all pregnant women covered under the State plan. This requirement appears under clause (V) following what is currently paragraph (F) of section 1902(a)(10). This provision states that if a State makes available "services relating to pregnancy (including prenatal, delivery, and postpartum services) or to any other condition which may complicate pregnancy," the State is not required to provide these services to any other individual, except pregnant women, covered under the plan. The State must provide its pregnancy-related services and services for any other condition that may complicate pregnancy, in the same amount, duration, and scope, to all pregnant women covered under the State plan, including pregnant women whose pregnancy is not the basis for their Medicaid eligibility (e.g., those receiving AFDC or SSI). (See §§ 440.210 and 440.220).

We issued a separate document to interpret this and other provisions of COBRA. In it, we left to the States the responsibility for defining these services listed in the statute within the bounds of broad policy guidelines (54 FR 7798, February 23, 1989 and 55 FR 48601,

November 21, 1990). We believe that the same principles apply for the pregnancy-related services and services which may complicate pregnancy which are specific to the section 1902(1) group of women. (See § 440.250(q).)

Generally, the State plan includes services identified in section 1905(a) (1) through (24) of the Act (mandatory and optional services that are considered as medical assistance to Medicaid recipients). Many of these services can qualify as appropriate components of the areas of care required by the statute; that is, prenatal services, delivery services, postpartum services, and family planning services, and services related to conditions that may complicate pregnancy. For example, physicians' services in section 1905(a)(5) can qualify as prenatal services, since examinations by a physician are part of prenatal care, and as delivery services, since a physician may also deliver the woman's baby. Therefore, a State plan must provide pregnant women with what the State has decided are enough services identified in section 1905(a) to sufficiently cover each of the required areas of care. In addition, a State, at its option, may provide services under section 1905(a) of the Act (for example, rehabilitative services or nutritional supplements) only to pregnant women and not to any other categorically needy eligible Medicaid recipient, as long as such services qualify as either services related to pregnancy or to other conditions that may complicate pregnancy. A State would not be required to specifically identify which services it provides to pregnant women. However, the State would be required to specify in its plan that it covers each of the required areas of care.

We interpret "pregnancy-related services" to mean those services which are needed because the woman is or was pregnant, either because they are necessary for the health of the pregnant woman or fetus or because the services became necessary as a result of the woman having been pregnant. These include, but are not limited to, prenatal care, delivery, family planning, and postpartum services.

On the other hand, "services relating to any other condition which may complicate pregnancy" are not "pregnancy related" because they do not arise because of the pregnancy. These services include those for diagnosis or treatment of illnesses or medical conditions which might threaten the carrying of the fetus to full term or the safe delivery of the fetus. Because these services are for conditions "which may complicate the pregnancy," the services can be provided only while the woman is pregnant.

It is important to note that, unlike the other eligibility groups of pregnant women who are entitled to at least the full range of services available under a particular State's Medicaid plan to recipients of the same eligibility group, these low-income categorically needy pregnant women are only entitled to pregnancy-related services (including family planning services) and services for the treatment of conditions that may complicate pregnancy.

Infants and children in these eligibility groups are eligible for all appropriate Medicaid services included in the approved State plan.

5. Premiums for Pregnant Women and Infants

Section 4101(d) of OBRA '87 redesignated section 1916(c) as 1916(d) and created a new section 1916(c) which permits States to impose a monthly premium on optional categorically needy low-income pregnant women and infants eligible under section 1902(a)(10)(A)(ii)(IX) of the Act. States may impose the premium on these individuals if their income equals or exceeds 150 percent, but is not more than 185 percent, of the poverty level for a family of the size involved. The amount of the premium imposed may not exceed 10 percent of the amount by which the family's income exceeds 150 percent of the poverty income guidelines. Costs for the care of a dependent child must be deducted in determining the family's income under this provision. States are prohibited from requiring the prepayment of the premium. Eligibility may not be terminated for failure to pay this premium unless the premium has been unpaid for at least 60 days. In cases of undue hardship, as defined by the State, the State may waive the payment of the premium. In addition, a State may use State or local funds from other programs to pay the premium. Under section 1916(c)(4) of the Act, if these funds are used, they may not be counted as income to the individual for whom payment is made.

Although Congress did not specifically address the meaning of the term "costs of care for a dependent child" (the Conference Report refers to these costs as "child care" expenses (H. Rep. No. 495, 100th Cong., 1st Sess. 731 (1987)), we believe that there was no Congressional intent to use a broader concept of child care costs for this provision than that traditionally used under the AFDC program. Therefore, we propose to define child care costs for purposes of this provision as costs related to the care of a child necessary to enable a member of the family whose income was included in the eligibility determination to work or participate in training.

6. Payment Levels Under AFDC

OBRA '86 added section 1902(1)(4)(A) to the Act, which provided that a State plan may not elect to cover the optional groups of low-income pregnant women, infants, and children up to age 5 described in section 1902(a)(10)(A)(ii)(IX) unless the State had in effect AFDC payment levels that were not less than those in effect on April 17, 1986. This provision became effective on April 1, 1987. OBRA '87 amended this provision, changing the date upon which AFDC levels would be measured from April 1 to July 1, 1987. The OBRA '87 amendment was effective on December 22, 1987.

Section 302(c) of MCCA eliminated section 1902(1)(4), but placed a comparable provision in a new section 1903(i)(9). This provision states that payment will not be made to a State with respect to amounts for medical assistance for section 1902(a)(10)(A)(ii)(IX) optional groups if the State has in effect AFDC payment levels that are less than those in effect on July 1, 1987. In addition, section 302(c) established a new, more general maintenance of effort provision in section 1902(c)(1), which states that the Secretary will not approve any Medicaid State plan if the State has in effect AFDC payment levels which are less than those in effect on May 1, 1988. Because section 1116(b) of the Act distinguishes between plans and plan amendments, we interpret this provision literally as prohibiting approval of new State plans but not prohibiting approval of amendments to a State plan. The MCCA provisions were effective on July 1, 1989.

There have been some questions raised about how we would determine if the AFDC payment level has been maintained by a State as specified in the law. "Payment level" is not an existing term used under AFDC. However, for the purposes of sections 1902(c) and 1903(i)(9), payment levels are the amounts of the payments for basic needs (according to family size) which would be made to families with no income under the approved State AFDC plan. Special needs are not included, as we have concluded, based on a review of statutory history, that Congress intended to include only basic needs. Thus, we propose to find a State has not reduced its payment level if it has not reduced the amount of the AFDC payment for

basic needs made to a family with no other income.

7. Application for AFDC

Section 4104(e) of OBRA '87 amended section 1902(1)(4) of the Act by adding a new paragraph (C) to specify that a State Medicaid plan may not provide that any of the low-income pregnant women, infants, and children under section 1902(1) must apply for AFDC as a condition of applying for or receiving Medicaid. Section 302(c) of MCCA made further amendments by removing section 1902(1)(4) and adding a comparable provision to section 1902(c)(2) of the Act. Section 1902(c)(2) provides that the Secretary must not approve any State plan for Medicaid if the State requires low-income pregnant women, infants, and children under section 1902(1)(1) to apply for AFDC benefits as a condition of applying for or receiving Medicaid.

8. Need for Regulations

The statutory amendments discussed above are effective without regard to whether final regulations to carry them out have been published by the applicable effective dates. However, changes in the Medicaid regulations are necessary to bring the regulations up to date with current statutory requirements.

9. Proposed Regulations

We propose to amend the Medicaid regulations under 42 CFR parts 435, 436, 440, and 447 as follows:

- Add a new § 435.118 to specify the mandatory eligibility groups of pregnant women, infants under age 1, children age 1 up to age 6 with incomes at or below 133 percent of the Federal poverty income guidelines, and children age 6 up to age 19 with incomes at or below 100 percent of the Federal poverty income guidelines.
- Add § 435.228 to specify the optional eligibility groups of low-income pregnant women and infants (and low-income children in American Samoa and the Northern Mariana Islands) and § 436.226 to specify the optional eligibility groups of low-income pregnant women, infants, and children and the conditions under which they may establish eligibility.
- Add §§ 435.612 and 436.612 to incorporate the requirements for a State to establish income standards, and at State option, resource standards for these low-income groups and for applying methodologies to determine financial eligibility.
- Revise §§ 435.608 and 436.608 to specify that the State agency must not require low-income pregnant women, infants, and children to apply for AFDC benefits as a condition of applying for or receiving Medicaid.
- Add a new § 431.60 to specify the maintenance of specified AFDC payment levels as a condition of State plan approval. Revise §§ 435.1002 and 436.1002 to specify that FFP is not available for expenditures for Medicaid for optional groups of low-income pregnant women and infants covered under section 1902(a)(10)(A)(ii)(IX) if the State has in effect AFDC payment levels that are less than the payment levels in effect under the plan on July 1, 1987.
- Revise § 440.250 on limits on comparability of services to provide that services to pregnant women in the mandatory and optional categorically needy low-income eligibility groups are limited to services related to pregnancy (including prenatal, delivery, family planning, and postpartum services) and to other conditions which may complicate pregnancy that are included under the approved State plan.
- Add a new § 447.60 to specify the requirements and conditions for imposing a monthly premium on the optional eligibility groups of low-income pregnant women and infants with family incomes between 150 and 185 percent of the poverty level and make conforming changes to §§ 447.50 and 447.51.

Section 303(e) of MCCA added section 1902(r)(2) of the Act, which allows States to elect to use less restrictive income and resource methodologies than the cash assistance methodologies for a number of eligibility groups, including the mandatory and optional categorically needy pregnant women, infants, and children in section 1902(l). On January 19, 1993, we published in the **Federal Register** (58 FR 4908) regulations at §§ 435.601, 435.602, 436.601, and 436.602 to interpret section 1902(r)(2). The eligibility groups of low-income pregnant women, infants, and children described in this preamble are subject to the provisions of §§ 435.601, 435.602, 436.601, and 436.602.

[Note: On February 19, 1993, August 23, 1993, and February 18, 1994, we published notices in the **Federal Register** (58 FR 9120; 58 FR 44457; and 59 FR 8138) to delay the effective dates for the January 19, 1993 final rule. If, at the time we issue the final rule for these proposed regulations, the January 19, 1993 final regulations have been revised or are not in effect, we will make appropriate revisions.]

We propose to add new §§ 435.612 and 436.612 to specify the requirements for establishing the income and resource standards for these groups and to cross-refer to §§ 435.601, 435.602, 436.601, and 436.602 for the methodologies to be used for determining financial eligibility. The group of low-income aged and disabled individuals discussed in section I.F. of this document also is subject to §§ 435.601, 435.602, 436.601 and 436.602.

*B. Continuous Eligibility of Pregnant Women*

Under section 1902(e)(6) of the Act, as added by section 9401(d) of OBRA '86 and amended by section 4101(e)(2) of OBRA '87, section 302(e) of MCCA, and section 4603 of OBRA '90, States must treat any pregnant women who are eligible under section 1902(a)(10) as continuously eligible throughout the pregnancy and the postpartum period without regard to changes in income.

Section 9401(d) of OBRA '86 added section 1902(e)(6) to the Act. Section 1902(e)(6) allowed States to treat any women who were described in sections 1902(a)(10)(A)(ii)(IX) and 1902(1) as continuously eligible during the pregnancy and through a 60-day postpartum period, without regard to any changes in family income. Women covered under this provision consisted of two groups: low-income pregnant women and low-income women during the 60-day period after the pregnancy ends. Therefore, this provision covered women who applied for and became Medicaid eligible under section 1902(l) either before or after giving birth. Section 4101(e)(2) of OBRA '87 redefined the section 1902(e)(6) postpartum period to specify that the period of continued coverage extends for 60 days after the pregnancy ends, beginning on the last day of pregnancy, plus any remaining days in the month in which the 60th day occurs. The remaining days in the month provision was added by OBRA '87 for Federal matching payment and quality control purposes because, in some States, Medicaid eligibility is not terminated at any time other than the end of the month.

Section 302(e) of MCCA amended section 1902(e)(6) of the Act to provide States with the option of treating any pregnant woman who has established eligibility under any eligibility group listed in section 1902(a)(10) and who, because of a change in income, would cease to be eligible, as a mandatory eligible low-income pregnant woman throughout the pregnancy and for the specified postpartum period, without regard to changes in family income. Section 1902(e)(6) now refers to "pregnant women" rather than "women described in section 1902(l)(1)." As a result, we believe it still covers the

pregnant women described in section 1902(l)(1)(A) but no longer includes those women in section 1902(l)(1)(A) who first become eligible only in the 60-day postpartum period after they have ceased to be "pregnant women."

Section 4603(a)(2) of OBRA '90 further amended section 1902(e)(6) to require States to provide continuous coverage to any pregnant woman eligible under section 1902(a)(10) of the Act who would otherwise lose her eligibility due to a change in income. The pregnant woman must be "deemed to continue to be" a mandatory categorically needy individual described under sections 1902(a)(10)(A)(i)(IV) and 1902(1)(1)(A) through the end of the postpartum period. The OBRA '90 amendment also stated that this mandatory coverage would not apply in the case of a woman who has received ambulatory prenatal care under section 1920 of the Act during a presumptive eligibility period and is then determined to be ineligible for regular Medicaid.

Although section 1902(e)(6) purports to cover all pregnant women who, because of a change in family income, would not otherwise continue to be eligible for Medicaid, we believe that it does not automatically cover all pregnant women who must meet a spenddown. Most pregnant women seeking to meet a spenddown would be attempting to establish eligibility as medically needy. Section 1902(e)(6) now requires that a State deem a pregnant woman (who has established eligibility under any eligibility group) to continue to be a pregnant woman under sections 1902(a)(10)(A)(i)(IV) and 1902(1)(1)(A) if that woman would otherwise cease to be eligible due to a change in income.

A medically needy woman can establish her eligibility during a given budget period by spending down her excess income. However, if she has the excess income in the following budget period and is ineligible because she cannot spend it down, we do not believe that her ineligibility has resulted from a "change" in income. In fact, her income is unchanged for eligibility purposes if it remains in excess of the medically needy income level by the same amount as in the previous budget period; she has simply not been able to spend down to the medically needy income level. We believe that under the statute, a medically needy pregnant woman whose family income does not change and who cannot meet her spenddown does not qualify as having the "change" in income contemplated by section 1902(e)(6).

We are uncertain how to apply section 1902(e)(6) in the context of pregnant women who have a spenddown, and whose family incomes increase, causing this spenddown amount to increase. We propose to cover under this provision any pregnant woman who was eligible (either as categorically needy, medically needy without a spenddown, or medically needy after meeting a spenddown) at any time during her pregnancy, who then experiences a change in family income which either would cause her to lose categorically needy Medicaid, medically needy Medicaid without a spenddown, or to lose eligibility (be unable to meet the increased spenddown although she would have met the earlier spenddown) by virtue of an increased spenddown amount.

We would interpret section 1902(e)(6) so that it will not relieve pregnant women who qualify under section 1902(e)(6) of their obligation to satisfy their original spenddown amount in each budget period while in section 1902(e)(6) status.

If a pregnant woman who has in the previous budget period met a spenddown has an increase in income and qualifies under section 1902(e)(6), she must be "deemed to continue to be" a pregnant woman under sections 1902(a)(10)(A)(i)(IV) and 1902(1)(1)(A). These provisions describe categorically needy eligibility groups with respect to whom the limited Medicaid benefit is available. We believe that the phrase "deemed to continue to be" is ambiguous. The phrase can mean that the woman is to be regarded for all purposes as if she were actually categorically needy, or only that she is to be considered as categorically needy for the purpose of receiving the restricted service package that applies to pregnant women described in section 1902(1) without regard to the change in her family's income. If we were to regard the woman as though she were actually categorically needy, she would no longer have to meet any spenddown, and any subsequent changes of income would not affect her eligibility. This would place the medically needy pregnant woman whose income has increased in a better position than any other medically needy pregnant woman with a spenddown who has had no increase in income.

In order to avoid the anomalous result of only pregnant women with higher incomes being relieved of their total spenddown obligations, we propose not to interpret section 1902(e)(6) as requiring that a medically needy woman be considered as though she were categorically needy for all purposes. We propose instead to interpret the phrase "deemed to continue to be" in section 1902(e)(6) to require only that a woman who meets her original spenddown amount, but cannot meet the increased amount, be deemed to be eligible for the limited service package provided to the section 1902(1) pregnant women. The woman can maintain this deemed status without having to pay any increased spenddown amounts which result from increases in family income. She will, however, be required to continue to meet her original spenddown while in section 1902(e)(6) status.

We propose to revise redesignated § 435.918 relating to redetermination of eligibility, to provide that the agency must consider a pregnant woman eligible under any Medicaid eligibility group as an individual who is eligible to receive the services available to the mandatory categorically needy low-income group throughout the pregnancy and for the specific postpartum period after the pregnancy ends without regard to changes in the family income.

*C. Qualified Children*

Section 4601(a)(2) of OBRA '90 amended the definition of a qualified child in section 1905(n)(2) of the Act, effective July 1, 1991. Under section 1902(a)(10)(A)(i)(III) of the Act, a State must provide Medicaid coverage to the mandatory group of qualified children. Effective July 1, 1991, under the new definition of qualified child added by OBRA '90, a State must provide Medicaid coverage to children under the age of 19 who were born after September 30, 1983, and who meet the income and resource requirements of the State plan under title IV–A. The option in section 1905(n)(2) for a State to include as qualified children those children born after an earlier date than September 30, 1983 (as chosen by the State) was retained. As a result, effective July 1, 1991, States have the option to provide Medicaid coverage to children under the age of 19 who were born after any date prior to September 30, 1983 (as chosen by the State) who meet the income and resource requirements of title IV–A.

We propose to amend § 435.116(c) to raise the maximum age of a qualified child to under age 19.

*D. Deemed Newborn Eligibility*

1. OBRA '90 Changes

Section 4603(a) of OBRA '90 changed the requirements in section 1902(e)(4) of the Act under which a newborn child remains eligible for Medicaid, effective January 1, 1991. Prior to this change, States were only required to continue

the eligibility of an infant deemed eligible at birth for so long as the infant remained a member of the mother's household and the mother remained eligible for Medicaid. States must now also continue the eligibility of an infant deemed eligible at birth if the infant remains a member of the mother's household and the mother loses Medicaid eligibility but would remain eligible if pregnant.

We considered whether the language "remain eligible if pregnant" meant that the mother should be considered as newly pregnant in each month after the postpartum period. Under this interpretation, if the mother was regarded as reapplying for Medicaid after the postpartum period as though she were newly pregnant, her income might be too high for her to be eligible, even under the pregnancy-related eligibility categories. (For example, the mother's income may have increased above the applicable standard during the pregnancy but she remained eligible through the postpartum period by virtue of section 1902(e)(6) of the Act.) If she is regarded as newly pregnant, she would not receive the continued coverage under section 1902(e)(6) for women whose incomes increase after they are already eligible and pregnant. As a result, the mother would not be "eligible" even if she were considered to be pregnant and the infant would lose eligibility under section 1902(e)(4).

We decided that a better reading of the provision would be to consider a mother as if she had not yet given birth; that is, as if she had remained continuously pregnant. A discussion of this provision in the House Report of the Committee on Budget to accompany H.R. 5835 (H. Rep. No. 881, 101st Cong., 2d. Sess. 103 (1990)) refers to the woman remaining eligible for Medicaid or one who "would be eligible for Medicaid were she still pregnant," which implies she should be treated as if she had not given birth. Therefore, we propose to require States to continue the eligibility of an infant deemed eligible at birth who is in his or her mother's household and whose mother would still be eligible for Medicaid if the infant had not yet been born. Under this interpretation, changes in the mother's income will have no impact on the infant's eligibility because were the mother still pregnant, she would remain eligible without regard to changes in income by virtue of section 1902(e)(6) of the Act. A redetermination of the mother's eligibility is not required at the end of the postpartum period unless information is received that there has been a change in the mother's circumstances which might have affected her eligibility even if she were still pregnant and the infant had not yet been born.

2. Member of the Mother's Household

An infant must continue to be a member of his/her mother's household to maintain deemed newborn eligibility. We are codifying existing policy related to determinations of whether an infant is a member of his or her mother's household. An infant is considered a member of his or her mother's household as long as he or she is continuously hospitalized after birth, unless the mother has legally relinquished control of the child or the State has established that she has abandoned the child. After the infant's release from the hospital, or in situations not involving hospitalization, States must apply the AFDC rules for determining whether a child is living with a specified relative to determine if an infant (who is not an SSI recipient) is a member of his or her mother's household.

*E. Inpatient Services to Infants and Children*

Under section 1902(e)(7) of the Act, as added by OBRA '86 and amended by section 4101(b) of OBRA '87, section 302(e)(2) of MCCA, and section 6401 of OBRA '89, States must extend Medicaid eligibility to a low-income infant or child described in section 1902(l) of the Act or a qualified child described in section 1905(n)(2) of the Act who is receiving covered inpatient services in a hospital or a long-term care facility on the date he or she attains the maximum age for Medicaid eligibility under the State plan until the end of the inpatient stay if the child or infant remains eligible, except that he or she has attained that maximum age. This provision applies to the mandatory and optional categorically needy eligibility groups of low-income infants and children described under section 1902(l) of the Act. Section 6401 of OBRA '89 extended this provision to the new mandatory categorically needy group of low-income children age 1 up to age 6 under section 1902(l)(1)(C) and section 4601 of OBRA '90 (by changes to section 1902(l)(1)(D)) to the new mandatory categorically needy group of children born after September 30, 1983 who have not attained age 19 also. (In addition, section 302(b) of MCCA further clarified this provision by adding in the matter after paragraph (F) of section 1902(a)(10) a new paragraph (X) to provide that States that impose durational limits on payments for inpatient hospital services must establish exceptions to these limits for medically necessary inpatient services received by an infant up to age 1 in a hospital designated as a disproportionate share hospital under the State's Medicaid plan. Regulations to interpret section 302(b) of MCCA are included in a separate document that is under development.)

We propose to amend §§ 435.520 and 436.520 to require State agencies to extend Medicaid eligibility to a low-income infant or child described in section 1902(1) of the Act and a qualified child described in section 1905(n)(2) of the Act who are receiving covered inpatient services on the date they attain the maximum age for Medicaid eligibility under the State plan until the end of the inpatient stay if the infant or child remains eligible except for attainment of the maximum age; and make conforming changes to §§ 435.500 and 436.500.

*F. Low-Income Aged and Disabled Individuals*

Section 9402 of OBRA '86 amended the Social Security Act by adding new sections 1902(a)(10)(A)(ii)(X) and 1902(m) to establish an optional categorically needy eligibility group of aged and disabled individuals with incomes at or below the Federal poverty income level. Section 1902(m) of the Act, as added by OBRA '86 and amended by section 4118(p)(8) of OBRA '87 and section 301(e) of MCCA, describes individuals in this group as those who are 65 years of age or older or are disabled as determined under SSI, whose income does not exceed a standard established by the State that is set at a percentage (at or below 100 percent) of the Federal poverty income level, and whose resources do not exceed the maximum amount of resources allowed under SSI. If a State has a medically needy program with a more generous resource level, section 1902(m)(2)(B) allows a State to elect to use the medically needy resource level instead of the SSI resource level.

Between July 1, 1987 and June 30, 1989, States were permitted to provide eligibility to this optional group of low-income aged and disabled individuals only if they also provided Medicaid eligibility to the low-income group of pregnant women and infants under the provisions of section 1902(a)(10)(A)(ii)(IX) as added by section 9401 of OBRA '86 discussed earlier. Section 301(e)(2)(D) of MCCA removed the condition for providing eligibility to both groups, effective July 1, 1989.

Income eligibility for this optional group of aged and disabled individuals is based on a standard established at a level that is at or below 100 percent of

the Federal poverty income guidelines for a family of the size involved. The term "family of the size involved," as used in section 1902(m)(2)(A), is not specifically defined in the statute. However, for this optional group of aged and disabled we believe that it would be appropriate to adopt for individuals and couples who seek eligibility under section 1902(m) of the Act the SSI program's distinction between eligible individuals and eligible couples, depending on whether the individual alone is eligible or both members of the couple are eligible under section 1902(m). Since the statute requires that income be determined using the principles of section 1612, which are SSI program rules, using SSI's individual and couple distinction as well as SSI's deeming rules enables States to have a clear understanding of the baseline for determining eligibility for members of this poverty level-related group. It also avoids potential conflicts with section 1902(a)(17)(D) of the Act, which could result if eligibility for this group were determined by pooling family income (if the family included individuals other than a husband and wife).

The SSI program determines eligibility for couples, or for individuals. If the SSI definition of a couple (i.e., the couple is married and they qualify for SSI benefits as an eligible couple) is not met, eligibility is determined on an individual basis. We propose to apply this principle to determine eligibility for the optional Medicaid aged and disabled group. If two individuals are married and are both eligible under section 1902(m), both spouses will be considered a couple even if only one spouse applied for medical assistance and their income will be compared to the Federal poverty level for a family of two. If both individuals in a family are not eligible as a couple under section 1902(m), their eligibility will be determined as individuals, with their incomes being compared to the poverty level for an individual, and deeming of income and resources from responsible family members using SSI deeming methodologies.

Section 1902(m) of the Act has always specified that resources of individuals under the low-income optional categorically needy group of aged and disabled individuals may not exceed the SSI limits, and that SSI methodologies must be used to determine countable income and resources. However, section 1902(r)(2) of the Act, as added by section 303(e) of MCCA, does permit States, at their option, to use less restrictive requirements than SSI for optional categorically needy groups. However, in spite of section 1902(r)(2), we do not believe that States are authorized to allow individuals to deduct (spend down) the costs incurred for medical care or any other type of remedial care from income in order to meet the income standard established, except as they are permitted to do so under SSI if the individual is a severely disabled person who works. This is because section 1902(m)(3)(B) of the Act specifically prohibits the use of an income spenddown, except in the case of individuals covered by section 1612(b)(4)(B)(ii) of the Act. Under this exception, a severely disabled individual who works is allowed to deduct from income the reasonable costs for attendant care services, medical devices, equipment, prostheses, and similar items and services (generally not including routine drugs or routine medical services) that are necessary in order for the individual to work.

Section 6411(a) of OBRA '89 amended section 1902(f) of the Act to eliminate the option to use more restrictive eligibility criteria than are used by the SSI program for certain eligibility groups. One of those groups is the optional low-income aged and disabled group. Therefore, section 1902(f) States that elect to cover the section 1902(m) group must use SSI eligibility methodologies, and the statutorily mandated income and resource standards, in determining eligibility for individuals under this group. The only exception is that section 1902(f) States can use more liberal criteria under section 1902(r)(2). (Guam, Puerto Rico, and the Virgin Islands would use the SSI disability definition under section 1614 of the Act and the methodologies for determining income and resource eligibility applied under sections 1612 and 1613, or less restrictive income and resource methodologies under section 1902(r)(2), as appropriate. This is because the reference in section 1902(m) relating to disability and financial methodologies is to those of title XVI (that is, SSI) and not to those of the State plan program under title XVI.)

Section 4501(e)(1) of OBRA '90 amended section 1905(p)(2) of the Act by adding paragraph (D) to provide that, in determining income eligibility for qualified Medicare beneficiaries (QMBs) who are entitled to monthly title II insurance benefits, any cost-of-living adjustment (COLA) in these title II benefits received beginning in December of the preceding year must be disregarded. We will issue a separate regulation incorporating this provision for QMBs. Section 4501(e)(2) of OBRA '90 made this rule also apply to the income eligibility determinations of the aged and disabled individuals covered by section 1902(m).

The disregard applies to all the months from the month the COLA increase is effective through the month after the month the revised poverty levels are published each year. Since the new poverty levels are usually published in February, the disregard normally will be effective through March of each year.

However, for Medicaid purposes, the new poverty levels are effective upon publication. This means that, for the period between publication of the poverty levels (usually mid-February) and the end of the disregard period (usually March), the disregard of the COLA increase and the poverty level increase would overlap. As a result of this overlap, some individuals would meet the income level for this group because the COLA disregard would lower their countable income at the same time that the revised poverty level would allow for higher income. As soon as the COLA disregard expired, these individuals would lose eligibility again.

We believe that this approach would create an unreasonable administrative burden for States. They would have to add these individuals to the Medicaid rolls, only to have to remove them again a few weeks later. We also believe that the intent of the statutory provision is to protect individuals who would lose that status for a few weeks because of the COLA increase (but only until the increase in the poverty level took effect), and not to permit other individuals to achieve eligibility status for a few weeks.

For these reasons, we are proposing to make the revised poverty levels effective for title II recipients with the month after the last month in which the COLA disregard is effective. Since the COLA disregard normally expires at the end of March, in most years, the new poverty levels would be effective for these individuals on April 1. By delaying the effective date of the increased poverty level so that it coincides with the date on which the COLA increase is first counted, we would eliminate the problem discussed above.

Section 9402 of OBRA '86 does not require or permit the different treatment of income and resources allowed for this low-income aged and disabled eligibility group to be applied to other Medicaid eligibility groups because of the comparability provisions of section 1902(a)(17) of the Act. In addition, we propose to require that if a State elects to provide Medicaid eligibility to this low-income group, it must cover both

the aged and disabled and must apply the same income and resource standards to both groups and to all family sizes involved. This requirement is consistent with the intent of Congress, as expressed in the language of the House Committee Report accompanying OBRA '86 (H. Rep. 727, 99th Cong., 2d Sess. 103 (1986)).

Medicaid services provided to the optional group of low-income aged and disabled individuals must be the same in amount, duration, and scope as the Medicaid services provided to other categorically needy individuals under the approved State Medicaid plan.

The amendments made by section 9402 of OBRA '86 apply to payments to States for services for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry them out have been published by that date.

We propose to incorporate the provisions of sections 1902(a)(10)(A)(ii)(X) and 1902(m) of the Act and section 9402 of OBRA '86 in the Medicaid regulations by adding § 435.238 (§ 436.235 for the Territories) to specify the optional categorically needy eligibility group of aged and disabled individuals with incomes at or below Federal poverty income guidelines and the conditions under which they may establish eligibility. We also propose to add a new §§ 435.615 and 436.615 to specify the requirements for establishing the income and resource standards and methodologies for this group and for determining financial eligibility.

*G. Presumptive Eligibility for Pregnant Women*

Section 9407 of OBRA '86 added a new section 1902(a)(47) to the Act, redesignated section 1920 as section 1921, and added a new section 1920 to allow States to provide ambulatory prenatal care to certain needy pregnant women to help ensure that these women receive health care early in pregnancy. Section 411(k)(16)(B) of the MCCA and section 4605 of OBRA '90 amended section 1920. Under section 1920, ambulatory prenatal care is available during a presumptive eligibility period on the basis of income eligibility only before a woman is formally determined to be eligible or ineligible for Medicaid and for a specified number of days while a woman is waiting for a Medicaid eligibility determination. Under the statutory provisions, a qualified provider, who is defined in section 1920(b)(2), determines whether a pregnant woman is presumptively eligible for Medicaid. These qualified providers make the presumptive eligibility determination on the basis of preliminary information about the pregnant woman's family income. The qualified provider determines whether the pregnant woman's family income appears to meet the income criteria applied to any of the eligibility groups specified in the approved State Medicaid plan under which the pregnant woman might be eligible. At the time of the determination, a qualified provider must refer a pregnant woman to the Medicaid agency. The qualified provider must also assist a pregnant woman in completing and filing an application for full Medicaid services if she wishes to apply for Medicaid at that time. The Medicaid agency then would establish whether or not she is eligible for regular Medicaid.

Any provider that is eligible for payment under the State plan for services which the State considers to be ambulatory prenatal care can furnish these services to presumptively eligible pregnant women during the presumptive period. (We note that the purpose of presumptive eligibility is to provide temporary, limited coverage to pregnant women who are likely to be eligible for Medicaid. Under section 1905(a) of the Act, individuals who are inmates in public institutions are ineligible for Medicaid. Therefore, because she is not "likely to be eligible for Medicaid," any pregnant woman who is an inmate in a public institution could not be determined presumptively eligible for Medicaid and receive ambulatory prenatal care under section 1920 of the Act.)

In accordance with section 1920(b)(1), as added by OBRA '86 and amended by section 4605 of OBRA '90, the presumptive period of eligibility for ambulatory prenatal care begins on the day a qualified provider makes a presumptive eligibility determination. The pregnant woman then has until the last calendar day of the month following the month in which the presumptive eligibility determination was made to file a regular Medicaid application with the Medicaid agency. If she does not file a regular Medicaid application by that last day, presumptive eligibility ends on that last day. If she files a regular Medicaid application, presumptive eligibility under section 1920 ends on the date a decision is made on the regular Medicaid application.

We are proposing to allow only one presumptive eligibility period for any one pregnancy. We believe that this limitation is consistent with the intent of Congress as evidenced in the language of the Senate Committee Report on OBRA '86 (S. Rep. 348, 99th Cong., 2d Sess. 153 (1986)). In explaining the provision, the Committee stated that under the presumptive eligibility program, States may "for *any one pregnancy*, grant presumptive eligibility for *a period* not to exceed * * *" (emphasis added). Congress' use of the underscored phrases leads to the conclusion that only one presumptive period was intended. We solicit comments on the proposed policy to allow only one presumptive eligibility period per pregnancy.

The new section 1920 specifies that a presumptive eligibility determination is to be made if the pregnant woman appears to the qualified provider, on the basis of preliminary information supplied by her on family income, to meet the applicable income level of eligibility only. Resources and other Medicaid eligibility requirements that would be considered under the approved State plan if the woman were to apply for regular Medicaid benefits are not considered in making the presumptive eligibility determination. In addition, section 1920 provides that a determination of presumptive eligibility be based on "preliminary information" about family income. Therefore, a qualified provider may only request information that is correct based upon a pregnant woman's best information and belief and may not require exact information under a penalty of perjury. A State may require that women reveal what their incomes are or only that their incomes are below the applicable level.

In implementing the provisions of section 1920 that specify that presumptive eligibility determinations must be based on family income, we would require the qualified provider in all cases to apply to the woman's gross family income the highest, most advantageous income criteria applicable to the pregnant woman under the approved plan. The "applicable" level would usually be the higher of either the poverty level standard or the medically needy income level (without spenddown). This means that income disregards are not considered, and in the case of blind or disabled individuals in section 1902(f) States, or in States that have a medically needy program, the cost of incurred medical expenses could not be deducted in order to reduce income to the allowed income level (spending down). Consideration of disregards and incurred medical expenses would allow some women to have income above the "applicable level" specified in section 1920(b)(1)(A). We believe Congress intended by the use of the term "applicable level" to require qualified providers only to make simple calculations and not complicated

adjustments of income such as those involved in applying spenddown rules or in disregarding certain types of income. To impose detailed calculations and complicated adjustments on providers would be administratively burdensome and contrary to efficient administration because of the short-term nature of the presumptive eligibility status and because no other eligibility requirements (not even resources) are considered. We believe that we are not imposing an undue hardship on a pregnant woman by not allowing spenddown or not disregarding certain income. If the provider makes a decision that the woman does not "appear" to meet the income criteria, the pregnant woman still has the right to apply for regular Medicaid within a reasonable period of time and have a formal eligibility determination made. Under a formal eligibility determination, the agency may find that the pregnant woman is retroactively eligible for regular Medicaid during the presumptive period under the authority of section 1902(a)(34) of the Act.

Section 1920(b)(2) of the Act, as added by OBRA '86 and amended by section 411(k)(16) of MCCA, specifies the qualifications that a provider must meet in order to be allowed to make presumptive eligibility determinations. The provider must—

(1) Be eligible to receive payments under Medicaid;

(2) Be an entity that provides services of the following type: outpatient hospital services as specified in section 1905(a)(2)(A) of the Act or rural health clinic services and any other ambulatory services offered by a rural health clinic and otherwise included in the plan as described in section 1905(a)(2)(B); or be an entity that provides clinic services by or under the direction of a physician described in section 1905(a)(9) of the Act;

(3) Be determined by the State agency to be capable of making presumptive eligibility determinations on the basis of preliminary information on family income; and

(4) Meet one of the following conditions:

—Be receiving funding from the migrant health centers or community health centers programs under sections 329, 330, or 340 of the Public Health Service Act; funding from the maternal and child health services block grant program under title V of the Social Security Act; or funding under title V of the Indian Health Care Improvement Act.

—Be participating in the Special Supplemental Food Program for Women, Infants, and Children established under section 17 of the Child Nutrition Act of 1966, or in the Commodity Supplemental Food Program established under section 4(a) of the Agriculture and Consumer Protection Act of 1973.

—Be participating in a State perinatal program.

—Be the Indian Health Service or a health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (Pub. L. 93–638).

All providers who meet the criteria listed above must be considered qualified providers. Therefore, if a State determines that a provider is not capable of making presumptive eligibility determinations for pregnant women, that provider would not be considered "qualified" to make these determinations. We would permit States to exclude a provider that is qualified only under very narrow circumstances; that is, if a State can demonstrate that there is good cause to exclude the provider. In addition, we wish to give States maximum flexibility in meeting the needs of pregnant women and, therefore, propose to allow States to determine whether a program is a "State perinatal program."

In interpreting the provisions of section 1920(b), we would require States to provide qualified providers with proper screening forms for pregnant women to request a decision of presumptive eligibility. We also would require the States to provide instructions to qualified providers on how to apply the gross income criteria under the various eligibility groups under the State's approved Medicaid plan and how to determine the highest income criteria group under which the pregnant woman is most likely to be eligible if she applies for regular Medicaid. We are not prescribing the specific content and format of the screening forms or instructions. However, we expect State instructions to be in enough detail to allow a qualified provider (based on preliminary information provided by a pregnant woman) to make reasonably accurate income eligibility determinations.

In accordance with section 1920(c)(1), we would require State agencies to furnish qualified providers with regular Medicaid application forms and train them to assist pregnant women who wish to apply in completing and filing these forms. As provided by section 1920(c)(3) of the Act as amended by section 4605 of OBRA '90, the application provided may be an application developed by the State for use by pregnant women who wish to apply as low-income pregnant women described in section 1902(l)(1)(A) of the Act.

Section 1920(c)(3) of the Act seems to contemplate an application for regular Medicaid that is separate from the screening form for presumptive eligibility for ambulatory prenatal care. We believe the presumptive eligibility screening form and the regular Medicaid application can be combined. However, pregnant women cannot be required to provide all of the information necessary for a full-scale Medicaid application when applying for only presumptive eligibility. If the forms are combined, a State agency can offer the pregnant woman the option to complete the entire application but cannot require that she do so in order to establish presumptive eligibility. A qualified provider must make a presumptive eligibility determination once a pregnant woman has provided information about her family income and cannot require additional information.

A presumptive eligibility screening form alone cannot be used to establish a filing date for a regular Medicaid application. If a combined presumptive eligibility screening form and Medicaid application is used and the woman chooses to complete the entire application, the completed application form must be forwarded promptly to the appropriate State agency for a decision on regular Medicaid eligibility under the plan once the qualified provider makes a decision on presumptive eligibility. In this situation, the date the completed form is received by the State agency is the Medicaid filing date for Medicaid eligibility. If the woman is determined to be eligible, this date will determine the beginning of the period in which she qualifies for the more extensive services under the plan and will establish the month used to determine the dates of the 3 months of retroactive eligibility, if the woman would have been eligible during the retroactive period. Under this latter approach, pregnant women would not be required to file another application. However, they would not be exempt from meeting with State agency staff as appropriate or from providing additional information necessary to determine eligibility under the plan.

A modified approach under this option would be to have State agency staff on site at qualified provider locations to supervise or actually assist pregnant women in completing the application form. In these cases, the application date for regular Medicaid

plan services would be the date the onsite State agency staff person receives the completed form. This would result in an earlier Medicaid filing date. However, even though State agency staff who are working at qualified provider locations can receive and process applications for regular Medicaid, they cannot make presumptive eligibility determinations unless they themselves meet the definition of "qualified provider" under section 1920(b)(2).

Since we are considering pregnant women who apply only for presumptive eligibility for ambulatory prenatal care as requesting to receive services under a special status (that is, not regular Medicaid eligibility), we propose not to apply to a decision on presumptive eligibility the notification requirements that a State must meet when it makes a decision on a regular Medicaid application. Existing regulations under §§ 435.911 and 435.912 and part 431, subpart E, require Medicaid agencies to notify Medicaid applicants within a specified period of time of the agency's decision on a regular Medicaid application, the reasons for the decision, and an explanation of rights to a hearing if the application is denied. Although we propose not to apply the requirements of §§ 435.911 and 435.912 and part 431, subpart E, to presumptive eligibility decisions, we are proposing to require that the qualified provider inform a pregnant woman in writing of the presumptive eligibility decision at the time of the determination. In the case of a denial of presumptive eligibility, the qualified provider would be required to inform the woman in writing of the reason for the denial of this special status and of her right to apply to the State agency for an eligibility decision for regular Medicaid.

In accordance with section 1920 of the Act, we propose to require the qualified provider to inform, in writing, a pregnant woman who is determined presumptively eligible that she is required to file a regular Medicaid application by the last day of the month following the month in which the presumptive determination is made if she wishes to continue to receive ambulatory prenatal care after that date. The qualified provider must inform the pregnant woman in writing that if she does not file her application for regular Medicaid by the last day of the month following the month in which she was determined presumptively eligible, her presumptive eligibility will end on that date. However, if she files within the deadline, she will remain presumptively eligible until she has a regular Medicaid determination. Under the provisions of section 1920(c)(2), the qualified provider also must notify the State agency within 5 working days after the date on which the provider determines that the pregnant woman is presumptively eligible.

While the procedures under §§ 435.911 and 435.912 for notifying individuals of actions on applications would not apply to presumptive eligibility decisions for ambulatory prenatal care, they would apply to regular Medicaid applications filed after the presumptive eligibility determination is made. Because we do not consider presumptive eligibility for ambulatory prenatal care to be eligibility for Medicaid per se, and because termination of ambulatory prenatal care benefits occurs automatically after specified time periods under section 1920 of the Act, we also propose not to apply the existing provisions of the regulations that require Medicaid agencies to provide timely written notice of reduction or termination of Medicaid benefits and rights to appeal of an adverse action (part 431, subpart E and § 435.919). As indicated earlier, we propose to require a qualified provider to provide written notice of the date a pregnant woman can expect presumptive eligibility for ambulatory prenatal care to end. However, we propose not to grant rights to appeal a denial or termination of ambulatory prenatal care services under a presumptive eligibility decision. A presumptively eligible pregnant woman who subsequently files a regular Medicaid application that is denied would have the right to appeal the denial of her regular Medicaid application.

We do not believe that we are imposing an undue burden on qualified providers by requiring that notification by a qualified provider be in writing. We do not foresee that this written notice will be individual personal letters. We considered requiring States to supply qualified providers with preprinted notices. However, we decided to allow States the flexibility to determine how to best arrange for this notification within each State program. We particularly solicit comments on whether the requirement that notification by a qualified provider be in writing imposes an undue hardship on qualified providers.

Existing regulations at § 435.914 permit States to provide Medicaid for an entire month when an individual is eligible for Medicaid under the plan at any time during the month. We propose not to permit States to provide full month eligibility for presumptive eligibility periods because by definition a presumptive determination is not a determination of Medicaid eligibility but eligibility for a special status. Therefore, special status eligibility begins on the exact date a presumptive eligibility decision is made and ends on the last day of the month following the month in which the presumptive decision is made when a Medicaid application has not been filed, or on the date a formal decision of Medicaid eligibility is made if an application has been filed. However, full month regular Medicaid eligibility is available during the approval month of a regular Medicaid application in States that have elected full month coverage in their approved State Medicaid plan.

Section 9407 of OBRA '86, as amended by section 411(k)(16) of MCCA, provides that, for purposes of Federal financial participation, ambulatory prenatal care services that are covered under the plan, are furnished by a provider that is eligible for payment under the State plan, and are furnished to pregnant women during a presumptive period of eligibility, will be treated as expenditures for medical assistance under the State plan and thus are regarded as Medicaid plan services. If the State makes any payments for ambulatory prenatal care furnished by an eligible provider during the presumptive period for women who are later determined to be ineligible for Medicaid, these payments will not be counted in determining a State's excess erroneous payments for purposes of disallowing Federal financial participation. In general, Medicaid quality control will not review the accuracy of presumptive eligibility determinations in terms of predicting a pregnant woman's eligibility for Medicaid, and any erroneous payments made cannot be counted in determining the State's erroneous payments for purposes of quality control eligibility errors. However, quality control will review claims for services furnished to presumptively eligible pregnant women to determine whether these claims were, in fact, made for women who were pregnant and were for ambulatory prenatal services covered under the State plan, were furnished by a provider that is eligible to receive payment under the State plan, and were furnished during a period of presumptive eligibility. There will be situations in which the services furnished by a qualified provider will include verification of a woman's pregnancy. The services that are furnished for verification will be covered as presumptive eligibility services for FFP purposes only if the woman is actually pregnant. Section 1920 covers only

ambulatory prenatal care made available to a pregnant woman during a specified period. Services furnished to deliver or remove an embryo/fetus from the mother or furnished following that delivery or removal will not be covered as presumptive eligibility services for FFP purposes. That is because, if the embryo/fetus is no longer viable, the woman is no longer considered to be a pregnant woman. Also, we do not believe that the services involved in delivering either a viable or nonviable fetus constitute prenatal services. In addition, any services furnished following removal or delivery would not be furnished to a pregnant woman nor would they constitute prenatal care.

We also expect States to monitor decisions made by specific qualified providers to assure the accuracy and integrity of the determinations and to take any corrective actions that may be necessary. Therefore, we are proposing to require States to monitor presumptive eligibility decisions.

We propose to amend the Medicaid regulations to incorporate the provisions of section 9407 of OBRA '86, section 411(k)(16) of MCCA, and section 4605 of OBRA '90 as follows:

- Revise §§ 431.864 and 431.865 to specify that excess erroneous payments for purposes of disallowance of Federal financial participation do not include erroneous payments for ambulatory prenatal care covered under the State plan, and provided to pregnant women during a presumptive eligibility period by a provider eligible for Medicaid payments.
- Add §§ 435.250 and 436.250 to specify optional coverage of pregnant women during a presumptive eligibility period.
- Amend § 435.907 to clarify what constitutes a formal Medicaid application.
- Add a new § 435.911 to specify the screening and application requirements and procedures for making presumptive eligibility determinations. Existing §§ 435.911 through 435.914 would be redesignated as §§ 435.914 through 435.917, respectively, to allow the incorporation of the new § 435.911.
- Add a new § 435.912 to specify the application requirements for pregnant women following the presumptive eligibility determination.
- Amend §§ 435.1001 and 436.1001 to clarify that FFP is available in the necessary administrative costs the State incurs in determining presumptive eligibility for pregnant women and in providing ambulatory prenatal care to presumptively eligible women.
- Revise § 440.1 to add the statutory basis for providing ambulatory prenatal care to pregnant women during a presumptive eligibility period.
- Add § 440.172 to define ambulatory prenatal care and qualified provider.
- Add § 447.85 to specify the availability of Federal financial participation for payments for ambulatory prenatal care.

*H. Enhancement of Pregnancy Outcomes*

As we have discussed earlier in two sections of this document, Congress has expanded mandatory and optional Medicaid eligibility for pregnant women as part of an overall effort to combat the problem of infant mortality and incidences of low-birth weight through provision of needed health services to low-income pregnant women. In addition, we believe that we must focus State attention on the need for special vigilance in cases of high-risk pregnancy in order to maximize the cost effectiveness of the increased Medicaid investments. Examples of high-risk pregnancies include those in which the women have a complicating medical condition, complications that may result from genetic factors, or a history of adverse pregnancy outcomes. There is much evidence that many adverse birth outcomes are preventible through timely and appropriate intervention by health and social services agencies, with the potential for reducing infant mortality, the use of high-cost neonatal intensive care services, and the incidence of long-term care services associated with extended or lifelong disabilities.

We propose to add § 435.935 to the Medicaid regulations to require States to define a high-risk pregnancy, to describe the methods they will apply to identify high-risk pregnant women, and to specify steps that individuals, groups, and organizations involved in the service delivery system will take to ensure that these women will receive services designed to enhance pregnancy outcomes for both the mother and the child. The purpose of defining these terms is to assist States in their efforts to see that pregnant Medicaid recipients receive the full range of medical and related services appropriate to their risk status.

We are proposing to impose these requirements on States under the authority of sections 1902(a) (4) and (19) of the Act. These provisions, respectively, require that the Medicaid State plan provide for such methods of administration as are found necessary by the Secretary for the proper and efficient operation of the plan, and provide such safeguards as may be necessary to assure that eligibility for care and services under the plan will be determined, and the care and services will be provided in a manner consistent with simplicity of administration and the best interests of recipients.

We specially solicit comment on the proposal to require States to target potentially high risk pregnant women. Moreover, we are interested in comments on the effectiveness of a State plan amendment to achieve this goal.

*I. Clarification of Medicaid to Homeless Individuals*

Section 9405 of OBRA '86 revised section 1902(b)(2) of the Act to prohibit States from imposing any residence requirement that excludes from Medicaid an otherwise eligible individual who resides in the State, but does not maintain a residence permanently or at a fixed address. Before this provision was enacted, some States were requiring applicants for Medicaid to furnish a fixed address or evidence of a permanent residence in order to qualify for Medicaid, even though this was not a Federal requirement. In addition, section 11005 of the Homeless Eligibility Clarification Act added section 1902(a)(48) to the Act to require, as a State plan requirement, that States establish a method for making Medicaid eligibility cards available to an eligible individual who does not reside in a permanent dwelling or at a fixed address. This provision was effective on January 1, 1987.

In the interest of affording States maximum flexibility in the administration of their Medicaid programs, we are not proposing to impose a specific method to be used to issue Medicaid eligibility cards to homeless individuals. However, the State would be required to describe the method in its State plan. The method, as part of the State plan, would be subject to approval by HCFA. HCFA will approve any reasonable method that ensures the timely issuance of cards and receipt of Medicaid and that does not impose an undue hardship on the homeless individual.

We propose to—

- Amend §§ 435.403 and 436.403 to add the prohibition against requiring otherwise eligible homeless individuals to have a fixed address or reside in a permanent dwelling.
- Add a new § 435.932 to specify the State plan requirement that a State must establish and specify a method for issuing Medicaid eligibility cards to homeless individuals.

**III. Response to Public Comments**

Because of the large volume of public comments that we usually receive on notices of proposed rulemaking, we

cannot acknowledge or respond to them individually. However, we will address all public comments received on this document in the preamble to the document in which these proposed regulations are issued in final form.

### IV. Paperwork Burden

Sections 435.612(f), 435.615(e), 435.907, 435.911, 435.918, 435.932, 435.935, 436.612(e), 436.615(e), 447.51, and 447.60 contain information collection and reporting requirements that are subject to review by the Office of Management and Budget under the requirements of the Paperwork Reduction Act (44 U.S.C. chapter 35). We have submitted these proposed regulations to OMB for review. The reporting burden for this collection of information is estimated to be 6 hours per response. A notice will be published in the **Federal Register** when approval is obtained. Comments regarding the burden estimate or any other aspect of information collection must be addressed to the specified office indicated under the "**ADDRESSES**" section of this preamble.

### V. Regulatory Analysis

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. For purposes of RFA, we consider all providers and suppliers of health care as small entities. Individuals and States are not included in the definition of a small entity. We are not preparing a RFA because we have determined, and the Secretary certifies, that this proposed regulation would not have a significant economic impact on a substantial number of providers and suppliers.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural hospital impact statement because we have determined, and the Secretary certifies, that this proposed regulation would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

Although this proposed rule is not an "economically significant" rule under Executive Order 12866, the statutory changes which are the basis of this proposed rule, are substantial. We present below a voluntary anaylsis of these effects.

This proposed rule would incorporate in regulations, and in some cases interpret, statutory changes that are already in effect. In cases where it was necessary to provide interpretation, we have relied on the legislative history of the statutory provisions, when available, for the best reading of the provision. The statutory provisions are effective on the statutorily established date, regardless of whether or not we have issued final regulations. The statutory changes that expand eligibility groups and coverage of services will increase Medicaid program expenditures independently of the promulgation of this rule. Costs associated with these proposed regulations are the result of legislation or due to the interpretation of statutory changes already in effect. Therefore, these costs have been included in the Medicaid budget estimates.

It is difficult to predict what the fiscal impact will be since several provisions provide Medicaid coverage to certain groups at the option of States. Another unknown factor is the additional number of pregnant women, infants, and children and disabled, elderly, and homeless individuals who will be offered services that previously were not covered by the States and the type and cost of these specific services. We know costs for States will rise as they begin to furnish the additional services that will be required if medically necessary. The following data reflects our estimate of medical costs attributable to expansion of services under the Omnibus Budget Reconciliation Act of 1987, Public Law 100–203; the Medicare Catastrophic Coverage Act of 1988, Public Law 100–360; the Family Support Act of 1988, Public Law 100–485; the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239; and the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508. The following estimates are based on data from the census, current population survey, and average cost using Medicaid data:

ESTIMATED FEDERAL COSTS

[Dollars in millions]

| Law | Provisions | FY93 | FY94 | FY95 | FY96 |
|---|---|---|---|---|---|
| OBRA–86 | MCH* | $250 | $285 | $325 | $370 |
| | eld/disab** | 245 | 295 | 355 | 425 |
| OBRA–87 | MCH | 380 | 440 | 510 | 590 |
| OBRA–88 | MCH | 165 | 180 | 195 | 210 |
| OBRA–89 | MCH | 335 | 355 | 380 | 405 |
| OBRA–90 | MCH | 280 | 415 | 565 | 730 |
| Totals | | 1655 | 1970 | 2330 | 2730 |

ESTIMATED STATE COSTS

[Dollars in millions]

| Law | Provisions | FY93 | FY94 | FY95 | FY96 |
|---|---|---|---|---|---|
| OBRA–86 | MCH* | $190 | $215 | $245 | $280 |
| | eld/disab** | 185 | 220 | 265 | 320 |
| OBRA–87 | MCH | 285 | 330 | 380 | 445 |
| OBRA–88 | MCH | 125 | 135 | 145 | 160 |
| OBRA–89 | MCH | 250 | 265 | 285 | 305 |
| OBRA–90 | MCH | 210 | 310 | 425 | 550 |

ESTIMATED STATE COSTS—Continued
[Dollars in millions]

| Law | Provisions | FY93 | FY94 | FY95 | FY96 |
|---|---|---|---|---|---|
| Totals | | 1245 | 1475 | 1745 | 2060 |

*MCH—Maternal/Child Health
**eld/disab—elderly/disabled

Several alternatives were considered in the development of these proposed regulations and are discussed in detail earlier in the preamble: Two of the more significant ones involve continuous eligibility of pregnant women and deemed newborn eligibility under sections II. B and II. D, respectively, of the preamble. Our proposed interpretation of the statutory provisions relating to these two areas would have minimal cost effects and will probably save money through better management of high risk pregnancies. At most, the proposed interpretation of the provision relating to continuous eligibility of newborn children would cost $10 million, a very small addition to the statutory costs included in the above tables. However, we believe that most States have already adopted our proposed interpretation as practice.

In accordance with the provisions of Executive Order 12866, this proposed regulation was reviewed by the Office of Management and Budget.

**List of Subjects**

*42 CFR Part 431*

Grant programs—health, Health facilities, Medicaid, Reporting and recordkeeping requirements.

*42 CFR Part 435*

Aid to Families with Dependent Children, Grant program—health, Medicaid, Supplemental Security Income (SSI).

*42 CFR Part 436*

Aid to Families with Dependent Children, Grant programs—health, Guam, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

*42 CFR Part 440*

Grant programs—health, Medicaid.

*42 CFR Part 447*

Accounting, Administrative practice and procedure, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR chapter IV would be amended as set forth below:

**Subchapter C—Medical Assistance Programs**

## PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

A. Part 431 is amended as follows:

1. The authority citation for part 431 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. A new § 431.60 is added to subpart B to read as follows:

**§ 431.60 Maintenance of AFDC efforts.**

Effective July 1, 1989, HCFA will not approve any State plan for Medicaid if the State has in effect, under its approved AFDC plan, payment levels (that is, the amount of the AFDC payment for basic needs made to a family with no other income) that are less than its AFDC payment levels in effect on May 1, 1988. However, HCFA will continue to approve amendments to a State plan under these conditions.

3. Section 431.201 is amended by revising the definition of "action" to read as follows:

**§ 431.201 Definitions.**

* * * * *

*Action* means a termination, suspension, or reduction of Medicaid eligibility or covered services. It does not include a denial of presumptive eligibility for ambulatory prenatal care for a pregnant woman or a termination of presumptive eligibility at the end of the specified period under § 435.911 of this subchapter.

* * * * *

4. In § 431.864, the introductory text of paragraph (b) is republished and the definition of "erroneous payments" under paragraph (b) is revised to read as follows:

**§ 431.864 Disallowance of Federal financial participation for erroneous State payments (effective January 1, 1984 through June 30, 1990).**

* * * * *

(b) *Definitions.* For purposes of this section—

* * * * *

*Erroneous payment* means the Medicaid payment that was made for an individual or family under review who—

(1) Was ineligible for the review month or, if full month coverage is not provided, at the time services were received;

(2) Was ineligible to receive a service provided during the review month; or

(3) Had not properly met beneficiary liability prior to receiving Medicaid services.

Effective April 1, 1987, the term does not include erroneous payments made for ambulatory prenatal care that is included in the care and services covered under the State plan and furnished to pregnant women by providers that are eligible to receive payments under the State plan during a presumptive eligibility period as defined in § 435.911(e)(2) of this subchapter.

* * * * *

5. In § 431.865, the introductory text of paragraph (b) is republished and the definition of "erroneous payments" under paragraph (b) is revised to read as follows:

**§ 431.865 Disallowance of Federal financial participation for erroneous State payments (for annual assessment periods ending after July 1, 1990).**

* * * * *

(b) *Definitions.* For purposes of this section—

* * * * *

*Erroneous payment* means the Medicaid payment that was made for an individual or family under review who—

(1) Was ineligible for the review month or, if full month coverage is not provided, at the time services were rendered;

(2) Was ineligible to receive a service provided during the review month; or

(3) Had not properly met beneficiary liability prior to receiving Medicaid services.

The term does not include erroneous payments made for ambulatory prenatal care that is included in the care and services covered under the State plan and furnished to pregnant women by providers that are eligible to receive payments under the State plan during a presumptive eligibility period as defined in § 435.911(e)(2) of this subchapter.

## PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

B. Part 435 is amended as follows:

1. The authority citation for part 435 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The heading of subpart B is revised to read as follows:

**Subpart B—Mandatory Coverage of the Categorically Needy and Special Groups**

3. In § 435.3, paragraph (a) introductory text is republished and several entries are added in numerical order to read as follows:

**§ 435.3 Basis.**

(a) This part interprets the following sections of the Act and public laws which state eligibility requirements and standards:

* * * * *

1902(c)—Conditions of State plan approval—States must maintain AFDC payment levels and not require that section 1902(l) low-income pregnant women, infants, and children apply for AFDC benefits.

* * * * *

1902(e)(6)—Mandatory continuation of Medicaid for pregnant women without consideration of changes in income up to specified periods after pregnancy ends.

1902(e)(7)—Continuation of Medicaid eligibility for certain infants and children receiving inpatient care.

* * * * *

1902(l)—Description of eligible pregnant women, infants, and children with incomes related to Federal poverty income level.

1902(m)—Description of eligible aged and disabled individuals with incomes at or below Federal poverty income level.

1902(r)(2)—Use of less restrictive income and resource methodologies than those for cash assistance programs in determining financial eligibility of specified categorically needy and medically needy groups.

* * * * *

1920—Optional presumptive eligibility period for pregnant women.

* * * * *

4. In § 435.116, paragraph (c) introductory text is republished and paragraphs (c) (1) and (2) are revised to read as follows:

**§ 435.116 Qualified pregnant women and children who are not qualified family members.**

* * * * *

(c) The agency must provide Medicaid to children who meet all of the following criteria:

(1) They are born after September 30, 1983, or at State option, an earlier designated date;

(2) They are under 19 years of age; and

* * * * *

5. Section 435.117 is revised to read as follows:

**§ 435.117 Newborn children.**

(a) The agency must provide categorically needy Medicaid eligibility to a child born to a woman who is eligible as categorically needy and is receiving Medicaid on the date of the child's birth. The child is deemed to have applied and been found eligible for Medicaid on the date of birth and remains eligible as categorically needy for one year so long as the woman remains eligible or (with respect to infants born on or after January 1, 1991) would have remained eligible if still pregnant and the child is a member of the woman's household. If the mother's basis of eligibility changes to medically needy, the child is eligible as medically needy under § 435.301(b)(1)(iii).

(b) An infant is considered to be a member of his or her mother's household for so long as he or she is continuously hospitalized after birth, unless the mother has legally relinquished control of the child or the State has established that she has abandoned the child. After the infant's release from the hospital, or in situations not involving hospitalization, States must apply the AFDC rules to determine if an infant (who is not an SSI beneficiary) is a member of his or her mother's household.

6. The undesignated center heading "Mandatory Coverage of Pregnant Women, Children Under 8, and Newborn Children" appearing before § 435.116 is revised and a new § 435.118 is added to read as follows:

Mandatory Coverage of Pregnant Women, Children Under 19, and Newborn Children

**§ 435.118 Pregnant women, infants, and children with family incomes at a percentage of the Federal poverty income guidelines.**

(a) *Pregnant women and infants.* The agency must provide Medicaid to pregnant women and women during the 60-day period beginning on the last day of pregnancy, subject to the limits in § 440.250(q), and to infants under one year of age who meet the following criteria:

(1) Effective April 1, 1990, they have family income, established in accordance with § 435.610, that does not exceed 133 percent of the Federal poverty income guidelines for a family of the size involved, unless, as of December 19, 1989, the agency had elected to apply a higher percentage (or percentages) in determining eligibility for the optional categorically needy groups of low-income pregnant women and infants described under § 435.228. If the agency had elected a percentage or percentages greater than 133 percent but no more than 185 percent for either pregnant women or infants under § 435.228 or both, the percentage or percentages applicable under paragraph (a)(1) of this section must be the percentage or percentages that the agency specified in that election in—

(i) The approved State plan;

(ii) A State plan amendment submitted as of December 19, 1989, whether approved or not; or

(iii) State legislation enacted or State appropriations made as of December 19, 1989.

(2) At State option, they have resources that do not exceed standards, established in accordance with § 435.610, that are no more restrictive than the SSI standard for pregnant women and no more restrictive than the AFDC standard for infants under one year of age.

(b) *Eligibility period for women and infants.* The agency must provide Medicaid to—

(1) Women described in paragraph (a) of this section, as long as they continue to meet the criteria described in paragraph (a) of this section, during their pregnancy and during a post partum period that begins on the last day of the pregnancy and continues for 60 days. Sections 435.170 and 435.918(c)(2) may also apply to these women.

(2) Infants described in paragraph (a) of this section, as long as they continue to meet the criteria described in paragraph (a) of this section, until they reach age 1, except as provided in § 435.520(b). Section 435.117 may also apply to these infants.

(c) *Children age 1 up to age 6.* The agency must provide Medicaid to children who are age 1 but have not attained age 6 who meet the following criteria:

(1) Effective April 1, 1990, they have family income, established in accordance with § 435.610, that does not exceed 133 percent of the Federal poverty income guidelines for a family of the size involved; and

(2) At State option, they have resources that do not exceed a standard, established in accordance with

§ 435.610, that is no more restrictive than the AFDC standard.

(d) *Eligibility period for children up to age 6.* The agency must provide Medicaid to children described in paragraph (c) of this section, as long as they continue to meet the criteria described in paragraph (c) of this section, until they reach age 6, except as provided in § 435.520(b).

(e) *Children age 6 up to age 19.* The agency must provide Medicaid to children born after September 30, 1983, who have attained age 6 but have not attained age 19 who meet the following criteria:

(1) Effective July 1, 1991, they have family income, established in accordance with § 435.610, that does not exceed 100 percent of the Federal poverty income guidelines for a family of the size involved; and

(2) At State option, they have resources that do not exceed a standard, established in accordance with § 435.610, that is no more restrictive than the AFDC standard.

(f) *Eligibility period for children age 6 up to age 19.* The agency must provide Medicaid to children described in paragraph (e) of this section, as long as they continue to meet the criteria described in paragraph (e) of this section, until they reach age 19, except as provided in § 435.520(b).

(g) *States with section 1115 waivers.* The 50 States and the District of Columbia must provide Medicaid to individuals described in paragraphs (a) through (e) of this section, regardless of whether or not they operate their Medicaid programs under waivers granted under section 1115 of the Act.

(h) *Application of rules to Northern Mariana Islands and American Samoa.* The rules specified in this section do not apply in the Northern Mariana Islands and American Samoa. In these two Territories, the rules for optional coverage of individuals specified in § 436.226 apply.

7. The heading of subpart C is revised to read as follows:

**Subpart C—Options for Coverage of Individuals as Categorically Needy and As Special Groups**

8. A new § 435.228 is added under the undesignated center heading "Options for Coverage of Families and Children" under subpart C to read as follows:

**§ 435.228 Pregnant women and infants with family incomes at a percentage of Federal poverty income guidelines.**

(a) Subject to the conditions specified in paragraphs (b) and (c) of this section, effective April 1, 1990, the agency may provide Medicaid to any of the following groups of individuals who are not otherwise eligible as mandatory categorically needy:

(1) Pregnant women and women during the 60-day period beginning on the last day of pregnancy with family incomes that are above 133 percent (or any higher percent applicable under § 435.118), but no more than 185 percent of the Federal poverty income guidelines for a family of the size involved; and

(2) Infants under 1 year of age with family incomes that are above 133 percent (or any higher percentage applicable under § 435.118), but no more than 185 percent, of the Federal poverty income guidelines for a family of the size involved.

(b) Individuals described in paragraph (a) of this section are eligible if—

(1) Their family income meets the applicable standard in § 435.612(c); and

(2) At State option, their resources meet the applicable standard in § 435.612(d).

(c) If the agency chooses to provide Medicaid to pregnant women specified in paragraph (a)(1) of this section, it must cover the women, as long as they continue to meet the criteria described in paragraph (b) of this section, during the pregnancy and during the 60-day period after the pregnancy ends. Sections 435.170 and 435.918(c)(2) may also apply to these women. Services for these women are limited to services specified in § 440.250(q) of this subchapter.

(d) If the agency chooses to provide Medicaid to infants described in paragraph (a)(2) of this section, it must cover the infants, as long as they continue to meet the criteria described in paragraph (b) of this section, until they reach age 1, except as provided in § 435.520(b). Section 435.117 may also apply to these infants.

9. A new § 435.238 is added under the undesignated center heading "Options for Coverage of the Aged, Blind, and Disabled" under subpart C to read as follows:

**§ 435.238 Aged and disabled individuals with incomes at or below Federal poverty income guidelines.**

(a) The agency may provide Medicaid to individuals who are not eligible as mandatory categorically needy and who—

(1) Are 65 years of age or older; or are disabled as determined under SSI;

(2) Have family income that meets a standard established by the State at a level that is no more than 100 percent of the Federal poverty income level in accordance with § 435.615(b); and

(3) Have resources that meet the standard established in accordance with § 435.615(c).

(b) An agency that elects the option under paragraph (a) of this section must provide Medicaid to both aged and disabled groups of individuals.

10. A new undesignated center heading and § 435.250 are added at the end of subpart C to read as follows:

**Option for Coverage of Special Groups**

**§ 435.250 Pregnant women eligible for a presumptive eligibility period.**

(a) The agency may provide pregnant women with eligibility for ambulatory prenatal care services based on a presumptive eligibility determination made by a qualified provider if—

(1) The woman's estimated gross family income appears to meet the highest applicable income criteria under the State plan that are most likely to be used if the woman applied for regular Medicaid;

(2) The provider making the determination meets the requirements of § 440.172(c) of this subchapter; and

(3) The agency has established procedures to ensure that the screening and application requirements and procedures of § 435.911 of subpart J of this part are met.

(b) Pregnant women who are determined eligible for ambulatory prenatal care services under this section are eligible during a presumptive period in accordance with § 435.911.

11. In § 435.301, paragraphs (b) introductory text and (b)(1) introductory text are republished and paragraph (b)(1)(iii) is revised to read as follows:

**§ 435.301 General rules.**

* * * * *

(b) If the agency chooses this option, the following provisions apply:

(1) The agency must provide Medicaid to the following individuals who meet the requirements of paragraph (a) of this section:

* * * * *

(iii) All newborn children born to a woman who is eligible as medically needy and is receiving Medicaid on the date of the child's birth. The child is deemed to have applied and been found eligible for Medicaid on the date of birth and remains eligible as medically needy for one year so long as the woman remains eligible or (with respect to infants born on or after January 1, 1991) would have remained eligible if still pregnant and the child is a member of the woman's household (as determined in accordance with § 435.117(b)). If the woman's basis of eligibility changes to categorically needy, the child is eligible as categorically needy under § 435.117.

* * * * *

12. Section 435.403 is amended by redesignating paragraphs (j) (1), (2), and

(3) as paragraphs (j) (2), (3), and (4), respectively, and adding a new paragraph (j)(1) to read as follows:

**§ 435.403 State residence.**

* * * * *

(j) *Specific prohibitions.*

(1) The agency may not deny Medicaid eligibility to an otherwise qualified resident of the State because the individual's residence is not maintained permanently or at a fixed address.

* * * * *

13. Section 435.500 is revised to read as follows:

**§ 435.500 Scope.**

This subpart prescribes categorical requirements for determining the eligibility and continuing eligibility of both categorically and medically needy individuals specified in subparts B, C, and D of this part.

14. Section 435.520 is revised to read as follows:

**§ 435.520 Age requirements for the aged and children.**

(a) In determining or redetermining eligibility, the agency must not impose an age requirement of more than 65 years.

(b) The agency must continue eligibility until the end of the inpatient stay for infants and children who are eligible under § 435.116, 435.118, or 435.228, who are receiving covered inpatient services on the date they reach the age limit for inclusion under the State plan, and who would remain eligible under § 435.116, 435.118, or 435.228 but for attainment of that maximum age.

* * * * *

15. The heading of subpart G is revised to read as follows:

## Subpart G—General Financial Eligibility Requirements and Options for the Categorically Needy and Special Groups

16. Section 435.601 (as published on January 19, 1993 (58 FR 4929)) is amended by revising paragraph (b) and paragraph (d)(1)(ii) (the text of paragraph (d)(1) introductory text is republished) to read as follows:

**§ 435.601 Application of financial eligibility methodologies.**

* * * * *

(b) *Basic rule for use of cash assistance methodologies.* Except as specified in paragraphs (c), (d), and (e) of this section and in §§ 435.121, 435.610, and 435.615, in determining financial eligibility of individuals as categorically and medically needy, the agency must apply the financial methodologies and requirements of the cash assistance program that is most closely categorically related to the individual's status.

* * * * *

(d) *Use of less restrictive methodologies than those under cash assistance programs.*

(1) At State option, and subject to the conditions of paragraphs (d)(2) through (d)(5) of this section, the agency may apply income and resource methodologies that are less restrictive than the cash assistance methodologies in determining eligibility of the following groups:

* * * * *

(ii) Low-income pregnant women, infants, and children under §§ 435.118 and 435.228 and in section 1902(a)(10)(A)(i)(IV), section 1902(a)(10)(A)(i)(VI), section 1902(a)(10)(A)(i)(VII), and section 1902(a)(10)(A)(ii)(IX) of the Act;

* * * * *

17. Section 435.608 is amended by adding a new paragraph (c) to read as follows:

**§ 435.608 Applications for other benefits.**

* * * * *

(c) The agency may not require any pregnant woman, infant, or child eligible under § 435.118 or § 435.228 to apply for AFDC benefits as a condition of applying for or receiving Medicaid.

18. A new § 435.612 is added under subpart G to read as follows:

**§ 435.612 Income and resource standards and methodologies: Pregnant women, infants, and children with family incomes at a percentage of Federal poverty income guidelines.**

(a) *General rules.*

(1) The agency must determine income and resource eligibility of women, infants, and children under §§ 435.118 and 435.228 in accordance with the requirements of this section.

(2) For purposes of this section, family size includes the unborn child and other members of the Medicaid budgetary unit.

(b) *Establishing the income standard: mandatory groups.* (1) For mandatory groups of low-income pregnant women, infants under age 1, and children age 1 up to age 6 under § 435.118, the agency must establish and apply an income standard, based on family size, at a level that is 133 percent of the Federal poverty income guidelines for a family of the size involved, unless it is required to establish a higher level (not to exceed 185 percent) by virtue of § 435.118(a)(1).

(2) For the mandatory group of low-income children age 6 up to age 19 under § 435.118, the agency must establish and apply an income standard, based on family size, at a level that is 100 percent of the Federal poverty income guidelines for a family of the size involved.

(c) *Establishing the income standard: optional groups.* (1) For optional groups of pregnant women and infants under § 435.228, the agency may establish separate income standards or use a single income standard.

(2) The standards must be based on family size, at a level that is—

(i) For pregnant women, above 133 percent and no more than 185 percent of the Federal poverty income guidelines for a family of the size involved; and

(ii) For infants up to 1 year of age, above 133 percent and no more than 185 percent of the Federal poverty income guidelines for a family of the size involved.

(d) *Establishing the resource standard.* At State option, the agency may apply resource standards in determining financial eligibility that are no more restrictive than the SSI standard for pregnant women, and no more restrictive than the AFDC standard for infants and children.

(e) *Methodologies for determining income and resources.* (1) Except as specified in paragraphs (e)(2) through (5) of this section, in determining family income and resources, the agency must use the methodologies established in accordance with § 435.601.

(2) In determining family income, the agency must use the income methodologies of the approved AFDC plan or the State's title IV–E adoption assistance and foster care plan as appropriate, or it may instead use any less restrictive methodologies specified in the State plan which conform with § 435.601(d). Methodologies include, but are not limited to, those used for disregarding income.

(3) In determining countable income, the agency may not deduct costs incurred for medical care or any other type of remedial care to reduce income to the level of the standard established.

(4) The resource methodologies used in determining financial eligibility of pregnant women must not be more restrictive than the methodologies applied under SSI. The resource methodologies used in determining financial eligibility of infants and children must not be more restrictive than the methodologies applied under the State's approved AFDC plan.

(5) In determining the financial responsibility of relatives, the State must use the requirements of § 435.602.

(f) *State plan requirements.* The State plan must—

(1) Specify the income standards; and

(2) If the State elects to apply resource standards, specify those resource standards.

19. A new § 435.615 is added to subpart G to read as follows:

**§ 435.615 Income and resource standards and methodologies: Aged and disabled individuals with incomes at or below Federal poverty income guidelines.**

(a) *General rule.* If the agency provides Medicaid to aged and disabled individuals under § 435.238, it must determine financial eligibility in accordance with the requirements of this section.

(b) *Establishing the income standard.* (1) The agency must establish and apply an income standard at a level that does not exceed 100 percent of the Federal poverty income guidelines applicable to a family of the size involved.

(2) For purposes of this section, "family of the size involved" is based on the SSI concept of eligibility for an individual as an individual or as part of a couple. If two individuals in a family are married and eligible under section 1902(m), their income will be compared to the Federal poverty income level for a family of two. In all other situations, eligibility will be determined on an individual basis, using the poverty level for one, with deeming of income as appropriate (under SSI deeming rules that do not conflict with title XIX of the Act).

(c) *Establishing the resource standard.* The agency must establish and apply a resource standard that is either—

(1) The SSI resource standard; or

(2) If the State has a medically needy program that uses a higher resource standard, at State option, the resource standard applied to the medically needy.

(d) *Methodologies for determining income and resources.* (1) Subject to the provisions of paragraph (d) (2) through (4) of this section, in determining financial eligibility, the agency must use the income and resource methodologies applied under SSI, or it may instead use any less restrictive income and resource methodologies than SSI as specified in the approved State plan in accordance with § 435.601.

(2) The agency may not deduct from income the costs incurred for medical care or any other type of remedial care in order to reduce the individual's income to the established income standard, except as specified in paragraph (d)(3) of this section.

(3) For severely disabled individuals who work, the agency may deduct the reasonable costs for attendant care services, medical devices, equipment, prostheses, and similar items and services (generally not including routine drugs or routine medical services) that are necessary in order for the individual to work.

(4) In determining the financial responsibility of relatives, the State must use the requirements of § 435.602.

(5) In determining eligibility under this section for an individual entitled to monthly social security cash benefits, Title II COLA increases must be disregarded from December of each year through the month after the month in which the Federal poverty guideline for the next year is published. During that period, the poverty level for the previous year will be used for these individuals.

(e) *State plan requirement.* The State plan must specify the income standard and the resource standard by the family size involved.

20. The heading of subpart J and § 435.907 are revised to read as follows:

**Subpart J—Eligibility in the States, the District of Columbia, the Northern Mariana Islands, and American Samoa**

**§ 435.907 Written application.**

(a) The agency must require a written application from the applicant, an authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant.

(b) The application must be on a form prescribed by the agency and signed under a penalty of perjury.

(c) [Reserved]

(d) The application form must solicit sufficient information to allow the agency to reasonably make a decision of eligibility or ineligibility.

**§ 435.916 [Redesignated]**

20a. Section 435.916 is redesignated as § 435.918 under the undesignated center heading "Redeterminations of Medicaid Eligibility".

21. Sections 435.911, 435.912, 435.913, and 435.914 are redesignated as §§ 435.914, 435.915, 435.916, and 435.917, respectively, and new §§ 435.911 and 435.912 are added under the undesignated center heading "Application" under subpart J to read as follows:

**§ 435.911 Screening and application procedures for pregnant women for presumptive eligibility determinations.**

(a) If the agency elects to provide presumptive Medicaid eligibility for pregnant women under the provisions of § 435.250, the requirements and conditions under paragraphs (b) through (e) of this section must be met.

(b) A pregnant woman may be determined eligible for only one presumptive eligibility period during any one pregnancy.

(c) The presumptive eligibility determination must be made by a qualified provider who meets the requirements of § 440.172(c) of this subchapter.

(d) The agency must provide qualified providers with—

(1) Screening forms and guidelines for determining presumptive eligibility under the plan and the eligibility group under which a pregnant woman is most likely to be eligible under regular Medicaid if she applies.

(2) Information on how to assist a pregnant woman in completing and filing the screening form for presumptive eligibility for ambulatory prenatal care services available to eligible pregnant women.

(3) Application forms for Medicaid under the plan, which forms may be those developed for use by women described in section 1902(l)(1)(A) of the Act, and instructions on how to help women complete and file these forms.

(e) The agency must establish procedures to ensure that qualified providers—

(1) Notify the agency in writing that a pregnant woman is presumptively eligible within 5 working days after the date the determination is made;

(2) Inform the woman in writing at the time the determination is made that she has until the last day of the month following the month in which the determination is made to file a Medicaid application if she wishes to continue her presumptive eligibility beyond that date. Providers also must inform the woman that if she files a Medicaid application by that date, her presumptive eligibility will end on the day a decision is made on her Medicaid application.

(3) In writing, inform any pregnant woman who is determined not presumptively eligible of the reason why she was determined ineligible and that she may file a Medicaid application with the agency if she wishes to have a determination made on a regular Medicaid application. A determination of ineligibility for ambulatory prenatal care is not subject to appeal under part 431 of this subchapter.

(f) The agency must establish methods for monitoring the presumptive eligibility determinations made by qualified providers to ensure the integrity of the determinations and to take any corrective action that may be necessary.

**§ 435.912 Application for Medicaid by pregnant women following a presumptive eligibility determination.**

A pregnant woman who is determined by a qualified provider to be presumptively eligible for ambulatory prenatal care services must file an application for Medicaid with the agency by the last day of the month following the month in which the presumptive eligibility determination is made in order to extend the period of presumptive eligibility until her eligibility for regular Medicaid has been determined.

22. Redesignated § 435.918 is amended by revising paragraph (c) to read as follows:

**§ 435.918 Periodic redeterminations of Medicaid eligibility.**

* * * * *

(c) *Agency action on information about changes.*

(1) Except as provided for in paragraph (c)(2) of this section—

(i) The agency must promptly redetermine eligibility when it receives information about changes in a recipient's circumstances that may affect his or her eligibility.

(ii) If the agency has information about anticipated changes in a recipient's circumstances, it must redetermine eligibility at the appropriate time based on those changes.

(2) Effective January 1, 1991, the agency must consider any pregnant woman who has established eligibility for Medicaid under this part and who, because of a change in family income, would no longer be eligible, to be eligible to receive services as mandatory categorically needy under § 435.118 throughout the pregnancy and the 60-day period after pregnancy ends and for any remaining days in the month in which the 60th day falls, without regard to any changes in income that may occur during this period.

(i) This provision does not apply to women who are determined to be presumptively eligible under § 435.250 but are subsequently determined to be ineligible for regular Medicaid.

(ii) A woman who is eligible for continued coverage under this section retains her existing status as a mandatory categorically needy, optional categorically needy, or medically needy recipient, even though she is entitled to the services that are available to a mandatory categorically needy pregnant woman described in § 435.118. As a result, she must continue to meet eligibility requirements associated with her status (for example, she may have to meet a spenddown if she is medically needy), except that any increase in income will have no effect on her eligibility.

23. New §§ 435.932 and 435.935 are added under undesignated center heading "Furnishing Medicaid" under subpart J to read as follows:

**§ 435.932 Issuance of eligibility cards to homeless individuals.**

(a) The agency must establish a method for making available to individuals who do not reside at a permanent dwelling or at a fixed address cards that evidence Medicaid eligibility.

(b) The State plan must describe the method.

**§ 435.935 Enhancing pregnancy outcomes.**

The State plan must—

(a) Define a high-risk pregnancy;

(b) Describe the process the State uses to identify, during the pregnancy, high-risk women; and

(c) Specify the steps that providers and other organizations and agencies involved in the delivery of services to pregnant women will take to ensure that these high-risk Medicaid recipients receive appropriate services designed to enhance the probability of a healthy, full-term pregnancy, uncomplicated delivery, and a healthy outcome for both mother and child.

24. Section 435.1001 is amended by revising paragraph (a) to read as follows:

**§ 435.1001 FFP for administration.**

(a) FFP is available in the necessary administrative costs the State incurs in—

(1) Determining and redetermining Medicaid eligibility and in providing Medicaid to eligible individuals; and

(2) Determining presumptive eligibility for pregnant women and in providing ambulatory prenatal care to presumptively eligible women.

* * * * *

25. Section 435.1002 is amended by revising paragraph (a) and adding new paragraphs (c) and (d) to read as follows:

**§ 435.1002 FFP for services.**

(a) Except for the limitations and conditions specified in paragraphs (c) and (d) of this section and in §§ 435.1007 and 435.1008, FFP is available in expenditures for Medicaid services for all recipients whose coverage is required or allowed under this part.

* * * * *

(c) FFP is available in expenditures for ambulatory prenatal care services covered under the plan (as defined in § 440.172) that are furnished to pregnant women who are determined by a qualified provider to be presumptively eligible when these services are furnished during a presumptive eligibility period by a provider that is eligible for payment under the State plan, regardless of whether or not the women are determined eligible for regular Medicaid following the presumptive eligibility period.

(d) FFP is not available in expenditures for services provided to low-income pregnant women and infants covered as optional categorically needy under § 435.228 if the State has in effect under its AFDC plan payment levels (that is, the amount of the AFDC payment for basic needs made to a family with no other income) that are less than those in effect under its AFDC plan on July 1, 1987.

## PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

C. Part 436 is amended as follows:

1. The authority citation for part 436 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The heading of subpart C is revised to read as follows:

### Subpart C—Options for Coverage of Individuals as Categorically Needy and as Special Groups

3. In § 436.2, paragraph (a) introductory text is republished and several entries are added in numerical order to read as follows:

**§ 436.2 Basis.**

(a) This part interprets the following sections of the Act and public laws which state eligibility requirements and standards:

* * * * *

1902(c) Conditions of State plan approval—States must maintain AFDC payment levels and not require that section 1902(1) low-income pregnant women, infants, and children apply for AFDC benefits.

* * * * *

1902(e)(6) Mandatory continuation of Medicaid for pregnant women without consideration of changes in income up to a specified period after pregnancy ends.

1902(e)(7) Continuation of Medicaid eligibility for certain infants and children receiving inpatient care.

1902(l) Description of pregnant women, infants, and children with incomes related to the Federal poverty income level.

1902(m) Description of aged and disabled individuals with incomes at

or below the Federal poverty income level.

* * * * *

1902(r)(2) Use of less restrictive income and resource methodologies than those under the cash assistance programs in determining financial eligibility for specified categorically needy and medically needy groups.

* * * * *

1920 Optional presumptive eligibility period for pregnant women.

* * * * *

4. In § 436.120, paragraph (c) introductory text is republished and paragraphs (c) (1) and (2) are revised to read as follows:

**§ 436.120 Qualified pregnant women and children who are not qualified family members.**

* * * * *

(c) The agency must provide Medicaid to children who meet all of the following criteria:

(1) They are born after September 30, 1983, or at State option, an earlier designated date;

(2) They are under 19 years of age; and

* * * * *

5. Section 436.124 is revised to read as follows:

**§ 436.124 Newborn children.**

(a) The agency must provide categorically needy Medicaid eligibility to a child born to a woman who is eligible as categorically needy and is receiving Medicaid on the date of the child's birth. The child is deemed to have applied and been found eligible for Medicaid on the date of birth and remains eligible as categorically needy for one year so long as the woman remains eligible or (with respect to infants born on or after January 1, 1991) would have remained eligible if still pregnant and the child is a member of the woman's household. If the mother's basis of eligibility changes to medically needy, the child is eligible as medically needy under § 436.301(b)(1)(iii).

(b) An infant is considered to be a member of his or her mother's household for so long as he or she is continuously hospitalized after birth, unless the mother has legally relinquished control of the child or the State has established that she has abandoned the child. After the infant's release from the hospital, or in situations not involving hospitalization, States must apply the AFDC rules to determine if an infant (who is not an SSI beneficiary) is a member of his or her mother's household.

6. A new § 436.226 is added under the undesignated center heading "Options for Coverage of Families and Children and the Aged, Blind, and Disabled, Including Pregnant Women" (as published on January 19, 1993 (58 FR 4935)) under subpart C to read as follows:

**§ 436.226 Pregnant women, infants, and children with family incomes at a percentage of Federal poverty income guidelines.**

(a) *Groups of pregnant women, infants and childen.* Subject to the conditions specified in paragraphs (b) and (c) of this section, the agency may provide Medicaid to any of the following groups of individuals who are not eligible as mandatory categorically needy:

(1) Pregnant women and women during the 60-day period beginning on the last day of pregnancy with family incomes that are at or below 185 percent of the Federal poverty income guidelines for a family of the size involved, or at or below any lesser percentage that the agency chooses.

(2) Infants under 1 year of age with family incomes that are at or below 185 percent of the Federal poverty income guidelines for a family of the size involved, or at or below any lesser percentage that the agency chooses.

(3) Children with family incomes at or below 133 percent of the Federal poverty income guidelines who are age 1 but have not attained age 6.

(4) Children with family incomes at or below 100 percent of the Federal poverty income guidelines who are born after September 30, 1983 and who are age 6 but have not attained age 19.

(b) *Conditions of eligibility.* Individuals described in paragraph (a) of this section may be eligible if they—

(1) Have family income that meets the applicable standard established in accordance with § 436.610(b); and

(2) At State option, have resources that meet the applicable standard established in accordance with § 436.610(c).

(c) *Eligibility period for women.* If the agency chooses to provide Medicaid to women specified in paragraph (a)(1) of this section, it must provide Medicaid to such women, as long as they continue to meet the criteria described in paragraph (b) of this section, during the pregnancy and during a postpartum period that begins on the last day of the pregnancy and continues for 60 days. Sections 436.122 and 435.918(c)(2) of this subchapter may also apply to these women. Services to these women are limited to services specified in § 440.250(q) of this subchapter.

(d) *Eligibility period for infants under age 1.* If the agency chooses to provide Medicaid to infants specified in paragraph (a)(2) of this section, it must provide Medicaid to such infants, as long as they continue to meet the criteria described in paragraph (b) of this section, until they reach age 1. Section 436.124 may also apply to these infants.

(e) *Eligibility period for children age 1 up to age 6.* If the agency chooses to provide Medicaid to children specified in paragraph (a)(3) of this section, it must provide Medicaid to such children, as long as they continue to meet the criteria described in paragraph (b) of this section, until they reach age 6.

(f) *Eligibility period for children age 6 up to age 19.* If the agency chooses to provide Medicaid to children specified in paragraph (a)(4) of this section, it must provide Medicaid to such children, as long as they continue to meet the criteria described in paragraph (b) of this section, until they reach age 19.

(g) The provisions of this section apply to Guam, Puerto Rico, the Virgin Islands, the Northern Mariana Islands, and America Samoa.

7. A new § 436.235 is added under the undesignated center heading "Options for Coverage of the Aged, Blind, and Disabled" under subpart C to read as follows:

**§ 436.235 Aged and disabled individuals with incomes at or below Federal poverty income guidelines.**

(a) The agency may provide Medicaid to individuals who are not eligible as mandatory categorically needy and who—

(1) Are 65 years of age or older, or are disabled as determined under section 1614 of the Act;

(2) Have family income that meets a standard established by the State at a level that is no more than 100 percent of the Federal poverty income level in accordance with § 436.615(b); and

(3) Have resources that meet the standard established in accordance with § 436.615(c).

(b) An agency that elects the option under paragraph (a) of this section must provide Medicaid to both aged and disabled groups of individuals.

8. A new undesignated center heading and § 436.250 is added at the end of subpart C to read as follows:

**Options for Coverage of Special Groups**

**§ 436.250 Pregnant women eligible during a presumptive eligibility period.**

(a) The agency may provide pregnant women with eligibility for ambulatory prenatal care services on the basis of a presumptive eligibility determination made by a qualified provider if—

(1) The woman's estimated gross family income appears to meet the highest applicable income criteria under the State's approved plan that are most likely to be used if the woman applied for regular Medicaid;

(2) The provider making the determination meets the requirements of § 440.172(c) of this subchapter; and

(3) The agency has established procedures to ensure that the screening and application requirements and procedures of § 435.911 of this subchapter are met.

(b) Pregnant women who are determined eligible for ambulatory prenatal care services under this section are eligible during a presumptive period in accordance with § 435.911(e).

9. In § 436.301, paragraphs (b) introductory text and (b)(1) introductory text are republished and paragraph (b)(1)(iii) is revised to read as follows:

**§ 436.301 General rules.**

* * * * *

(b) If the agency chooses this option, the following provisions apply:

(1) The agency must provide Medicaid to the following individuals who meet the requirements of paragraph (a) of this section:

* * * * *

(iii) All newborn children born to a woman who is eligible as medically needy and is receiving Medicaid on the date of the child's birth. The child is deemed to have applied and been found eligible for Medicaid on the date of birth and remains eligible as medically needy for one year so long as the woman remains eligible or (with respect to infants born on or after January 1, 1991) would have remained eligible if still pregnant and the child is a member of the woman's household (as determined in accordance with § 436.124(b)). If the woman's basis of eligibility changes to categorically needy, the child is eligible as categorically needy under § 436.124.

* * * * *

10. Section 436.403 is amended by redesignating paragraphs (i) (1), (2), and (3) as paragraphs (i) (2), (3), and (4), respectively, and adding a new paragraph (i) (1) to read as follows:

**§ 436.403 State residence.**

* * * * *

(i) *Specific prohibitions.*

(1) The agency may not deny Medicaid eligibility to an otherwise qualified resident of the State because the individual's residence is not maintained permanently or at a fixed address.

* * * * *

11. Section 436.500 is revised to read as follows:

**§ 436.500 Scope.**

This subpart prescribes categorical requirements for determining the eligibility and continuing eligibility of both categorically needy and medically needy individuals specified in subparts B, C, and D of this part.

12. Section 436.520 is revised to read as follows:

**§ 436.520 Age requirements for the aged and children.**

(a) In determining or redetermining eligibility, the agency must not impose an age requirement of more than 65 years.

(b) The agency must continue eligibility until the end of the inpatient stay for infants and children who are eligible under § 436.120 or § 436.226, who are receiving covered inpatient services on the date that they reach the age limit for inclusion under the State plan, and who would remain eligible under § 436.120 or § 436.226 but for attainment of that maximum age.

13. Section 436.601 is amended by revising paragraph (b), the heading of paragraph (d), and paragraph (d)(1)(ii) (the text of paragraph (d)(1) introductory text is republished) to read as follows:

**§ 436.601 Application of financial eligibility methodologies.**

* * * * *

(b) *Basic rule for use of cash assistance methodologies.* Except as specified in paragraphs (c), (d), and (e) of this section and in §§ 436.610, and 436.615, in determining financial eligibility of individuals as categorically and medically needy, the agency must apply the financial methodologies and requirements of the cash assistance program that is most closely categorically related to the individual's status.

* * * * *

(d) *Use of less restrictive methodologies than those under cash assistance programs.*

(1) At State option, and subject to the conditions of paragraphs (d)(2) through (d)(5) of this section, the agency may apply income and resource methodologies that are less restrictive than the cash assistance methodologies in determining eligibility of the following groups:

* * * * *

(ii) Low-income pregnant women, infants, and children under §§ 436.226 and in section 1902(a)(10)(A)(i)(IV), section 1902(a)(10)(A)(i)(VI), section 1902(a)(10)(A)(i)(VII), and section 1902(a)(10)(A)(ii)(IX) of the Act;

* * * * *

14. Section 436.608 is amended by adding a new paragraph (c) to read as follows:

**§ 436.608 Applications for other benefits.**

* * * * *

(c) The agency may not require any pregnant woman, infant, or child eligible under § 436.226 to apply for AFDC benefits as a condition of applying for or receiving Medicaid.

15. A new § 436.612 is added to subpart G to read as follows:

**§ 436.612 Income and resource standards and methodologies: Pregnant women, infants, and children with family incomes at a percentage of the Federal poverty income guidelines.**

(a) *General rules.*

(1) The agency must determine income and resource eligibility of women, infants, and children under § 436.226 in accordance with the requirements of this section.

(2) For purposes of this section, family size includes the unborn child and other members of the Medicaid budgetary unit.

(b) *Establishing the income standard.*

(1) For optional groups of pregnant women and infants under § 436.226(a)(1) and (2), the agency may establish separate income standards or use a single income standard.

(2) For the optional groups of children under § 436.226(a) (3) and (4), the agency must establish separate income standards.

(3) The standards must be based on family size—

(i) For pregnant women, at a level that covers family incomes that are at or below 185 percent (or at or below some lesser percent that the agency chooses) of the Federal poverty income guidelines for a family of the size involved;

(ii) For infants under 1 year of age, at a level that covers family incomes that are at or below 185 percent (or at or below some lesser percent that the agency chooses) of the Federal poverty income guidelines for a family of the size involved;

(iii) For children age 1 up to age 6, at a level that covers family incomes that are at or below 133 percent of the Federal poverty income guidelines for a family of the size involved;

(iv) For children born after September 30, 1983 who are 6 years of age up to age 19 years of age, at a level that covers family incomes that are at or below 100 percent of the Federal poverty income guidelines for a family of the size involved.

(c) *Establishing the resource standard.* At State option, the agency may apply

resource standards in determining financial eligibility that are no more restrictive than the SSI standard for pregnant women and no more restrictive than the AFDC standard for infants and children.

(d) *Methodologies for determining income and resources.* (1) Except as specified in paragraph (d) (2) through (4) of this section, in determining family income and resources, the agency must use the methodologies established in accordance with § 436.601.

(2) In determining family income, the agency must use the income methodologies of the approved AFDC plan or the State's title IV–E adoption assistance and foster care plan as appropriate, or it may use any less restrictive methodologies specified in the State plan which conform with § 436.601(d). Methodologies include, but are not limited to, those used for disregarding income.

(3) In determining countable income, the agency may not deduct costs incurred for medical care or any other type of remedial care to reduce income to the level of the standard established.

(4) The resource methodologies used in determining financial eligibility of pregnant women must not be more restrictive than the methodologies applied under SSI. The resource methodologies used in determining financial eligibility of infants and children must not be more restrictive than the methodologies applied under the State's approved AFDC plan.

(5) In determining the financial responsibility of relatives, the State must use the requirements of § 436.602.

(e) *State plan requirements.* The State plan must—

(1) Specify the income standards; and

(2) If the State elects to apply resource standards, specify those resource standards.

16. A new § 436.615 is added to subpart G to read as follows:

**§ 436.615 Income and resource standards and methodologies: Aged and disabled individuals with incomes at or below Federal poverty income guidelines.**

(a) *General rule.* If the agency provides Medicaid to aged and disabled individuals under § 436.235, it must determine financial eligibility in accordance with the requirements of this section.

(b) *Establishing the income standard.* (1) The agency must establish and apply an income standard at a level that does not exceed 100 percent of the Federal poverty income guidelines applicable to a family of the size involved.

(2) For purposes of this section, family of the size involved is based on the SSI concept of eligibility for an individual as an individual or as part of a couple. If two individuals are married and eligible under section 1902(m), their income will be compared to the Federal poverty income level for a family of two. In all other situations, eligibility will be determined on an individual basis, using the poverty level for one, with deeming of income as appropriate (under SSI deeming rules that do not conflict with title XIX of the Act).

(c) *Establishing the resource standard.* The agency must apply a resource standard that is either—

(1) The SSI resource standard; or

(2) If the State has a medically needy program that uses a higher resource standard, at State option, the resource standard applied to the medically needy.

(d) *Methodologies for determining income and resources.* (1) Subject to the provisions of paragraph (d) (2) through (4) of this section, the agency must use the methodologies applied under sections 1612 and 1613 of the Act in determining countable income and resources or may instead use any less restrictive income and resource methodologies specified in the State plan in accordance with § 436.601. Methodologies include, but are not limited to, those used in disregarding income.

(2) The agency may not deduct from income the costs incurred for medical care or any other type of remedial care to reduce the individual's income to the established income standard, except as specified in paragraph (d)(3) of this section.

(3) For severely disabled individuals who work, the agency may deduct the reasonable costs for attendant care services, medical devices, equipment, prostheses, and similar items and services (generally not including routine drugs or routine medical services) that are necessary in order for the individual to work.

(4) In determining the financial responsibilities of relatives, the agency must apply the requirements of § 436.602.

(5) In determining eligibility under this section for an individual entitled to monthly social security cash benefits, Title II COLA increases must be disregarded from December of each year through the month after the month in which the Federal poverty guideline for the next year is published. During that period, the poverty level for the previous year will be used for these individuals.

(e) *State plan requirement.* The State plan must specify the income standard and the resource standard by the family size involved.

17. Section 436.1001 is amended by revising paragraph (a) to read as follows:

**§ 436.1001 FFP for administration.**

(a) FFP is available in the necessary administrative costs the State incurs in—

(1) Determining and redetermining Medicaid eligibility and in providing Medicaid to eligible individuals; and

(2) Determining presumptive eligibility for pregnant women and in providing ambulatory prenatal care to presumptively eligible women.

* * * * *

18. Section 436.1002 is amended by revising paragraph (a) and adding new paragraphs (c) and (d) to read as follows:

**§ 436.1002 FFP for services.**

(a) Except for the limitations and subject to the conditions specified in paragraphs (c) and (d) of this section, FFP is available in expenditures for Medicaid services for all recipients whose coverage is required or allowed under this part.

* * * * *

(c) FFP is available in expenditures for ambulatory prenatal care services covered by the plan that are furnished to pregnant women who are determined by a qualified provider to be presumptively eligible, when these services are furnished during a presumptive eligibility period by a provider that is eligible for payment under the State plan, regardless of whether or not the women are determined eligible for Medicaid following the presumptive eligibility period.

(d) FFP is not available in expenditures for services provided to low-income pregnant women and infants covered under § 436.226(a) (1) and (2) if the State has in effect under its AFDC plan payment levels (that is, the amount of the AFDC payment for basic needs made to a family with no other income) that are less than those in effect under its AFDC plan on July 1, 1987.

## PART 440—SERVICES: GENERAL PROVISIONS

D. Part 440 is amended as follows:

1. The authority citation for part 440 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 440.1 is revised to read as follows:

**§ 440.1 Basis and purpose.**

(a) This subpart interprets—

(1) Section 1905(a) of the Act, which lists the services included in the term "medical assistance";

(2) Sections 1905 (c), (d), (f) through (i), (l), (m), and (p)(3) of the Act, which define services or specify conditions for provision of some of those services; and

(3) Section 1915(c) of the Act, which lists as "medical assistance" certain home and community-based services provided under waivers under that section to individuals who would otherwise require institutionalization.

(b) This subpart also interprets—

(1) Section 1905(a)(3) of the Act with respect to laboratory services (§§ 447.10 and 447.342 also contain related provisions on laboratory services);

(2) Section 1913 of the Act with respect to "swing-bed" services (§ 447.280 of this subchapter and § 482.66 of this chapter also contain related provisions); and

(3) Section 1920 of the Act which specifies that a State plan may provide for making ambulatory prenatal care available to presumptively eligible pregnant women during a prescribed presumptive period. The care must be covered under the State plan and be furnished by providers who are eligible for payments under the State plan.

3. A new § 440.172 is added to read as follows:

**§ 440.172 Ambulatory prenatal care.**

(a) *Ambulatory prenatal care* means services covered under the plan that—

(1) Are related to pregnancy or to any other condition that may complicate pregnancy;

(2) Are furnished to pregnant women who have been determined presumptively eligible by a qualified provider;

(3) Are furnished during the presumptive eligibility period;

(4) Are furnished by a provider that is eligible to receive payment under the State plan; and

(5) Are furnished to pregnant women as outpatients as defined in § 440.2.

(b) *Ambulatory prenatal care* does not include procedures to deliver or remove an embryo or fetus from the mother or any procedures following that delivery or removal.

(c) For purposes of paragraph (a) of this section, *qualified provider* means a provider who—

(1) Is eligible to receive payment under the approved plan;

(2) Furnishes such types of services as outpatient hospital services as defined in § 440.20(a), rural health clinic services (if provided for in the State plan) as defined in § 440.20(b), or clinic services as defined in § 440.90;

(3) Is determined by the agency to be capable of making presumptive eligibility determinations for pregnant women based on family income; and

(4) Meets one of the following conditions:

(i) Receives funds for migrant health centers or community health centers under sections 329, 330, or 340 of the Public Health Service Act; receives funds for the maternal and child health services block grant program (title V of the Act); or receives funds under title V of the Indian Health Care Improvement Act.

(ii) Participates in the Special Supplemental Food Program for Women, Infants, and Children under section 17 of the Child Nutrition Act of 1966 or the Commodity Supplemental Food Program under section 4(a) of the Agriculture and Consumer Protection Act of 1973.

(iii) Participates in a State perinatal program; or

(iv) Is the Indian Health Service or is a health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act.

4. Section 440.250 is amended by adding new paragraph (q) to read as follows:

**§ 440.250 Limits on comparability of services.**

* * * * *

(q) Services to pregnant women with incomes related to the Federal poverty income guidelines who are eligible under §§ 435.118, 435.228, and 436.226 must be limited to services related to pregnancy (including prenatal, delivery, family planning, and postpartum services) and to services for the treatment of conditions which may complicate pregnancy. Any different treatment provided under this section for pregnant women does not require or permit such treatment for other Medicaid-eligible individuals.

## PART 447—PAYMENT FOR SERVICES

E. Part 447 is amended as follows:

1. The authority citation for part 447 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

**§ 447.59 [Redesignated]**

2. Part 447 is amended by redesignating § 447.59 as § 447.80 under subpart A.

3. Section 447.50 is revised to read as follows:

**§ 447.50 Cost sharing: Basis and purpose.**

(a) *Basis.* Sections 1902(a)(14) and 1916 of the Act permit States to require certain recipients to share some of the costs of Medicaid by imposing upon them such payments as enrollment fees, premiums, deductibles, coinsurance, copayments, or similar cost-sharing charges.

(b) *Purpose.* For States that impose cost sharing payments, §§ 447.51 through 447.85 prescribe State plan requirements and options for cost sharing, specify the standards and conditions under which States may impose cost-sharing, set forth minimum amounts and the methods for determining maximum amounts, and prescribe conditions for FFP that relate to cost-sharing requirements.

4. Section 447.51 is revised to read as follows:

**§ 447.51 Requirements and options.**

(a) The plan must provide that the Medicaid agency does not impose any enrollment fee, premium, or similar charge upon categorically needy individuals, as defined in §§ 435.4 and 436.3 of this subchapter, for any services available under the plan, except as specified in paragraph (b) of this section.

(b) The plan may impose a monthly premium on optional categorically needy poverty level pregnant women and infants under age 1, as defined in §§ 435.228 and 436.226 of this subchapter, if the requirements of § 447.60 are met.

(c) The plan may impose an enrollment fee, premium, or similar charge on medically needy individuals, as defined in §§ 435.4 and 436.3 of this subchapter, for any services available under the plan.

(d) For each charge imposed under paragraph (c) of this section, the plan must specify—

(1) The amount of the charge;

(2) The period of liability for the charge; and

(3) The consequences for an individual who does not pay.

(e) The plan must provide that any charge imposed under paragraph (c) of this section is related to total gross family income as set forth under § 447.52.

5. In § 447.52, the cross-reference in the introductory text to "§ 447.51(d)" is revised to read "§ 447.51(e)".

6. A new § 447.60 is added to read as follows:

**§ 447.60 Imposition of premium on low-income pregnant women and infants under age 1.**

(a) *Basic option.* The plan may provide for imposing a monthly premium on either the optional group of pregnant women or the optional group of infants under age 1, or both, who are eligible for and receiving Medicaid under §§ 435.228 and 436.226 of this

subchapter if their family income equals or exceeds 150 percent of the Federal poverty income guidelines for a family of the size involved. Family income is determined in accordance with §§ 435.612 and 436.612 of this subchapter.

(b) *Premium limits.* If a monthly premium is imposed under the option under paragraph (a) of this section, the premium amount may not be more than 10 percent of the amount by which the family income, after deducting expenses for the care of a dependent child, exceeds 150 percent of the Federal poverty income guidelines.

(c) *Prepayment prohibited.* The agency must not require prepayment of the premium imposed under this section.

(d) *Termination for nonpayment of premium.* The agency may terminate the eligibility of an individual for Medicaid if the individual fails to pay the premium for a period of at least 60 calendar days from the date due. The agency must comply with the requirements of part 431, subpart E, of this subchapter before terminating an individual.

(e) *Waiver of premium payment.* The agency may waive payment of the premium if it determines that requiring the payment of the premium would create an undue hardship on the individual.

(f) *Method of paying premium.* The agency may use State or local funds under other programs to pay for premiums imposed under this section. These funds do not count as income to the individual for whom the payment is made.

(g) *State plan requirement.* For premiums imposed under this section, the plan must specify—

(1) The method by which premiums are determined;

(2) The period of time in which an individual has to pay a premium before Medicaid is terminated;

(3) The consequences for an individual who does not pay the premium timely; and

(4) Whether the agency will waive payment of premiums because of undue hardship on an individual.

7. Under the undesignated center heading "Federal Participation," a new § 447.85 is added to read as follows:

**§ 447.85 FFP for ambulatory prenatal care.**

If a State plan provides for coverage of ambulatory prenatal care, as defined in § 440.172 of this subchapter, to pregnant women during a presumptive eligibility period, FFP is available for payments made on the woman's behalf for services covered under the plan that are furnished during that period, regardless of whether the pregnant woman is determined to be eligible for Medicaid after the presumptive eligibility period ends.

(Catalog of Federal Domestic Assistance Program No. 93.778 Medical Assistance Programs)

Dated: August 27, 1993.

**Bruce C. Vladeck,**

*Administrator, Health Care, Financing Administration.*

Dated: November 28, 1993.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 94–6540 Filed 3–22–94; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018–AC13**

## Endangered and Threatened Wildlife and Plants; Proposal to List the San Xavier Talussnail as Endangered

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

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) proposes to list the San Xavier talussnail (*Sonorella eremita*) as an endangered species under the Endangered Species Act of 1973, as amended (Act). The San Xavier talussnail is found only in an area of 15 by 30 meters (m) (50 by 100 feet (ft)) on private land in Pima County, Arizona. The primary threat to the species results from its vulnerability to habitat disturbances that would remove talus, increase interstitial soil, or alter moisture accumulation and retention. This proposal, if made final, would implement Federal protection provided by the Act for the San Xavier talussnail. The Service seeks data and comments from the public on this proposal.

**DATES:** Comments from all interested parties must be received by May 23, 1994. Public hearing requests must be received by May 9, 1994.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 3616 West Thomas Road, Suite 6, Phoenix, Arizona 85019. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Debra T. Bills, at the above address (602/379–4720).

**SUPPLEMENTARY INFORMATION:**

### Background

The San Xavier talussnail (*Sonorella eremita*) is a land snail, first described in 1910 by H.A. Pilsbry and L.E. Daniels (Pilsbry and Ferriss 1915). The species has a globose shell with as many as 4.5 whorls, a white to pinkish tint, and a chestnut-brown shoulder band. It is approximately 19 millimeters (0.7 inches) in diameter. This is the only land snail fitting this description in the Mineral Hills area, but its shell is very typical of desert *Sonorella* (Pilsbry and Ferriss 1915).

The San Xavier talussnail lives in a deep, northwestward-facing, limestone rockslide in Pima County, Arizona. Its habitat is protected from drying effects of the sun by outcrops of limestone and decomposed granite to the northeast and southwest, and by the hill itself to the southeast (Pilsbry and Ferriss 1915, Hoffman 1990). The vegetation, slope of the hillside, and depth of the slide provide necessary moisture conditions. This talussnail is similar to other *Sonorella* species in that it feeds on fungus or decaying plant material (Hoffman 1990). The San Xavier talussnail is hermaphroditic (Morton 1968, Hoffman 1990). After a rain, the snail will lay eggs, feed, and mate. Fertilization and production of eggs takes several days. If the rains are short-lived, the eggs are held until the next rain. The species requires three or four years to mature, depending on rainfall frequency, and has a reproductive life of four to six years, depending on the total number of days it remains active (Hoffman 1990).

Talussnails are extremely sensitive to desiccation and sedimentation resulting from disturbance of the talus and associated vegetation. In general, desert snails are known to protect themselves from drying out by crawling into deep, cool rockslides that are not filled with soil. The limestone rock or other talus that contains calcium carbonate is crucial to the species, as it aids in shell deposition and neutralizes carbonic acid that is produced during estivation (Hoffman 1990). The San Xavier talussnail is known to estivate for up to three years and in most years is only active for three or four days (Hoffman 1990).

The San Xavier talussnail was included as a Category 2 species in the Service's May 22, 1984, notice of review of candidate invertebrates (49 FR 21664) and in the January 6, 1989, animal

candidate notice of review (54 FR 554). Category 2 species are those for which the Service has some evidence of vulnerability, but for which there is insufficient scientific and commercial information to support proposed rules at the time. The San Xavier talussnail was included as a Category 1 species in the November 21, 1991, animal candidate notice of review (56 FR 58804). Category 1 species are those for which the Service has sufficient biological data to support proposals for listing.

**Summary of Factors Affecting the Species**

Section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the San Xavier talussnail (*Sonorella eremita*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The San Xavier talussnail is a very restricted endemic and is extremely vulnerable to any disturbance that would remove talus, increase interstitial sedimentation, or otherwise alter moisture conditions in its habitat (e.g., road or trail expansion or alteration, mining exploration) (Hoffman 1990). Within the species' habitat are inactive mining prospects and mines, mining stakes, a powerline across the east ridge, and a road leading to a microwave site on the hilltop. A large copper mine is located nearby. There are housing developments of small acreage to the north and to the southwest of the hill. The habitat is too steep (30 to 40 percent slope) to permit house construction, but possible future threats include additional road construction, expansion of the copper mine and/or tailings, and small-scale prospecting and mining.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The extremely restricted habitat of this species makes it vulnerable to excessive collecting during periods when the snails are active.

C. *Disease or predation.* No diseases are known. Rodent predation is random and sporadic on the San Xavier talussnail (Hoffman 1990).

D. *The inadequacy of existing regulatory mechanisms.* The State of Arizona offers no protection to this species. The Act would provide protection and encourage active management through "Available Conservation Measures" discussed below.

E. *Other natural or manmade factors affecting its continued existence.* The very restricted range of the San Xavier talussnail makes it vulnerable to extinction from relatively small-scale human actions. The only known habitat for the species is on a single rockslide near Tucson, Arizona, in an area of limestone talus about 15 by 30 m (50 by 100 ft) near a dirt road. The habitat is located downslope from a dirt road, making it vulnerable to infiltration of rocks and soil or other material. The species is so restricted in range that it is threatened by even limited removal of cover through vandalism or by individuals curious about the presence of a rare species. Removal of cover, including both rocks and vegetation, harms snails by exposing them to the drying effects of the sun and periods of low ambient humidity.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the San Xavier talussnail as endangered. The species has a highly restricted range, is located in an area of growing urban development and active mining, and is easily accessible by road. Although the San Xavier talussnail is on private land, Federal actions may occur as the area continues to develop. Endangered status is most appropriate because the single known population could be destroyed by one action. Because of the vulnerability of the population, threatened status does not appear appropriate for the San Xavier talussnail. A decision to take no action would exclude this species from needed protection available under the Act, and the species would likely decline. The decision not to propose critical habitat for the San Xavier talussnail is explained in the following section.

**Critical Habitat**

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time a species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the San Xavier talussnail at this time.

The extremely restricted habitat of the species makes it vulnerable to collection and isolated acts of vandalism. Although there are relatively few amateur collectors of land snails, a single collection effort under advantageous conditions could severely deplete the species' population. The population could, however, withstand some limited, regulated scientific collection. Of greater concern than collection is the potential for acts of vandalism that directly kill the snails by crushing or by habitat disturbances that cause desiccation of the snails. These acts may sometimes be purposeful, but may also be caused by well-intentioned persons who are curious about the presence of an endangered species. The likelihood of these potential threats occurring would be greatly increased by designation of critical habitat, because the publication of critical habitat maps and descriptions would allow unauthorized persons to precisely identify the locality of this species. Identification of critical habitat would therefore increase the degree of threat to this species.

Critical habitat designation would also not provide additional benefit to the species. The range and major ecological requirements of this species are sufficiently known to provide adequate protection through the Act's take prohibitions and application of the section 7 jeopardy standard. The Service will continue to communicate the conservation needs of the species to the involved landowner, as well as inform the landowner of the status of legal protection and conservation planning for the species.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on

any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Potential Federal activities that may require consultation under section 7 include permits for road and transmission facilities near the locality of the San Xavier talussnail.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities.

Requests for copies of the regulations regarding listed wildlife and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 420C, 4401 N. Fairfax Drive, Arlington, Virginia 22203 (703/358–2104; FAX 703/358–2281).

### Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the San Xavier talussnail;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to Arizona Ecological Services Office (see **ADDRESSES** section).

### National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### References Cited

Hoffman, J.E. 1990. Status survey of seven land snails in the Mineral Hills and the Pinaleno Mountains, Arizona. Prepared for U.S. Fish and Wildlife Service, Phoenix, Arizona. Contract Number: 20181–88–00973.

Morton, J.E. 1968. Molluscs. Hutchinson University Library. London. 244 pp.

Pilsbry, H.A., and J.A. Ferriss. 1915. Mollusca of the southwestern states. VII. The Dragoon, Mule, Santa Rita, Baboquivari and Tucson ranges, Arizona. Proc. Acad. Nat. Sci. Phila. 67:363–418; Plates 8–15.

### Authors

The primary authors of this proposed rule are Debra T. Bills, Arizona Ecological Services Field Office (see **ADDRESSES** section), and Dr. Steven M. Chambers, Division of Endangered Species, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87123 (505/766–3972).

### List of Subjects in 50 CFR Part 17

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

### Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

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

2. Section 17.11(h) is amended by adding the following, in alphabetical order under "SNAILS," to the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * * * | * * * | * | | * | * | | * |
| **Snails** | | | | | | | |
| * * * | * * * | * | | * | * | | * |
| Talussnail, San Xavier .. | *Sonorella eremita* ..... | U.S.A. (AZ) ..... | NA | E | ..... | NA | NA |
| * * * | * * * | * | | * | * | | * |

Dated: March 14, 1994.

**Mollie H. Beattie,**

*Director, Fish and Wildlife Service.*

[FR Doc. 94-6791 Filed 3-22-94; 8:45 am]

BILLING CODE 4310-55-P

# Notices

Federal Register
Vol. 59, No. 56
Wednesday, March 23, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

March 18, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title 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) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

**Extension**

• Soil Conservation Service
7 CFR part 623, Emergency Wetlands Reserve Program
SCS–LTP–8, SCS–LTP–9, SCS–LTP–10
One time program
Individuals or households; Farms; 450 responses; 525 hours
Donald L. Butz, (202) 720–1869.

**New Collection**

• Food and Nutrition Service
Barriers to Good Nutrition
One time only
Individuals or households; 432 responses; 864 hours
Patricia McKinney (703) 305–2126.

**Larry K. Roberson,**
*Deputy Department Clearance Officer.*

[FR Doc. 94–6806 Filed 3–22–94; 8:45 am]
BILLING CODE 3410–01–M

## Farmers Home Administration

### Technical and Supervisory Assistance Grants

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Notice of extension of grant preapplication filing deadline.

**SUMMARY:** The Farmers Home Administration (FmHA) announces an extension of the closing date for filing Technical and Supervisory Assistance (TSA) Grant preapplications, from March 17, 1994 (as first announced in the notice published at 59 FR 7240 on February 15, 1994) to March 28, 1994. This extension of time is granted due to the brief initial 31-day preapplication period. This action is taken to comply with Agency regulations found in 7 CFR part 1944, subpart K which require the Agency to announce the opening and closing dates for receipt of preapplications for TSA grants from eligible applicants. The intended effect of this Notice is to provide public and private nonprofit corporations, agencies, institutions, organizations, Indian tribes, and other associations notice of these dates. This TSA grant program will be available to provide funds to eligible applicants to conduct programs of technical and supervisory assistance for low-income rural residents to obtain and/or maintain occupancy of adequate housing.

**DATES:** The extended closing date for acceptance by FmHA of preapplications is March 28, 1994. This period will be the only time during the current fiscal year that FmHA accepts preapplications. Preapplications must be received by or postmarked on or before March 28, 1994.

**ADDRESSES:** Submit preapplications to FmHA field offices; applicants must contact their FmHA State Office for this information.

**FOR FURTHER INFORMATION CONTACT:** Walter B. Patton, Senior Loan Officer, Single Family Housing Processing Division, USDA, FmHA, Room 5334, South Agriculture Building, Washington, D.C. 20250, telephone (202) 720–0099 (This is not a toll free number).

**SUPPLEMENTARY INFORMATION:** The FmHA extends the closing date for acceptance of preapplications for the Technical and Supervisory Assistance Grant program published at 59 FR 7240 on February 15, 1994, until March 28, 1994. This extension of time is granted due to the brief initial 31-day preapplication period. FmHA will be selecting grantees based on the preapplications submitted, requesting final application, and then obligating funds. Entities wishing to apply for assistance should contact the FmHA State Office to receive further information and copies of the application package.

Dated: March 17, 1994.

**Michael V. Dunn,**
*Administrator, Farmers Home Administration.*

[FR Doc. 94–6737 Filed 3–22–94; 8:45 am]
BILLING CODE 3410–07–U

## COMMISSION ON CIVIL RIGHTS

### Agenda and Public Meeting of the Arizona Advisory Committee

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 Arizona Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on Saturday, April 23, 1994, at the Embassy Suites Airport, 7051 South Tucson Boulevard, Tucson, Arizona 85706. The purpose of this meeting is to plan and evaluate future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Manuel Pena or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office 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, March 11, 1994.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 94–6717 Filed 3–22–94; 8:45 am]

BILLING CODE 6335–01–P

## Agenda and Public Meeting of the Nevada Advisory Committee

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 Nevada Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 12 p.m. on Friday, April 22, 1994, at the Offices of Walther, Key Maupin, et al., 3500 Lakeside Drive, 2nd Floor, Reno, Nevada 89509. The purpose of the meeting is to review current civil rights developments in the State and plan future program activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Margo Piscevich or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office 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, March 11, 1994.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 94–6718 Filed 3–22–94; 8:45 am]

BILLING CODE 6335–01–P

## Agenda and Public Meeting of the New Mexico Advisory Committee

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 New Mexico Advisory Committee to the Commission will convene at 1:30 p.m. to 4 p.m. on Friday, April 8, 1994, at the Best Western Fred Harvey Hotel, 2910 Yale Boulevard, Albuquerque, New Mexico 87102. The purpose of the meeting is to review current civil rights developments in the State, and plan future activities for northwestern New Mexico.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Emma Armendariz or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office 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, March 11, 1994.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 94–6716 Filed 3–22–94; 8:45 am]

BILLING CODE 6335–01–P

## Agenda and Public Meeting of the Texas Advisory Committee

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 Texas Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:30 p.m. on Friday, April 15, 1994, at the Courtyard by Marriott, 8585 Marriott Drive, San Antonio, Texas 78229. The purpose of the meeting is to provide an orientation for the membership and to discuss civil rights issues in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Adolph Canales or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office 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, March 11, 1994.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 94–6719 Filed 3–22–94; 8:45 am]

BILLING CODE 6335–01–P

# DEPARTMENT OF COMMERCE

## Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of the Census.

*Title:* March 12 Employment From IRS Form 941E.

*Form Number(s):* IRS Form 941E.

*Agency Approval Number:* 0607–0203.

*Type of Request:* Extension of the approval date of a currently approved collection without any change in the substance or in the method of collection.

*Burden:* 5,000 hours.

*Number of Respondents:* 50,000.

*Avg Hours Per Response:* 6 minutes.

*Needs and Uses:* The Internal Revenue Service (IRS) uses Form 941E to determine taxes for employers not covered under the Federal Insurance Contributions Act. These include state and local governments, payers of supplemental unemployment benefits, certain churches and church–controlled organizations, and certain payers of annuities and sick pay. These employers prepare and submit a Form 941E, quarterly, to the IRS. The Census Bureau sponsors and uses responses to Question 1 on the Form to update the Standard Statistical Establishment List (SSEL). The SSEL, as a universal sampling frame of U.S. business activity, requires employment data from all sectors of the economy. Question 1 reads as follows, "**Complete for First Quarter Only** Number of employees (except household) employed in the pay period that includes March 12th."

*Affected Public:* State and local governments, Businesses or other for–profit organizations, Small businesses or organizations.

*Frequency:* Annually.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 17, 1994.

**Edward Michals,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 94–6850 Filed 3–22–94; 8:45 am]

BILLING CODE 3510–07–F

## Bureau of the Census

### Census Advisory Committee of Professional Associations; Establishment

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR part 101–6, and after consultation with GSA, the Secretary of Commerce has determined that the establishment of the Census Advisory Committee of Professional Associations is in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee will advise the Director, Bureau of the Census, on the full range of Census Bureau programs and activities in relation to their areas of expertise.

The Committee will consist of 36 members to be appointed by the presidents of the American Economic Association, the American Statistical Association, the Population Association of America, and the chairman of the board of the American Marketing Association to assure a balanced representation among private sector data users, economists, statisticians, research groups, marketing analysts, demographers, and other groups associated with census statistics.

The Committee will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act. The charter will be filed under the Act, fifteen (15) days from the date of publication of this notice.

Interested persons are invited to submit comments regarding the establishment of this Committee to Phyllis Van Tassel, Committee Liaison Officer, Bureau of the Census, room 2419, FB 3, Washington, DC 20233, telephone: (301) 763–5410.

Dated: January 21, 1994.

**Paul A. London,**

*Acting Under Secretary for Economic Affairs.*

[FR Doc. 94–6805 Filed 3–22–94; 8:45 am]

BILLING CODE 3510–07–P

## Foreign-Trade Zones Board

**[Docket 11–94]**

### Foreign-Trade Zone 121—Albany, NY Application for Subzone, BASF Corporation Plant (Chemical Pigments/Dyes) Rensselaer, NY

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Capital District Regional Planning Commission, grantee of FTZ 121, requesting special-purpose subzone status for the chemical pigment/dye manufacturing facility of BASF Corporation located in Rensselaer, New York. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 11, 1994.

The BASF Rensselaer plant (3.84 mil.sq.ft/88 acres) is located at 36 Riverside Avenue, Rensselaer (Rensselaer County), New York, one mile east of the city of Albany across the Hudson River. The plant (440 employees) is used to produce certain chemical dyes and pigments, such as powdered and liquid dyestuffs, uvinuls, sicotans, and other pigments for the plastics and coatings industries (duty rates—free to 20%, some currently under duty suspension). Approximately 40 to 60 percent of material inputs are sourced from abroad, including: Rosa chloride CF/BRF, diaminoimid, uvinul, dimethylaminobenaldehyde, inorganic acids, chlorides, hydroxides, sulfites, acyclic hydrocarbons, acyclic acids, phenols, benzaldehyde, aldehyde-function compounds, ketones, quinones, oxalic/carbolic acids, polyamines, aminos, sulfurs, heterocyclic compounds, colorants, organic active agents, lubricating preparations, carbon finishing and antioxidizing agents, acrylic polymers, urea/thiourea resins (duty rates—free to 20%, some currently under duty suspension).

Zone procedures would exempt BASF from Customs duty payments on the foreign materials used in export production. On domestic sales, the company is seeking to eliminate duty payments on foreign materials which under Customs procedures would be subject to accountable loss in the manufacturing process. Also, the plant would pay duties on a deferred basis. The application indicates that the savings from zone procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 23, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period June 6, 1994.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, James T. Foley, Courthouse Bldg., Rm. 216, 445 Broadway Albany, NY 12207.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

Dated: March 14, 1994.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 94–6847 Filed 3–22–94; 8:45 am]

BILLING CODE 3510–DS–P

**[Order No. 684]**

### Grant of Authority; Establishment of a Foreign-Trade Zone; Holyoke, MA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas,* the Holyoke Economic Development and Industrial Corporation (the Grantee), a Massachusetts public corporation, has made application (FTZ Docket 23–93, 58 FR 33254, 6/16/93) to the Board, requesting the establishment of a foreign-trade zone in Holyoke, Massachusetts, within the Springfield Customs port of entry; and,

*Whereas,* notice inviting public comment has been given in the **Federal Register** and the Board has found that the requirements of the Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, Therefore,* the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 201, at the sites described in the application,

subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 10th day of March 1994.

Foreign-Trade Zones Board.

**Ronald H. Brown,**

*Secretary of Commerce, Chairman and Executive Officer.*

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 94–6842 Filed 3–22–94; 8:45 am]

BILLING CODE 3510–DS–P

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**[Order No. 683]**

## Grant of Authority; Establishment of a Foreign-Trade Zone; County of Mercer, NJ

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas*, the County of Mercer, New Jersey (the Grantee), has made application (FTZ Docket 11–93, 58 FR 19405, 4/14/93) to the Board, requesting the establishment of a foreign-trade zone in Mercer County, New Jersey, adjacent to the Consolidated Philadelphia Customs port of entry; and,

*Whereas*, notice inviting public comment has been given in the **Federal Register** and the Board has found that the requirements of the Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, Therefore*, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 200, at the sites described in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 11th day of March 1994.

Foreign-Trade Zones Board.

**Ronald H. Brown,**

*Secretary of Commerce, Chairman and Executive Officer.*

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 94–6843 Filed 3–22–94; 8:45 am]

BILLING CODE 3510–DS–P

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## International Trade Administration

**[A–401–601]**

## Brass Sheet and Strip From Sweden; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** The Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on brass sheet and strip from Sweden. The review covers exports of this merchandise to the United States by one manufacturer/exporter during the period March 1, 1991 through February 29, 1992. The review indicates the existence of dumping margins for this period.

As a result of this review, the Department has preliminarily determined to assess antidumping duties equal to the difference between United States price (USP) and foreign market value (FMV).

We invite interested parties to comment on these preliminary results.

**EFFECTIVE DATE:** March 23, 1994.

**FOR FURTHER INFORMATION CONTACT:** Valerie Turoscy, Chip Hayes, or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–5253.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 6, 1987, the Department published in the **Federal Register** (52 FR 6998) the antidumping duty order on brass sheet and strip from Sweden. On April 13, 1992, in accordance with 19 CFR 353.22(c), we initiated an administrative review of Outokumpu Copper Rolled Products AB (OAB) for the period March 1, 1991 through February 29, 1992 (57 FR 12797). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). In addition, from December 6, 1993 to December 10, 1993 we verified OAB's responses for this administrative review and found that, in general, OAB's records supported the information which OAB submitted to the Department.

### Scope of Review

Imports covered by this review are sales or entries of brass sheet and strip, other than leaded and tinned brass sheet and strip, from Sweden. The chemical composition of the products under review is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C20000 series. This review does not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. The merchandise is currently classified under Harmonized Tariff Schedule (HTS) item numbers 7409.21.00 and 7409.29.20. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. This review covers one manufacturer/exporter, OAB.

### United States Price

We based USP on purchase price (PP), in accordance with section 772(b) of the Tariff Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States. We calculated PP based on C.I.F., duty paid prices, delivered either to independent U.S. warehouses or to the customers' premises. In accordance with section 772(d)(2) of the Tariff Act we made deductions, where appropriate, for U.S. point-to-point freight, point-to-point insurance, brokerage and handling, customs duty, and cash discounts.

We also adjusted USP for imputed consumption tax in accordance with the decision made by the Court of International Trade (CIT) in *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–194 (CIT, October 7, 1993) (Federal-Mogul). In Federal-Mogul, the CIT rejected the Department's methodology for calculating an addition to USP under section 772(d)(1)(C) of the Tariff Act to account for taxes that the exporting country would have assessed on the merchandise had it been sold in the home market. The CIT held that the addition to USP under section 772(d)(1)(c) of the Tariff Act should be the result of applying the foreign market tax rate to the price of the U.S. merchandise at the same point in the chain of commerce that the foreign

market tax was applied to the foreign market sales (Federal-Mogul at 12).

In accordance with the Court's decision, the Department has added to USP the result of multiplying the foreign market tax rate by the price of the U.S. merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales. The Department has also adjusted the USP tax adjustments and the amount of tax included in FMV. These adjustments deduct the portions of the foreign market tax and the USP tax adjustment that are the result of expenses that are included in the foreign market price used to calculate foreign market tax and are included in the U.S. merchandise price used to calculate the USP tax adjustment. These adjustments to the amount of the foreign market tax and the USP tax adjustment are necessary to prevent our methodology for calculating the USP tax adjustment from creating antidumping duty margins where no margins would exist if no taxes were levied upon foreign market sales.

This margin creation effect is due to the fact that the basis for calculating both the amount of tax included in the price of the foreign market merchandise and the amount of the USP tax adjustment includes many expenses that are later deducted when calculating USP and FMV. After these deductions are made, the amount of tax included in FMV and the USP tax adjustment still reflects the amounts of these expenses. Thus, a margin may be created that is not dependent upon a difference between USP and FMV, but is the result of the price of the U.S. merchandise containing more expenses than the price of the foreign market merchandise. The Department's policy to avoid the margin creation effect is in accordance with the United States Court of Appeals' holding that the application of the USP tax adjustment under section 772(d)(1)(C) of the Tariff Act should not create an antidumping duty margin if pre-tax FMV does not exceed USP (*Zenith Electronics Corp.* v. *United States*, 988 F.2d 1573, 1581 (Fed. Cir. 1993)). In addition, the CIT has specifically held that an adjustment should be made to mitigate the impact of expenses that are deducted from FMV and USP upon the USP tax adjustment and the amount of tax included in FMV (*Daewoo Electronics Co., Ltd.* v. *United States*, 760 F. Supp. 200, 208 (CIT, 1991) (Daewoo)). However, the mechanics of the Department's adjustments to the USP tax adjustment and the foreign market tax amount as described above are not identical to those suggested in Daewoo.

No other adjustments were claimed or allowed.

**Foreign Market Value**

The Department used home market price, as defined in section 773 of the Tariff Act, to calculate FMV. Because the home market was viable, we compared U.S. sales with sales of such or similar merchandise in the home market. Home market prices were based on the monthly weighted-average, packed, F.O.B., ex-factory, or delivered prices to unrelated purchasers in the home market. Where applicable, we made adjustments for home market warranty expenses, home market rebates, packing expenses incurred in Sweden, home market credit, and home market inland freight. We further adjusted FMV by adding U.S. direct selling expenses (credit, warranties, and post-sale warehousing and commission expenses). However, since commissions were paid only in the U.S. market, we offset the U.S. commission expenses by deducting home market indirect selling expenses from FMV in an amount not exceeding the amount of U.S. commissions.

We also adjusted FMV for imputed consumption tax in accordance with the Federal-Mogul decision as described above, and for differences in physical characteristics. However, because we did not receive the information necessary to support OAB's reported difference-in-merchandise (difmer) amounts, for all U.S. sales to which we matched home market sales of most similar merchandise, we used the largest positive gauge and alloy difmer amounts reported by OAB (*i.e.*, the most adverse difmer amounts) as the best information available. See analysis memorandum of February 24, 1994 for further explanation.

OAB also claimed a tool-setting expense as a circumstance-of-sale (COS) adjustment. Based on information obtained at verification, we determined that because this expense was a manufacturing cost and not a selling expense, it did not warrant a COS adjustment. As a result, we did not adjust for this expense in these preliminary results. See analysis memorandum of February 24, 1994 for further explanation. No other adjustments were claimed or allowed.

**Preliminary Results of Review**

As a result of our comparison of USP to FMV, we preliminarily determine that the following margin exists for the period March 1, 1991 through February 29, 1992:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| OAB | 7.19 |

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed no later than 37 days after the date of publication of this notice. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at the hearing.

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be the "all others" rate established in the LTFV investigation.

On May 25, 1993, the CIT, in *Floral Trade Council* v. *United States*, Slip. Op. 93–79, and *Federal-Mogul Corporation* v. *United States*, Slip. Op. 93–83, decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department

has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction for clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. Therefore, the "all others" rate for this proceeding is 9.49 percent.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: March 15, 1994.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 94-6845 Filed 3-22-94; 8:45 am]

BILLING CODE 3510-DS-P

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[A-580-008]

## Color Television Receivers From the Republic of Korea; Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration/ Department of Commerce.

**ACTION:** Notice of Final Results of Antidumping Duty Administrative Review.

**SUMMARY:** On October 7, 1993, the Department of Commerce published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on color television receivers from the Republic of Korea (58 FR 52262). The period of review covers seven manufacturers/ exporters and the period April 1, 1991, through March 31, 1992.

We gave interested parties an opportunity to comment on our preliminary results. We did not hold a public hearing on these results, as the result for a public hearing was withdrawn.

Based on our analysis of the comments received and the correction of certain clerical errors, we have revised the preliminary results. The final dumping margins range from zero to 16.57 percent.

**EFFECTIVE DATE:** March 23, 1994.

**FOR FURTHER INFORMATION CONTACT:** Zev Primor or Wendy Frankel, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-5253.

**SUPPLEMENTARY INFORMATION:**

### Background

On October 7, 1993, the Department of Commerce (the Department published in the **Federal Register** the preliminary results (58 FR 52262) of its administrative review of the antidumping duty order on color television receivers (CTVs) from the Republic of Korea (ROK) (49 FR 18336, April 30, 1984). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act), and 19 CFR 353.22 (1993).

### Scope of the Review

The products covered by this review include color television receivers, complete and incomplete, from the ROK. The order covers all CTVs regardless of tariff classification. During the period of review (POR), the subject merchandise was classified under Harmonized Tariff Schedule (HTS) item numbers 8528.10.60, 85.29.90.15, 8529.90.20 and 8540.11.00. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive as to the scope of the product coverage.

The review covers seven manufacturers/exporters and the POR April 1, 1991, through March 31, 1992.

### Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case briefs and rebuttal briefs from the Independent Radionic Workers of America, the United Electrical Workers of America, the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO, and Industrial Union Department, AFL-CIO (the Unions), the petitioners in this proceeding, and three respondents, Goldstar Co., Ltd. (Goldstar), Daewoo Electronics Co., Ltd. (Daewoo), and Samwon Electronics, Inc. (Samwon).

Two companies, Tongkook General Electronics, Inc., and Cosmos Electronics Manufacturing Korea, Ltd., did not respond to our requests for information. When a company fails to provide the information requested in a timely manner, the Department considers the company uncooperative and generally assigns to that company the higher of (a) the highest rate assigned to any company in any previous review, including the less-than-fair-value (LTFV) investigation, or (b) the highest rate for a responding company with shipments during the POR. Therefore, we have used the highest rate from the LTFV investigation as the best information available (BIA) in determining the margins for these two companies for this review, because this rate is higher than the highest rate in the current review. *See Allied-Signal Aerospace Co.* v. *United States*, Appeal No. 93-1049 (Fed. Cir. June 22, 1993). *See also Krupp Stahl AG et al* v. *United States*, 822 F. Supp 789 (CIT May 26, 1993). Two other companies, Samsung Electronics Co. Ltd., and Quantronics Manufacturing Korea, Ltd., responded to the Department that they had no sales during the POR.

### Petitioners' Comments

*Comment 1:* Petitioners argue that in the preliminary results of this review, the Department failed to measure the home market tax incidence in Korea. Although petitioners admit that the United States Court of Appeals for the Federal Circuit (CAFC) has recently held that no measurement of tax incidence is required under the statute, petitioners argue that the Department should not implement that approach in light of a petition for "rehearing and suggestion for rehearing in banc that has been submitted by petitioners and is yet pending."

Respondents argue that the recent CAFC decision (*Daewoo Elec. Corp.* v. *United States*, Slip Op. 92-1558-1562 (Fed. Cir. Sept. 30, 1993) (*Daewoo*)), clearly affirmed the Department's longstanding interpretation of the governing statute, *i.e.*, no requirement to measure the amount of the pass-through taxes to the Korean consumers. Consequently, respondents request that the Department retain the same methodology in the final results of the review.

*Department's Position:* We disagree with petitioners. The question of whether the Department was required to measure the Korean home market tax incidence or "pass-through" tax was conclusively resolved by the CAFC in the *Daewoo* decision. In that decision, the CAFC rules that "the statute does

not speak to tax incidence, shifting burdens, or pass-through, nor does it contain any hint that an econometric analysis must be performed" (*Daewoo*, Slip Op. at 12). Consequently, the Department has retained its policy of not measuring the pass-through tax in this review.

*Comment 2:* Petitioners object to the Department's methodology of making a circumstance-of-sale (COS) adjustment for differences between home market and hypothetical U.S. taxes by adding the full amount of the Korean home market tax to United States price (USP). Citing the recent Court of International Trade (CIT) decision, *Federal-Mogul Corp.* v. *United States*, 17 CIT—, Slip Op. 93–194 (Oct. 7, 1993) (*Federal-Mogul*), petitioners request the Department to recalculate the commodity tax adjustment to USP.

Goldstar urges the Department to continue to adhere to the CAFC's decision in *Zenith Elec. Corp.* v. *United States*, 988 F. 2d 1573 (Fed. Cir. 1993) (Zenith), *i.e.*, by adding to USP the absolute amount of home market taxes, Goldstar claims that the recent Federal-Mogul decision failed to recognize the critical distinction between the Zenith holding that the Department may not adjust the foreign market value (FMV) to neutralize tax amounts, and the separate issue of how the adjustment to USP for commodity taxes shall be performed. Goldstar further claims that in the *Zenith* decision, the Department used an *ad valorem* methodology to calculate the adjustment to USP. This methodology, according to Goldstar, resulted in a multiplier effect on the underlying dumping margin, a result that the Department had argued justified making a tax-neutralizing adjustment to FMV. Goldstar notes that the CAFC held that the express terms of the statute preclude such an adjustment to FMV. However, Goldstar argues that in footnote four of that decision, the CAFC indicated that the Department may lawfully avoid the multiplier effect by performing the adjustment to USP on an absolute basis rather than on an *ad valorem* basis.

Daewoo concurs with Goldstar and adds that the Department should not implement the Federal-Mogul decision unless and until it is sustained by the CAFC.

*Department's Position:* We agree with petitioners. The CIT in *Federal-Mogul* rejected the practice of making COS adjustments for differences in tax amounts in USP and FMV. Consequently, we have revised our methodology and adjusted USP for tax by multiplying the USP by the home market tax rate at the point in the chain of commerce of the U.S. merchandise that is analogous to the point in the home market chain of commerce at which the foreign government applies the home market consumption tax. In this case we multiplied the U.S. tax base (gross unit price less discounts) by the Korean VAT rate. This product, the U.S. tax adjustment, was then added to the net USP.

With regard to the tax treatment in the home market, we included in the FMV the amount of Korean consumption tax collected in the home market by multipling the tax base (home market gross unit price) by the Korean VAT rate.

We also calculated the amount of the tax that was due solely to the inclusion of price deductions in the original tax base (*i.e.*, multiplying VAT rate by the sum of total deductions and additions). The total amount of U.S. movement and selling expenses was multiplied by the Korean VAT rate and subtracted from the net USP to determine the final USP. Similarly, a total amount of all adjustments in the home market was multiplied by the Korean VAT and deducted from FMV after all other adjustments had been made.

These adjustments are necessary to prevent our new methodology for calculating the USP tax adjustment from crating antidumping duty margins where no margins would exist if no taxes were levied upon foreign market sales.

*Comment 3:* Petitioners argue that since Goldstar, in the preliminary results, a zero margin, it may suggest that no dumping margin will be found in the final results of review. In that event, petitioners request that the Department should not count this POR for the purposes of an antidumping order revocation because the quantity of the CTVs shipped by Goldstar to the United States during this review was "*de minimis.*" Petitioners further state that "a *de minimis* volume of shipments is also no indication of the absence of price discrimination, because any producer seeking to dump its product would find it advantageous and a simple task to sell a *de minimis* volume of a product fair at fair value in the short-term so as to obtain revocation and then be freed to dump its product in the future."

Goldstar rebuts this allegation by claiming that: (1) There is no request for revocation in this review, therefore, the issue is irrelevant; and (2) the Department should not grant "advisory opinions" on issues not relevant to this review.

*Department's Position:* We agree with respondent. No request for revocation has been made and, therefore, this issue is not revelant.

*Comment 4:* Petitioners allege that respondents under-reported their U.S. sales during the POR and claim a discrepancy between the reported U.S. sales and entries of the subject merchandise made during the POR.

Daewoo rejects petitioners' allegations, pointing out the Department's extensive verification of its sales and the cost of production (COP) data. Respondents maintain that such a thorough verification would have revealed any discrepancies.

*Department's Position:* We disagree with petitioners. The factual information alleging unreported entries was submitted to the Department after more than 180 days from the initiation of the review. As such, it is untimely and cannot be used during the current POR. *See* 19 CFR 353.31(a)(1). Finally, all sales information and their respective entries pertaining to the current POR have been verified. We found no discrepancies between the reported sales volume and the source documents.

*Comment 5:* Petitioners submitted comments concerning three computer programming/clerical errors in the Department's preliminary results analysis of Daewoo's response.

*Department's Position:* We agree with the petitioners and have made the following corrections to the appropriate programs in our final results calculations for Daewoo: (1) We replaced the gross commission expense with the net commission expense in the exporter's sales price (ESP) cap; (2) we did not adjust USP for home market tax when we compared USP to a constructed value (CV) in both the purchase price (PP) and ESP sales; and (3) we corrected the cost of manufacturer value in model DTB–1404PW when it is used in the CV application.

**Daewoo's Comment**

*Comment 6:* Daewoo asserts that the Department incorrectly used CV for a home market model DTB–1404PW when the "90/60" day matching procedure revealed that there were not enough matching sales in every month of the POR. Instead, Daewoo requests the use of another model in the home market which, allegedly, can be qualified as similar merchandise and has sales in every month of the POR.

Petitioners object to the use of another model in the matching procedure because it does not meet the physical criteria necessary to qualify as similar merchandise.

*Department's Position:* We disagree with Daewoo. Prior to determining FMV under section 773(a)(1) of the Tariff Act, the department must first select the most similar merchandise. Section 771(16) of the Tariff Act defines such or similar merchandise and provides a hierarchy of preferences for determining which merchandise sold in the foreign market is most similar to the merchandise sold in the United States. Section 771(16) also expresses a preference for the use *identical over similar* merchandise. The cost test is not conducted until after the most similar model match is found under section 771(16).

Moreover, section 771(16) directs us only to "the first of the following categories * * *" and not to the next category when the first match is below the COP. If this were not the case, the COP test would inappropriately become part of the basis for determining what constitutes such or similar merchandise, which is clearly not the purpose of the COP test. Consequently, it appears that the statute directs us to the use of CV when the most similar model is sold below the cost.

In this case, as a result of the COP test, we discarded sales of the most similar home market model. In conducting the 90/60 day contemporaneity test, we found no remaining sales of the most similar model. Therefore, we relied on CV as the basis of FMV (*see* Tubeless Steel Disc Wheels from Brazil, 52 FR 6947 (March 20, 1987), *see, also,* Import Administration Policy Bulletin, Dec. 15, 1993).

*Comment 7:* Citing *AOC International* v. *United States*, 721 F. Supp. 314, 316 (CIT 1989) (*AOC*), Daewoo claims that the Department erroneously excluded from direct warranty costs in the home market the salaries and benefits of employees in the aftersale service centers. According to the respondent, the Department's approach is distortive because it treats all U.S. warranty expenses, incurred in the form of payments to unrelated parties, as direct selling expenses, while classifying similar expenses in the home market as indirect selling expenses simply because the warranty services are provided by the respondent's own service departments. Because the expenses incurred in both markets are identical in nature, respondent contends that the Department should treat such expenses in the same manner in both markets.

*Department's Position:* We disagree with Daewoo. According to our established practice, we consider the home market warranty expenses at issue to be fixed costs that do not qualify as direct selling expenses. This is because the respondent would have incurred such costs regardless of whether they made any sales of the subject merchandise. In the U.S. market, however, Daewoo's warranty repairs are performed by the independent service firms which are paid on a per unit basis, as expense clearly linked to units sold. Consequently, the U.S. warranty expenses are correctly treated as direct selling expenses. Further, we note that the decision in *AOC* is not final, and may yet be reversed. Therefore, we have continued to treat the home market fixed warranty expenses as indirect selling expenses for these final results (*see* Color Television Receivers from the Republic of Korea, 58 FR 50,333 (Sept. 27, 1993), Comment 16 (Eighth Review), and Color Television Receivers from the Republic of Korea, 56 FR 12,701 (March 27, 1991), Comment 20 (Fifth Review)).

**Goldstar's Comments**

*Comment 8:* Goldstar submitted comments concerning three computer programming/clerical errors in the Department's preliminary results analysis of Goldstar's response.

Petitioners objected to one of the clerical error allegations, *i.e.*, the inclusion of the U.S. commissions in the ESP "cap," on the grounds that there are no commissions, for comparable sales, in the home market.

*Department's Position:* We agree with Goldstar and have made the following corrections to the appropriate program in our final results calculations for Goldstar: (1) We included the warranty, technical expenses, royalties and promotional fees directly related to the CTV sales in the home market pool of direct selling expenses; (2) we included the U.S. indirect warranty, U.S. indirect advertising and U.S. commission expenses in the ESP cap; and (3) we corrected the amount of commodity taxes in the home market, however, the correction was made according to the new methodology explained above (see Comment 2).

With regard to petitioners' concerns regarding the inclusion of the U.S. commissions in the ESP cap, our regulations state that where there is a commission paid in one market and none in the other market, we offset the commission with indirect selling expenses incurred in the other market to the extent of the lesser of the commission or the selling expenses (*see* 19 CFR 353.56(b), *see, also,* Antidumping Manual, Import Administration, International Trade Administration, Chapter 8, p. 31).

*Comment 9:* Goldstar requests that the Department conform its COS adjustments in the ESP price comparisons to the methodology ordered by the CIT in *Timken Co.* v. *United States*, 673 F. Supp. 495 (CIT 1987) (*Timken*) and in a number of other cases. In *Timken*, the CIT held that, in ESP situations, the COS adjustments for U.S. direct selling expenses should be added to FMV rather than deducted from USP.

*Department's Position:* We disagree with Goldstar. Section 772(e)(2) of the Tariff Act states that ESP sales shall be adjusted by being reduced by the amount of "expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise" (emphasis added). Therefore, we make COS adjustments in ESP comparisons by deducting all selling expenses from ESP, rather than retaining them in ESP and adding the relevant amounts to FMV. The litigation in *Timken* was withdrawn and there was no conclusive decision in the case. Further, because the issue of deducting direct selling expenses from USP or adding them to FMV is currently on appeal before the CAFC, we have followed our longstanding practice of making COS adjustments in ESP comparisons by deducting all selling expenses from the ESP for these final results. *See* our positions in the Fifth Review, Comment 33, and Eighth Review, Comment 17.

**Samwon's Comments**

*Comment 10:* Samwon argues that the Department erred by excluding two U.S. sales which occurred outside the POR. Although Samwon acknowledges that, traditionally, the Department uses the sales date as a basis for a review, Samwon notes that the products covered by these sales entered the United States within the POR. Additionally, Samwon points out that it did not participate in the prior (eighth review); thus there is no risk of analyzing certain transactions twice.

Petitioners object to the inclusion of sales that fall outside the POR. They point out the Samwon could have participated in the prior review but decided against it. Additionally, petitioners urge the Department to continue its traditional policy of including sales within the POR using the date of sale and not the date of entry.

*Department's Position:* We disagree with Samwon. Samwon voluntarily chose *not* to participate in the eighth administrative review and, therefore, forfeited the opportunity to have those sales reviewed. Because the use of date of sale, rather than date of entry, as a basis for inclusion in a POR has been

the Department's longstanding policy in this case, we have retained this methodology in these final results (*see* Color Picture Tubes from Republic of Korea, 52 FR 44186 (Nov. 18, 1987)).

**Final Results of Review**

Based on our analysis of comments received, and the correction of certain clerical errors, we have revised our preliminary results. We determine the final margins for the period April 1, 1991, through March 31, 1992, to be:

| Manufacturer/Exporter | Margin percentage |
|---|---|
| Daewoo Electronics Co., Ltd | 1.23 |
| Goldstar Electronics Co., Ltd | 0.00 |
| Samwon Electronics, Inc | 0.53 |
| Cosmos Electronics Manufacturing Korea | 16.57 |
| Quantronics Manufacturing Korea, Ltd | [1] 3.63 |
| Samsung Electronics Co., Ltd | [1] 0.37 |
| Tangkook General Electronics, Inc | 16.57 |

[1] No shipments; rate from previous review.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appropriate appraisement instructions directly to Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be as outlined above except for Samsung, which will have a cash deposit of zero percent, since its rate is *de minimis*; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise.

On March 25, 1993, the Court of International Trade (CIT), in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders.

Because this proceeding is governed by an antidumping duty order, the "all others" rate for the purposes of this review will be 13.90 percent, the "all others" rate established in the LTFV investigation (49 FR 7620, March 1, 1984).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34.(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act and 19 CFR 353.22.

Dated: March 17, 1994.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 94–6844 Filed 3–22–94; 8:45 am]

BILLING CODE 3510–DS–M

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**[A–122–401]**

## Red Raspberries From Canada; Final Results of the Antidumping Duty Administrative Review, and Revocation in Part of the Antidumping Duty Order

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Red Raspberries from Canada—Notice of Final Results of the Antidumping Duty Administrative Review, and Revocation in Part of the Antidumping Duty Order.

**SUMMARY:** On December 15, 1993, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on red raspberries from Canada (58 FR 65577). We have now completed this review and determine the margin to be zero for Clearbrook Packers Inc. (Clearbrook) and Valley Berries during the period June 1, 1991 through May 31, 1992. We also determine that Clearbrook has met the requirements for revocation.

**EFFECTIVE DATE:** March 23, 1994.

**FOR FURTHER INFORMATION CONTACT:** Sylvia Chadwick or Rick Herring, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 15, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 65577) (*Prelim*), the notice of preliminary results of its administrative review of the antidumping duty order on certain red raspberries from Canada (50 FR 26019; June 24, 1985) for the period June 1, 1991 through May 31, 1992. We gave interested parties an opportunity to comment on the preliminary results. We received no comments. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

The review initially covered four processors/exporters. We terminated the review of Universal Packers Inc. and Mukhtiar & Sons Packers Ltd. because the companies withdrew their requests for review on a timely basis in accordance with § 353.22(a)(5) of the Commerce regulations. For the remaining two companies, we found zero margins.

**Scope of the Review**

Imports covered by this review are shipments of fresh and frozen red raspberries packed in bulk containers and suitable for further processing. These products are classifiable under the Harmonized Tariff Schedule (HTS) item numbers 0810.20.90, 0810.20.10, and 0811.20.20. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

**Final Results of the Review**

As a result of our comparison of United States price to foreign market value (FMV), as discussed in the preliminary results of our review, we determine that the following margins exist for the review period:

| Processor/Exporters | Margin (percent) 6/1/91–5/31/92 |
|---|---|
| Clearbrook | 0 |
| Valley Berries | 0 |

Based on information submitted by Clearbrook during this and two previous reviews (see, Final Results of Administrative Reviews at 57 FR 49686; November 3, 1992, and 56 FR 37527; August 7, 1991), we further determine that Clearbrook has met the requirements for revocation set forth in sections 353.25(a)(2) and 353.25(b) of the Department regulations. Clearbrook has demonstrated three consecutive years of sales at not less than foreign market value and has submitted the certifications required under 19 CFR 353.25(b)(1). The Department conducted a verification of Clearbrook as required under 19 CFR 353.25(c)(2)(ii).

On the basis of no sales at less than foreign market value for a period of three consecutive years, and the lack of any indication that such sales are likely, the Department concludes that Clearbrook is not likely to sell subject merchandise at less than foreign market value in the future. Therefore, the Department is revoking the order with respect to Clearbrook.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. With respect to Clearbrook's entries, the Department will instruct Customs to terminate suspension of liquidation, to liquidate the entries without regard to antidumping duties, and to cease collecting cash deposits.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company other than Clearbrook, will be as outlined above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 2.41 percent, the "all others" rate established in the LTFV investigation (50 FR 26019; June 24, 1985), in accordance with the decisions of the Court of International Trade in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation* v. *United States*, Slip Op. 93–83 (*see Prelim*, 58 FR at 65578).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1)(B) of the Act (19 U.S.C. 1675(a)(1)(B)) and 19 CFR 353.22 and 353.25.

Dated: March 4, 1994.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 94–6840 Filed 3–22–94; 8:45 am]

BILLING CODE 3510–DS–P

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[A–588–802]

## 3.5 Inch Microdisks and Coated Media Thereof From Japan; Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration/ International Trade Administration Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On December 30, 1993, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on 3.5 inch microdisks and coated media thereof (microdisks) from Japan. The review covers one manufacturer/ exporter of this merchandise to the United States, Hitachi Maxell, Ltd. (HML), and the period April 1, 1992 through March 31, 1993.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of comments received, we have changed the final results from those presented in our preliminary results of review.

**EFFECTIVE DATE:** March 23, 1994.

**FOR FURTHER INFORMATION CONTACT:** Arthur N. DuBois or Thomas F. Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–6312/ 3814.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 30, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 69339) the preliminary results of its administrative review of the antidumping duty order on microdisks (54 FR 13406, April 3, 1989). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act), and 19 CFR 353.22.

**Scope of the Review**

Imports covered by the review are shipments of 3.5 inch microdisks and coated media thereof from Japan, currently classifiable under Harmonized Tariff Schedule (HTS) item number 8523.20.0000. The HTS item number is provided for convenience and for Customs purposes only. The written descriptions remain dispositive.

A 3.5 inch microdisk is a tested or untested magnetically coated polyester disk with a steel hub enclosed in a hard plastic jacket. These microdisks are used to record and store encoded digital computer information for access by a 3.5 inch floppy disk drive. The 3.5 inch microdisk includes single-sided, double-sided, or high-density formats. The 3.5 inch microdisk is intended for use specifically in a 3.5 inch floppy disk drive.

Coated media is the flexible recording material used in the finished microdisk. Media consists of a polyester base film to which a coating of magnetically charged particles is bonded.

This review covers one Japanese manufacturer/exporter of this merchandise to the United States, HML, and the period April 1, 1992 through March 31, 1993.

**Analysis of Comments Received**

The Department gave interested parties an opportunity to comment on the preliminary results of this administrative review as provided by section 353.38 of the Commerce Regulations. We received comments from the respondent, HML. We have corrected the clerical errors noted by the respondents, and have addressed them specifically in this notice.

*Comment 1:* HML commented that rebates and discounts should not be included in constructed value because they are price adjustments and not expenses. It cites Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from The Federal Republic of Germany, Final Results of Antidumping Duty Administrative Review (55 FR 31692, 31732, July 11, 1991), as an example of the Department's practice.

*Department's Position:* We agree. Our preliminary analysis memorandum may have made it seem as if we included rebates and discounts in constructed value. However, we did not include rebates and discounts in our preliminary constructed value calculation because it is not our policy to do so. Therefore, no change in our calculations was necessary.

*Comment 2:* HML commented that in comparing U.S. sales to constructed value, the Department made an error regarding home market inventory carrying costs of coated media. HML asserts that the Department should include these costs when determining the total amount of home market indirect expenses to deduct from constructed value just as it did in calculating the deduction from home market prices.

*Department's Position:* We agree. It was our intention as we stated in our preliminary notice that inventory carrying costs be included in the pool of indirect home market selling expenses.

Therefore, we have corrected our calculations. In accordance with our practice, we have limited the adjustment to constructed value of home market indirect expenses to the amount of indirect expenses HML incurred on its exporter's sales price transactions.

*Comment 3:* HML pointed out two clerical errors in the model match table used in the computer program which caused no matching FMV sales to be found for two of the models sold in the United States.

*Department's Position:* We agree and have corrected the our calculations accordingly.

**Final Results of the Review**

As a result of this administrative review, the Department determines that the following margin exists for the period April 1, 1992, through March 31, 1993:

| Manufacturer/producer/exporter | Margin percent |
|---|---|
| HML | 0.96 |

The Department will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) For subject merchandise exported by HML, a cash deposit of 0.96 percent; (2) For subject merchandise exported by manufacturers or exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value (LTFV) investigation, a cash deposit based on the most recently published rate in a final result or determination for which the manufacturer or exporter received a company-specific rate; (3) If the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) If neither the exporter nor the manufacturer is a firm covered in these or any previous review reviews conducted by the Department, the cash deposit rate will be 42.85 percent, the "all other" rate established in the LTFV investigation, as discussed below.

On March 25, 1993, the Court of International Trade (CIT), in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company, it can only be changed through an administrative review.

The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in a proceeding governed by an antidumping duty order.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: March 10, 1994.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 94–6846 Filed 3–22–94; 8:45 am]

BILLING CODE 3510–05–P

## Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

*Docket Number:* 94–017. *Applicant:* University of Maryland, Physics Department, College Park, MD 20742–4111. *Instrument:* Thin Film Deposition System. *Manufacturer:* Precision Research Instruments, Canada. *Intended Use:* The instrument will be used for

studies of a class of low transition temperature superconductors, mainly transition metal elemental superconductors such as Nb and binary superconductors such as Mo-Ge and Nb-N. These studies will include investigating the electrodynamics of proximity coupled superconductors and the properties of arrays of coupled Josephson junctions. In addition, the instrument will be used extensively in four courses offered by the physics department. *Application Accepted by Commissioner of Customs:* February 16, 1994.

*Docket Number:* 94–021. *Applicant:* University of Colorado at Boulder, Department of Chemistry and Biochemistry, Campus Box 215, Boulder, CO 80309–0215. *Instrument:* Cryostream Nitrogen Gas Cooler. *Manufacturer:* Oxford Cryosystems, United Kingdom. *Intended Use:* The instrument will be used for studies of crystals of protein molecules or RNA molecules in order to determine the structures of molecules at atomic resolution. The resulting structural information will be important in protein engineering and understanding how RNA molecules fold up into conformations that are biologically active. In addition, the instrument will be used for educational purposes in several chemistry courses. *Application Accepted by Commissioner of Customs:* February 17, 1994.

*Docket Number:* 94–024. *Applicant:* Lehigh University, 111 Research Drive, Bethlehem, PA 18015. *Instrument:* Measurement and Analysis of Surface Interactions and Forces. *Manufacturer:* Anutech Pty Ltd., Australia. *Intended Use:* The instrument will be used to measure: (1) The forces of interaction between polymer-bearing surfaces as a function of their distance of separation (on the order of molecular dimensions) and (2) the friction and viscosity between these surfaces. In addition, the instrument will be used for educational purposes in the graduate level course Ch.E. (Chem., Mat) 497 – Polymer Interfaces which includes 4–6 weeks of laboratory training for instrumental analysis of polymer surfaces and interfaces. *Application Accepted by Commissioner of Customs:* February 24, 1994.

*Docket Number:* 94–025. *Applicant:* Princeton University, Geological & Geophysical Sciences, Guyot Hall, Princeton, NJ 08544. *Instrument:* Calorimetric System, Model STA409C. *Manufacturer:* Netzsch.–Geratebau GmbH, Germany. *Intended Use:* The instrument will be used to conduct experiments involving quantitative scanning calorimetry and TGA/DTA of silicates, oxides, minerals and ceramics with the objective of understanding fundamental thermodynamic properties. *Application Accepted by Commissioner of Customs:* February 24, 1994.

*Docket Number:* 94–026. *Applicant:* University of North Carolina at Chapel Hill, Department of Chemistry, Chapel Hill, NC 27599–3290. *Instrument:* High Resolution Sector Mass Spectrometer, Model MAT 900. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used in the development of new and improved analytical mass spectrometry methods in research which involves biological molecules such as peptides, carbohydrates and oligonucleotides, synthetic polymers, and general organic molecules. In addition, phenomena associated with tandem mass spectrometry will be investigated. *Application Accepted by Commissioner of Customs:* February 24, 1994.

*Docket Number:* 94–029. *Applicant:* University of Florida, Department of Chemistry, PO Box 117200, Gainesville, FL 32611–7200. *Instrument:* Excimer Laser Pumped Dye Laser System, Model LPX 240i. *Manufacturer:* Lambda Physik, Germany. *Intended Use:* The instrument will be used as an excitation source for ionization of elemental species which have been vaporized in an electrothermal furnace and atomized (i.e., converted to free atoms) in an air–acetylene flame. The research will focus on the development of the method with emphasis on the analysis of trace elements in small biological samples (body fluids and tissues). *Application Accepted by Commissioner of Customs:.* February 28, 1994.

**Pamela Woods,**

*Acting Director, Statutory Import Programs Staff.*

[FR Doc. 94–6841 Filed 3–22–94; 8:45 am]

BILLING CODE 3510–DS–F

## Minority Business Development Agency

### Business Development Center Applications: Indianapolis, Indiana MSA (Service Area)

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice.

**SUMMARY:** In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from September 1, 1994 to August 31, 1995 is estimated at $198,971. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Indianapolis, Indiana geographic service area. The award number of this MBDC will be 05–10–94007–01.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an applicant not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of the MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

**DATES:** The closing date for applications is May 2, 1994. Applications must be postmarked on or before May 2, 1994.

**ADDRESSES:** Chicago Regional Office, 55 E. Monroe Street, suite 1406, Chicago, Illinois 60603, (312) 353–0182.

**FOR FURTHER INFORMATION CONTACT:** David Vega, Regional Director, Chicago Regional Office, telephone (312) 353–0182.

**SUPPLEMENTARY INFORMATION:** Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. A pre-bid conference will be held on April 5, 1994, at 10 a.m. at the Federal Building, 575 North Pennsylvania Street, Conference Room 284, Indianapolis, Indiana. Questions concerning the preceding information can be answered by the contact person in Chicago indicated above, and copies of the application kits and applicable regulations can be obtained at the above Chicago Regional Office address.

*Pre-Award Costs*—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award cost. Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

*Outstanding Account Receivable*—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

*Name Check Policy*—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

*Award Termination*—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which may cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

*False Statements*—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

*Primary Applicant Certifications*—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

*Nonprocurement Debarment and Suspension*—Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

*Drug Free Workplace*—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

*Anti-Lobbying*—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

*Anti-Lobbying Disclosures*—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

*Lower Tier Certifications*—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: March 14, 1994.

**David Vega,**

*Regional Director, Chicago, Regional Office.*

[FR Doc. 94–6705 Filed 3–22–94; 8:45 am]

**BILLING CODE 3510–21–M**

## National Oceanic and Atmospheric Administration

**[I.D. 030894A]**

## Marine Mammals

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

**ACTION:** Receipt of application for a scientific research permit (P774#2).

**SUMMARY:** Notice is hereby given that the Northeast Fisheries Science Center, National Marine Fisheries Service, 166 Water Street, Woods Hole, MA 02543, has applied in due form for a permit to take several species of cetaceans, grey seals, and harbor seals for purposes of scientific research.

**DATES:** Written comments must be received on or before April 22, 1994.

**ADDRESSES:** The application and related documents are available for review upon written request or by appointment in the following office(s): Permits

Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289); and Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

The applicant seeks authorization to conduct a number of studies on several cetacean species, and grey and harbor seals, in northeast U.S. and Canadian waters. The proposed studies include: vessel surveys, aerial surveys and photogrammetry, photo-identification studies, and the collection of biopsies. The applicant also requests authority to import and export samples of cetacean tissues taken via projectile dart for genetic analyses.

Dated: March 16, 1994.

**William W. Fox, Jr.,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 94–6756 Filed 3–22–94; 8:45 am]

BILLING CODE 3510–22–P

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**[I.D. 031194A]**

## Marine Mammals

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

**ACTION:** Issuance of Scientific Research Permit No. 893 (P112G).

**SUMMARY:** Notice is hereby given that The New York Zoological Society, Wildlife Conservation Society, 185th and Southern Blvd., Bronx, New York 10460, (Principal Investigator: Dr. William Karesh) has been issued a permit to take South American fur seals *(Arctocephalus australis)*, South American sea lions *(Otaria byronia)* and Southern elephant seals *(Mirounga leonina)* for purposes of scientific research.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment, in the following office(s): Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289); and Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200).

**SUPPLEMENTARY INFORMATION:** On February 4, 1994, notice was published in the Federal Register (59 FR 5393) that a request for a scientific research permit to import specimens from Peru and Argentina and obtained from the species listed above had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and, the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: March 16, 1994.

**William W. Fox, Jr.,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 94–6755 Filed 3–22–94; 8:45 am]

BILLING CODE 3510–22–P

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# DEPARTMENT OF DEFENSE

## Department of the Air Force

### USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Air Force Communication Needs Study Panel will meet from 8 a.m. to 5 p.m. on 19 April 1994 at Scott Air Force Base, IL.

The purpose of this meeting is to receive briefings and to have discussions concerning the Air Force communications needs. The meeting will be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 94–6787 Filed 3–22–94; 8:45 am]

BILLING CODE 3910–01–M

### USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) 1994 Summer Study Committee Panels on Core Avionics and Combat Mission will meet from 8 a.m. to 5 p.m. on 19 April 1994 at McDonnell Douglas Corporation, St. Louis, MO.

The purpose of these meetings are to receive briefings and to have discussions concerning Core Avionics and Combat Mission. These meetings will be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 94–6786 Filed 3–22–94; 8:45 am]

BILLING CODE 3910–01–M

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### USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Aircraft Self Defense Against IR Missiles Panel will meet from 8 a.m. to 5 p.m. on 7–8 April 1994 at Phillips Laboratory, NM.

The purpose of these meetings are to receive briefings and to have discussions concerning IR missiles. These meetings will be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 94–6785 Filed 3–22–94; 8:45 am]

BILLING CODE 3910–01–M

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## Department of the Army

### Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

*Name of Committee:* Army Science Board (ASB).

*Date of Meeting:* 13 April 1994.

*Time of Meeting:* 0930–1700.

*Place:* University of Central Florida, Orlando, Florida.

*Agenda:* The Army Science Board's Analysis, Test and Evaluation Issue Group will meet to discuss with Mr. Hollis the future roles and missions of the Operational Test and Evaluation Command. This meeting will be open to the public. Any interested person may attend, appear before, or file

statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 94–6707 Filed 3–22–94; 8:45 am]

BILLING CODE 3710–08–M

## Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

*Name of Committee:* Army Science Board (ASB).

*Date of Meeting:* 18 April 1994.

*Time of Meeting:* 1000–1600.

*Place:* Pentagon, Washington DC.

*Agenda:* The Army Science Board's Analysis, Test and Evaluation Issue Group will meet to discuss the future roles and missions of the Operational Test and Evaluation Command. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 94–6708 Filed 3–22–94; 8:45 am]

BILLING CODE 3710–08–M

## Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

*Name of Committee:* Army Science Board (ASB).

*Date of Meeting:* 12 April 1994.

*Time of Meeting:* 0930–1700.

*Place:* University of Central Florida, Orlando, Florida.

*Agenda:* The Army Science Board's Ad Hoc Study on "Aided Target Recognition (ATR)" will meet to discuss study objectives and plan the course of the study. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 94–6709 Filed 3–22–94; 8:45 am]

BILLING CODE 3710–08–M

## Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

*Name of Committee:* Army Science Board (ASB).

*Date of Meeting:* 12 April 1994.

*Time of Meeting:* 0930–1700.

*Place:* University of Central Florida, Orlando, Florida.

*Agenda:* The Army Science Board's 1994 Summer Study Team on "Technical Architecture for Army C4I" will meet at the Holiday Inn, University of Central Florida, Orlando Florida to build the strawman for the Technical Architecture briefings and report. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 94–6711 Filed 3–22–94; 8:45 am]

BILLING CODE 3710–08–M

## Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

*Name of Committee:* Army Science Board (ASB).

*Date of Meeting:* 12 April 1994.

*Time of Meeting:* 0830–1100 (classified).

*Place:* Orlando, FL.

*Agenda:* The Threat Team of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Intelligence Support Status Report. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 94–6710 Filed 3–22–94; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF THE NAVY

### Intent To Prepare an Environmental Impact Statement for the Proposed Disposal and Reuse of Naval Hospital Philadelphia, PA

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental effects of the disposal and reuse of the Naval Hospital (NAVHOSP) Philadelphia, Pennsylvania.

In accordance with recommendations of the Department of Defense Secretary's 1988 Commission on Base Realignment and Closure, the Navy has disestablished NAVHOSP Philadelphia. The proposed action to be analyzed in the EIS involves the disposal of land, buildings, and infrastructure of NAVHOSP Philadelphia for subsequent reuse. NAVHOSP Philadelphia consists of approximately 49 acres and a total of 56 buildings, and structures, including 47 permanent, eight semi-permanent, and one temporary facility. NAVHOSP Philadelphia is located in the southern portion of the City of Philadelphia, north of the Philadelphia Naval Base, in the County of Philadelphia.

The reuse of NAVHOSP Philadelphia has been studied by the Mayor of Philadelphia's Commission on Defense Conversion. The redevelopment/reuse plan developed by the Commission will be the basis for the EIS. The reuse plan proposes a 15 acre area for market rate housing, a five acre nursing home/assisted living facility, and a 30 acre addition to Philadelphia's Fairmount Park. The Park area would include 13 acres of passive recreation, four acres of active recreation, and 13 acres for parking. The "no action" alternative, Navy retention of NAVHOSP Philadelphia land and infrastructure in caretaker status, will be addressed in the EIS. However, because of the process mandated by the Base Closure and Realignment Act, selection of the "no action" alternative would be considered outside the jurisdiction of the Navy.

The EIS to be prepared by the Navy will address the following known areas of concern: effects of new development at the Hospital on the natural and socioeconomic environments, effects of future growth on area schools, recreations facilities and transportation systems, and the effects of reuse on any historic properties on-site. Preliminary studies indicate the most of NAVHOSP

Philadelphia is eligible for listing on the National Register of Historic Places as a historic district, with many of the buildings and structures contributing to the district's significance. Major environmental issues that will be addressed in the EIS included, but are not limited to, air quality, water quality, wetlands, endangered species, transportation, and socioeconomic impacts.

The Navy will initiate a scoping process for the purposes of determining the scope of issues to be addressed and for identifying the significant issues related to the proposed reuse alternatives. A pubic scoping meeting is scheduled for Wednesday, April 6, 1994, beginning at 7:30 p.m., at the Holy Spirit Church, in the Church Hall, 1835 Hartranft Street, Philadelphia, Pennsylvania. This meeting will be announced in the local papers.

A brief presentation will precede request for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed no later than April 29, 1994, to: Commanding Officer, Northern Division, Naval Facilities Engineering Command, 10 Industrial Highway, Lester, Pennsylvania 19113 (Attn: Mr. Robert Ostermueller, Code 202), telephone (610) 595–0759.

Dated: March 18, 1994.

**Patrick W. Kelley,**

*CAPT, JAGC, USN, Alternate Federal Register Liaison Officer.*

[FR Doc. 94–6792 Filed 3–22–94; 8:45 am]

BILLING CODE 3810–AE–M

## DEPARTMENT OF ENERGY

### Office of Arms Control and Nonproliferation

### Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement", under the Agreement for Cooperation between the Government of the United States of America and the International Atomic Energy Agency (IAEA) concerning Peaceful Application of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract Number S–IA–165, for the sale of 75 grams of uranium containing 70 grams of the isotope uranium-235 (93.3 percent enrichment) and 5 grams of uranium containing approximately 1 gram of the isotope uranium-235 to the International Atomic Energy Agency (IAEA) laboratory, Siebersdorff, Austria for use in the calibration of analytical instruments and certification of analytical method reliability.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on March 16, 1994.

**Edward T. Fei,**

*Acting Director, Office of Nonproliferation Policy, Office of Arms Control and Nonproliferation.*

[FR Doc. 94–6825 Filed 3–22–94; 8:45 am]

BILLING CODE 6450–01–M

## Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of January 31 Through February 4, 1994

During the week of January 31 through February 4, 1994 the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals:

### Applications for Exception

*Bollmann Oil Inc., 02/03/94; LEE–0061*

Bollmann Oil Inc. (Bollmann) filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that Bollmann was not adversely affected by the reporting burden in a way that is significantly different from the burden borne by similar reporting firms. Therefore, it could not be granted relief from filing. Accordingly, exception relief was denied.

*Van Dyke Gas Co., 02/03/94; LEE–0058*

Van Dyke Gas Company (Van Dyke) filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The DOE determined that Van Dyke did not meet the standards for exception relief because it was not experiencing a serious hardship or gross inequity as a result of the reporting requirements. Accordingly, exception relief was denied.

*Walker Sims Oil Co., Inc., 02/03/94; LEE–0057*

Walker Sims Oil Co., Inc. (Walker Sims), filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was not adversely affected by the reporting burden in a way that is significantly different from the burden borne by similar reporting firms. Therefore, it could not be granted relief from filing. Accordingly, exception relief was denied.

### Refund Applications

*Acme Steel Co., 02/01/94; RF272–45165; RD272–45165*

The DOE issued a Decision and Order granting an Application for Refund filed by Acme Steel Company (Acme), a producer of steel and steel products, in the Subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States cited increases in Acme's sales and earnings from 1973 to 1974. In

addition, the States submitted an affidavit of an economist stating that, in general, the steel industry was able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. In addition, the DOE found that the petroleum coke purchased by Acme originated in a crude oil refinery and was purchased from a reseller who did not substantially change its form. Therefore these purchases were found to be eligible for a crude oil refund. The refund granted to the applicant in this Decision was $75,035.

*Lou-Jak Trucking Service, 02/03/94; RC272–226*

The DOE issued a Supplemental Order concerning an Application for Refund filed by Wilson, Keller and Associates (WKA) on behalf of Lou-Jak Trucking Service (Lou-Jak) (Case No. RF272–91757). Lou-Jak was granted a refund in Linston Inc., Case Nos. RF272–91500 *et al.* (January 3, 1994). After that decision was issued, WKA informed the DOE that a substantial portion of Lou-Jak's gallonage claim was based upon purchases made by the owner-operators of vehicles whose services were rented by Lou-Jak. WKA stated that the owner-operators, not Lou-Jak, purchased this fuel. Accordingly, the DOE rescinded the portion of Lou-Jak's refund that was based on the purchases made by the owner-operators.

*Texaco Inc./Burlington Northern Railroad; Dairymen, Inc. 02/04/94; RF321–8232; RF321–8353*

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning Applications for Refund filed by Burlington Northern Railroad and Dairymen, Inc. Both of these applicants had purchased some of their Texaco products through retail outlets at locations nationwide. The applicants attempted to estimate the amount of product purchased through retail outlets using their total cost as reflected in Texaco credit card payments. The DOE found that the applicants were entitled to refunds based upon their retail purchases, but that their estimates were flawed because they used inappropriate per gallon costs in converting purchase costs to purchase volumes. The DOE calculated, for each year of the refund period, a nationwide average retail price for branded motor gasoline, and used those selling prices to calculate the applicants' purchase volumes. The applicants were granted refunds based upon both their direct Texaco purchases and their purchases through retail outlets. The refunds granted in this Decision and Order total $401,962 ($291,340 in principal plus $110,622 in interest).

*Texaco Inc./Fairwood Texaco, 02/03/94; RF321–20044*

The DOE issued a Supplemental Order concerning an Application for Refund filed by Robert West on behalf of Fairwood Texaco (Case No. RF321–9165). Fairwood Texaco was granted a refund in Texaco Inc./Gaeta Brothers Oil, Inc. Case Nos. RF321–6560 *et al.* (September 28, 1993). The DOE received another application on behalf of Fairwood Texaco filed by Robert Brisendine (Case No. RF321–16546). Mr. Brisendine claimed and documented ownership dates that overlapped with those claimed by Mr. West. In response to a request for documentation of his ownership dates, Mr. West informed the DOE that Mr. Brisendine's dates of ownership were correct. Accordingly, the DOE rescinded a portion of Mr. West's refund.

**Refund Applications**

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

| | | |
|---|---|---|
| Aaron Cope Trucking et al | RF272–75969 | 02/04/94 |
| Atlantic Richfield Company/Fun Time, Inc. et al | RF304–13257 | 02/03/94 |
| Atlantic Richfield Company/Grafco Petroleum et al | RF304–14002 | 02/04/94 |
| Atlantic Richfield Company/R.L. Douglas & Sons et al | RF304–14401 | 02/04/94 |
| Freeborn County Co-op Oil Co. | RF272–88694 | 01/31/94 |
| Farmers Union Oil Company | RF272–88726 | |
| Gulf Oil Corporation/Colony West Gulf et al | RF300–20067 | 02/01/94 |
| Gulf Oil Corporation/Jackson Asphalt & Concrete Co. Inc. et al | RF300–20628 | 02/04/94 |
| Gulf Oil Corporation/Leroy Smith Gulf Serv. Station et al | RF300–15695 | 02/01/94 |
| Gulf Oil Corporation/Val Cap, Inc | RF300–21771 | 01/31/94 |
| Southside Imports, Inc. et al | RF272–90654 | 01/31/94 |
| St. Boniface Martyr et al | RF272–77631 | 02/03/94 |
| Texaco Inc./Fred's Texaco et al | RF321–19030 | 02/01/94 |
| Texaco Inc./Glen Oaks Texaco et al | RF321–16995 | 02/04/94 |
| Texaco Inc./Rollins Oil Co | RF321–20133 | 02/04/94 |
| Texaco Inc./Transit Truck Stop, Inc | RF321–19033 | 02/03/94 |
| J.W. Lyles, Inc | RF321–19034 | |
| Valley View Medical Center et al | RF272–85111 | 01/31/94 |
| Waukee Community School District et al | RF272–80014 | 02/04/94 |
| West Genesee Central School District et al | RF272–87341 | 02/04/94 |

**Dismissals**

The following submissions were dismissed:

| Name | Case No. |
|---|---|
| Anacortes Van & Storage | RF321–19231 |
| Blessed Sacrament Church | RF272–77778 |
| D&H Trading | RF340–107 |
| Energy Advisors, Inc | RF340–90 |
| Hodges' Texaco | RF321–19134 |
| Lake Air Texaco #1 | RF321–6477 |
| Lehman's Airport Texaco | RF321–14799 |
| Luci Petroleum, Inc | RF340–92 |
| Main Shell Service Center | RF315–8357 |
| McNary's Texaco #2 | RF321–11620 |
| Sacred Heart | RF272–77730 |
| St. Edward Confessor Parish | RF272–77808 |
| St. Teresa of Avila | RF272–77775 |
| Wackenhut Services, Inc | LWA–0004 |

| Name | Case No. |
|---|---|
| White Hall Texaco | RF321-14285 |
| Winey's Texaco | RF321-11362 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m. except federal holidays. They are also available in *Energy Management:* Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: March 16, 1994.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

[FR Doc. 94-6826 Filed 3-22-94; 8:45 am]

BILLING CODE 6450-01-P

## Issuance of Proposed Decisions and Orders by the Office of Hearings and Appeals; Week of February 28 Through March 4, 1994

During the week of February 28 through March 4, 1994, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: March 16, 1994.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

**Christian County Farmers Supply Co., Taylorsville, IL, Reporting Requirements: LEE-0073**

Christian County Farmers Supply Company (CCFSC) filed an Application for Exception from the provision of filing Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The exception request, if granted, would permit CCFSC to be exempted from filing Form EIA-782B. On March 4, 1994, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

**V.W. Smith Oils, Inc., Ankeny, IA, Reporting Requirements: LEE-0081**

V.W. Smith Oils, Inc., filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not experiencing a gross inequity or serious hardship. Accordingly, on February 28, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

[FR Doc. 94-6824 Filed 3-22-94; 8:45 am]

BILLING CODE 6450-01-P

## Issuance of Proposed Decisions and Orders by the Office of Hearings and Appeals; Week of February 14 Through February 18, 1994

During the week of February 14 through February 18, 1994, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: March 16, 1994.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

**Minneola Co-Op, Inc., Minneola, KS, Reporting Requirements: LEE-0071**

Minneola Co-op, Inc., filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering a gross inequity or serious hardship. Accordingly, on February 15, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

**Ranchers Supply, Inc., Rock River, WY, Reporting Requirements: LEE-0072**

Ranchers Supply, Inc., filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering a gross inequity or serious hardship. Accordingly, on February 15, 1994, the DOE issued a Proposed Decision and

Order determining that the exception request should be denied.

[FR Doc. 94–6823 Filed 3–22–94; 8:45 am]
BILLING CODE 6450–01–P

## Issuance of Decision and Order by the Office of Hearings and Appeals; Week of February 21 Through February 25, 1994

During the week of February 21 through February 25, 1994, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order is available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: March 16, 1994.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

### McKusick Petroleum; Dover-Foxcroft, ME Reporting Requirements: LEE–0054

McKusick Petroleum (McKusick) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Sales Report." In considering this request, the DOE found that McKusick was not suffering gross inequity or serious hardship. Accordingly, on February 24, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

[FR Doc. 94–6821 Filed 3–22–94; 8:45 am]
BILLING CODE 6450–01–P

## Federal Energy Regulatory Commission

[Docket No. PR94–10–000]

### AIM Pipeline Co.; Petition for Rate Approval

March 17, 1994.

Take notice that on March 14, 1994, AIM Pipeline Company [1] (AIM) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a rate of $36.92 per MMBtu for transportation services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

AIM states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and it owns and operates an intrastate pipeline system in the State of Mississippi. Pipeline proposes an effective date of March 14, 1994.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before April 1, 1994. The petition for rate approval is on file with the Commission and is available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–6738 Filed 3–22–94; 8:45 am]
BILLING CODE 6717–01–M

[1] Effective November 1, 1994, AIM acquired all of the assets of Mississippi Fuel Company.

[Docket No. RP94–177–000]

### Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

March 17, 1994.

Take notice that on March 15, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet, with a proposed effective date of April 1, 1994:

**Original Sheet No. 94C**

Algonquin states that the purpose of this filing is to update the net balance in Algonquin's Account No. 191 to reflect a refund from an upstream supplier. Algonquin requests that the Commission waive § 154.22 of the Commission's regulations to the extent that may be necessary to place this tariff sheet into effect as requested.

Algonquin states that copies of this filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 24, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–6739 Filed 3–22–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP94–102–000]

### Carnegie Natural Gas Co.; Petition for Cancellation of Technical Conference

March 17, 1994.

Take notice that on March 14, 1994, Carnegie Natural Gas Company (Carnegie) filed with the Commission a motion to cancel a technical conference previously ordered.

On January 28, 1994, the Commission issued an order in response to Carnegie's filing to direct bill Account No. 858 costs, and established a technical conference to address the

concerns of Carnegie's customers. Carnegie states that it believes that the concerns expressed by New Jersey Natural Gas Company (New Jersey) and the Columbia Distribution Companies have already been decided by the Commission in other proceedings. Carnegie argues that the issues identified by the parties have either been resolved by the Commission or mooted as a result of the tariff sheets filed by Carnegie in Docket No. RS92–30–000, and this supports the cancellation of the technical conference in this proceeding. Carnegie also seeks an order summarily approving its tariff filing.

Carnegie states that copies of the filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 24, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–6800 Filed 3–22–94; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket Nos RP94–1–005 and RP93–161–005]**

## Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 17, 1994.

Take notice that on March 15, 1994, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet to be effective April 15, 1994:

First Revised Sheet No. 480

In accordance with the Commission's February 28, 1994, Order in Columbia's WACOG surcharge proceeding (Docket Nos. RP94–1–000 and RP93–161–000), Columbia states that the instant filing implements the terms of Columbia's Settlement in this docket.

Columbia states that copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before March 24, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–6740 Filed 3–22–94; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. EG94–34–000]**

## EI Brooklyn Power Limited; Application for Commission Determination of Exempt Wholesale Generator Status

March 17, 1994.

On March 11, 1994, EI Brooklyn Power Limited ("Equity Sub"), c/o Kelly A. Tomblin, Energy Initiatives, Inc., One Upper Pond Road, Parsippany, New Jersey 07054, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Equity Sub states on its application that it is Nova Scotia corporation formed for the purpose of acquiring and holding all of the outstanding capital stock of 2285241 Nova Scotia Limited, a Nova Scotia corporation which, in turn, will own a general partnership interest in Brooklyn Energy Limited Partnership, a Nova Scotia limited partnership formed to own an electric and steam generating facility to be located in Brooklyn, Nova Scotia, Canada.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before March 28, 1994, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–6741 Filed 3–22–94; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. EG94–35–000]**

## EI Canada Holding; Application for Commission Determination of Exempt Wholesale Generator Status

March 17, 1994.

On March 11, 1994 EI Canada Holding ("Holding Sub") c/o Kelly A. Tomblin, Energy Initiatives, Inc., One Upper Pond Road, Parsippany, New Jersey 07054 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Holding Sub is a Nova Scotia corporation formed to acquire all of the capital stock of two subsidiaries. One such subsidiary will acquire all of the voting stock of another corporation which will, in turn, acquire a general partnership interest in Brooklyn Energy Limited Partnership, a Nova Scotia limited partnership formed to own an electric and steam generating facility to be located in Brooklyn, the Province of Nova Scotia, Canada. The other subsidiary will perform certain operation and maintenance services for the facility.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before March 28, 1994 and must be served on applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–6742 Filed 3–22–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–289–000]

## Equitrans, Inc.; Application

March 17, 1994.

Take notice that on March 16, 1994, Equitrans, Inc. (Equitrans) 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP94–289–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the immediate sale for resale in interstate commerce of up to 600,000 dekatherms (dt) of natural gas under Equitrans, Inc. Rate Schedule MSS (Unbundled Merchant Service) from a certificated storage reservoir for a limited term expiring either (1) 90 days from the date of issuance of the certificate or (2) upon termination of the underlying sales contracts if such contracts extend for a period in excess of 90 days, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Equitrans states that sales would be made by Equitrans' merchant division, Equitrans Marketing Services Company (EMSC), at market-clearing rates negotiated with individual customers on an open access non-discriminatory basis under Rate Schedule MSS.

In light of the crucial winter heating requirements being experienced throughout much of the United States, Equitrans requests that the Commission grant whatever waivers of its Regulations that may be necessary to permit the proposed sales to commence no later than March 31, 1994. Equitrans further requests pregranted abandonment authorization at the expiration of the underlying contracts for the sales of the working gas.

It is stated that the proposed sales would be made from the Hunters Cave storage reservoir from gas that was injected under Equitrans' blanket certificate for testing and development.[1] Equitrans states that these newly injected volumes need to be withdrawn for testing purposes and, due to increased demand, should be made available for immediate sale to help meet this winter's heating needs.

Equitrans states that at the time the additional volumes were injected into storage as test gas at Hunters Cave, the gas was reflected in Equitrans' rate base in the amount of $2.33 per dt. Upon sale of the gas under Rate Schedule MSS at individually negotiated, market-based rates, Equitrans proposes to credit its Account No. 164 by the amount that the gas is currently reflected in the rate case. If the sale is at a price lower than the rate base amount, Equitrans states that it will absorb the difference. Equitrans submits that this passthrough of revenues to its jurisdictional customers will provide them with rate relief while maintaining the same high level of service. Equitrans contends that this is the approach recently approved by the Commission for the sale of excess storage gas in, among other cases, Panhandle Eastern Pipe Line Company, 61 FERC ¶ 61,357 at 62,433 (1992), reh'g denied on this issue, 62 FERC ¶ 61,288 at 62,883–84 (1993).

Although this and other cases involve sales-in-place, Equitrans states that the new gas at Hunters Cave must be withdrawn for operational/testing reasons and cannot be allowed to remain in storage. Equitrans contends that, nonetheless, the ratemaking determinations for sales of excess storage gas should be the same whether or not the gas remains in storage.

Equitrans states that, as in Panhandle, it will bear the full revenue risk if the market does not allow the gas to be sold above the $2.33 level reflected in the rate base. It is stated that only the revenue, if any, above the rate base level will be retained by Equitrans, through its merchant division, EMSC.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 1, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held with further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Equitrans to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–6799 Filed 3–22–94; 8:45 am]

BILLING CODE 6717–01–M

[1] Section 157.215(a)(4) of the Commission's Regulations provides that a storage field developed under these regulations will not be utilized to render service without further authorization from the Commission, except that gas may be withdrawn for testing purposes. This filing was required since Equitrans proposes to make sales of gas to be withdrawn.

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[Docket No. RP94–123–001]

## Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 17, 1994.

Take notice that on March 14, 1994, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute First Revised Sheet No. 9, with an effective date of March 1, 1994.

MRT states that the purpose of this filing is to include specific language in its FERC Gas Tariff that covers the refund distribution options available to its customers for the recovery of Account Nos. 191 and 858 costs in compliance with the Commission's Order dated February 28, 1994 in the above referenced proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before March 24, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–6743 Filed 3–22–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94-56-001]

## Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 17, 1994.

Take notice that on March 14, 1994, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet:

First Revised Sheet Number 111
Second Revised Sheet Number 118

The proposed effective date of the tariff sheet is December 30, 1993.

Northern Border states that the proposed tariff sheets are being filed in response to the Commission's December 28, 1993, order in the captioned proceeding.

Northern Border states that copies of this filing are being served upon all parties to the captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before March 24, 1994. Protests will be considered but not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94-6744 Filed 3-22-94; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP93-5-022]

## Northwest Pipeline Corp.; Compliance Filing

March 17, 1994.

Take notice that on March 11, 1994, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet.

Substitute First Revised Sheet No. 376

Northwest states that the purpose of this filing is to correct First Revised Sheet No. 376, submitted January 28, 1994, as part of Northwest's implementation of the joint offer of settlement, filed with the Federal Energy Regulatory Commission (Commission) on July 2, 1993, as modified and approved by Commission order of December 23, 1993, in the above-referenced dockets. Northwest submits this filing to correct the Index of Shippers on Sheet No. 376.

Northwest states that a copy of this filing has been served upon all intervenors in Docket Nos. RP93-5-011 and RP93-5-016, upon Northwest's jurisdictional customers, and upon affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before March 24, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94-6745 Filed 3-22-94; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP94-121-001]

## Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff

March 17, 1994.

Take notice that on March 11, 1994, in compliance with the Federal Energy Regulatory Commission's (Commission) Order Accepting Tariff Sheets Subject to Conditions, dated February 28, 1994, in Docket No. RP94-121-000 (order) Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet with a proposed effective date of March 1, 1994:

Substitute Second Revised Sheet No. 282

Northwest states that the purpose of this filing is to comply with the Commission's directives in the Order. Northwest states that it has amended the Transition Cost Reservation ("TCR") Surcharge provisions in section 27 of the General Terms and Conditions of Third Revised Volume No. 1 of its FERC Gas Tariff to remove the language relating to the recovery of other transition costs, including electronic bulletin board costs.

Northwest states that a copy of this filing has been served upon all parties on the official service list as compiled by the Secretary in this proceeding and on Northwest's jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before March 24, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94-6746 Filed 3-22-94; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP94-136-001]

## Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff

March 17, 1994.

Take notice that on March 11, 1994, Northwest Pipeline Corporation (Northwest) requested withdrawal of Fourth Revised Sheet No. 108 and the Original Sheet No. 200 that were filed on February 14, 1994, and tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets with a proposed effective date of March 1, 1994:

First Revised Sheet No. 108
First Revised Sheet No. 200

Northwest states that on February 14, 1994, in Docket No. RP94-136-000, it filed tariff sheets proposing changes to Northwest's FERC Gas Tariff ("Tariff") to provide a way for Northwest to market to new customers uncommitted firm capacity that becomes available under expiring contracts. Northwest states that two of these tariff sheets were paginated erroneously. Fourth Revised Sheet No. 108 Superseding Third Revised Sheet No. 108 and Original Sheet No. 200 should have been submitted as First Revised Sheet No. 108 Superseding Original Sheet No. 108 and First Revised Sheet No. 200 Superseding Original Sheet No. 200. Northwest states that it requests withdrawal of Fourth Revised Sheet No. 108 and the Original Sheet No. 200 that were filed on February 14, 1994. These two new tariff sheets contain the same information as the originally submitted tariff sheets except for new issue dates and the aforementioned sheet number changes.

Northwest states that a copy of this filing has been served upon all parties on the official service list as compiled by the Secretary in this proceeding and on Northwest's jurisdictional customers

and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before March 24, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–6747 Filed 3–22–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP94–176–000]

### Tennessee Gas Pipeline Co.; Complaint

March 17, 1994.

Take notice that on March 14, 1994, Selkirk Cogen Partners, L.P., (Selkirk) tendered for filing a complaint regarding Tennessee Gas Pipeline Company's (Tennessee) gas supply realignment (GSR) cost surcharge. Selkirk states that Tennessee's GSR mechanism, because it is not mileage-based, contravenes Commission policy, as enunciated in Order No. 636–B.

Selkirk states that Tennessee's GSR recovery mechanism is unjust, unreasonable and unduly discriminatory because Selkirk is required to contribute the same amount to Tennessee's GSR costs for its short 25-mile haul as long-haul shippers utilizing Tennessee's entire system.

Selkirk states that copies of the filing have been served upon each person designated on the official service list compiled by the Secretary in Tennessee's GSR proceeding, Docket No. RP93–151–000.

Any person desiring to be heard or to protest said complaint 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 rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before April 18, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before April 18, 1994.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–6748 Filed 3–22–94; 8:45 am]

BILLING CODE 6717–01–M

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## ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–4854–3]

### Control Techniques Guidelines Document; Addendum to Control Techniques Guidelines Document: Reactor Processes and Distillation Operations Processes

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

**ACTION:** Addendum to control techniques guidelines (CTG) document.

**SUMMARY:** This notice establishes adoption and implementation dates for reasonably available control technology (RACT) rules based on a CTG published on November 15, 1993, for reactor processes and distillation operations in the synthetic organic chemical manufacturing industry.

**FOR FURTHER INFORMATION CONTACT:** Mr. William L. Johnson, Air Quality Management Division (MD–15), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5245.

**SUPPLEMENTARY INFORMATION:** Section 182(b)(2) of the Clean Air Act (Act) requires that States shall submit a revision to the applicable implementation plan to include provisions to require the implementation of RACT for each category of VOC sources in the area covered by a CTG document issued by the Administrator after enactment of the Clean Air Act Amendments of 1990. This revision shall be submitted within the period set forth by the Administrator in the relevant CTG document. This time table for States to submit RACT rules is further described in section IV of appendix E, General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 18077). A CTG document for control of volatile organic compound (VOC) process vent emissions from synthetic organic chemical manufacturing industry reactor processes and distillation operations was made available to the public through a **Federal Register** notice published on November 15, 1993 (58 FR 60197). Today's notice establishes the adoption and implementation dates for RACT rules required to be developed in response to this CTG.

Any State which has not adopted an approvable RACT rule for the sources covered by this CTG must submit a RACT rule for these sources before March 23, 1995. Furthermore, States must provide for sources to install and operate the required control devices or implement the required procedures under these RACT rules no later than November 15, 1996.

Dated: March 17, 1994.

**Mary Nichols,**

*Assistant Administrator.*

[FR Doc. 94–6832 Filed 3–22–94; 8:45 am]

BILLING CODE 6560–50–P

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[FRL–4853–9]

### The Commonwealth of Puerto Rico; Adequacy Determination of State Municipal Solid Waste Permit Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Tentative Determination on Application of the Commonwealth of Puerto Rico for Full Program Adequacy Determination, Public Hearing and Public Comment Period.

**SUMMARY:** Section 4005(c)(1)(B) of the Resource Conservation Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA Section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribe Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and

requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

The Commonwealth of Puerto Rico applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed Puerto Rico's MSWLF application and certain revisions thereto, and made a tentative determination that all portions of Puerto Rico's MSWLF permit program are adequate to assure compliance with the revised Federal Criteria. Puerto Rico's application for program adequacy determination and its revisions are available for public review and comment.

Although RCRA does not require EPA to hold a hearing on any determination to approve a State/Tribe's MSWLF program, the Region has scheduled four public hearings on this tentative determination. Details appear below in the **DATES** section.

**DATES:** All comments on Puerto Rico's application for a determination of adequacy must be received by the close of business on May 12, 1994.

Two public hearings will be held at the Solid Waste Management Authority in Hato Rey, Puerto Rico on May 11, 1994. The first hearing will begin at 1 p.m. and the second hearing will begin at 7 p.m. Two additional hearings will be held at the Mayagüez City Hall in Mayagüez, Puerto Rico on May 12, 1994. The first hearing in Mayagüez will begin at 1 p.m. and the second hearing will begin at 7 p.m. Puerto Rico will participate in the public hearings held by EPA on this subject.

**ADDRESSES:** Copies of Puerto Rico's application for adequacy are available between 8:30 a.m. and 5 p.m. at the following two addresses for inspection and copying: U.S. EPA Region II Library, 26 Federal Plaza, room 402, New York, New York, 10278, telephone (212) 264–2881, and U.S. EPA Caribbean Field Office, 1413 Fernandez Juncos Avenue, Office 2A, Santurce, Puerto Rico, 00909, telephone (809) 729–6922 extension 222. Written comments should be sent to Carl-Axel P. Soderberg, Director, USEPA-Region II, Caribbean Field Office, 1413 Fernandez Juncos Avenue, Santurce, Puerto Rico, 00909. The public hearings on May 11, 1994, will be held at the Solid Waste Management Authority, 268 Ponce De Leon Avenue, Puerto Rico Home Mortgage Building, 6th Floor, Hato Rey, Puerto Rico. The public hearings on May 12, 1994, will be held at Mayagüez City Hall, Peral Street at the corner of McKinley in front of Plaza de Colon, Mayagüez, Puerto Rico.

**FOR FURTHER INFORMATION CONTACT:** Jenine Tankoos, U.S. EPA Region II, Mail Stop 2AWM, room 1006, 26 Federal Plaza, New York, New York, 10278, telephone (212) 264–1369.

**SUPPLEMENTARY INFORMATION:**

## A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine that State municipal solid waste landfill permit programs are adequate to comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice or prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "Adequate" program based on the interpretation outlined above. EPA expects States/Tribes to meet all of these requirement for all elements of a MSWLF program before it gives full approval to a MSWLF program.

## B. Commonwealth of Puerto Rico

On October 8, 1993, the Commonwealth of Puerto Rico submitted an application for adequacy determination. On February 17, 1994, Puerto Rico made a revised submission. EPA reviewed Puerto Rico's application and the revised submission, and tentatively determined that all portions of Puerto Rico's Subtitle D program are adequate to provide compliance with the revised Federal Criteria.

On October 4, 1993, Puerto Rico, acting through its Environmental Quality Board, adopted comprehensive, revised regulations governing solid waste disposal. These regulations are closely patterned after the 40 CFR part 258 Federal Criteria. Certain technical and clarifying amendments have subsequently been considered by the Board and are expected to be adopted within the next several months. The purpose of the revised solid waste regulation and the amendments thereto are to bring Puerto Rico regulations into full conformity with 40 CFR part 258 Federal Criteria. EPA has reviewed Puerto Rico's revised regulation and the technical and clarifying amendments thereto, described above, and has made a preliminary determination that their provisions are adequate to meet part 258 criteria.

The Puerto Rico Environmental Quality Board has responsibility for implementing and enforcing solid waste management regulations, including a permit program, inspection authority and enforcement activities. In its application, Puerto Rico states that adequate technical, support, and legal personnel will be assigned to implement its permit program. In addition to identifying the individuals and offices that will be assigned to this effort, Puerto Rico has specifically assigned a complement of attorneys from the Environmental Quality Board to assist in the regulatory enforcement process. Puerto Rico has determined that at present there are 61 landfills throughout the Commonwealth, of which 31 will have stopped receiving waste by April 9, 1994 and will close in direct response to part 258 requirements. Thirty landfills will remain open after April 9, 1994, of which 19 will be closed over

the next 5 to 7 years, and 11 regional landfills will thereafter remain open. In recognition of the need to revise existing landfill permits to reflect the revised regulation and part 258 criteria, Puerto Rico plans to modify existing operating permits within the next two years for the 30 landfills that will remain open after April 9, 1994. Each modified operating permit will contain compliance provisions that will bring full compliance with the revised regulation and part 258 within a year's time.

The EPA will hold four public hearings on its tentative decision. Two hearings will be held on May 11, 1994 at the Solid Waste Management Authority in Hato Rey, Puerto Rico. Two additional hearings will be held on May 12, 1994 at the Mayagüez City Hall in Mayagüez, Puerto Rico. On each of these dates, the first hearing will begin at 1 p.m. and the second hearing will begin at 7 p.m. Comments can be submitted orally at the hearing or in writing at the time of the hearing. The public may also submit written comments on EPA's tentative determination to the location indicated in the **ADDRESSES** section of this notice until May 12, 1994. Copies of Puerto Rico's application are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

EPA will consider all public comments on its tentative determination received during the public comment period and during each public hearing. Issues raised by those comments may be the basis for a determination of inadequacy for Puerto Rico's program. EPA expects to make a final decision on whether or not to approve Puerto Rico's program by June 24, 1994 and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and responses to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA will be considered to be in compliance with Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

### Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirement of section 6 of Executive Order 12866.

### Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

**Authority:** This notice is issued under the authority of Section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: March 15, 1994.

**William J. Muszynski,**

*Acting Regional Administrator.*

[FR Doc. 94–6829 Filed 3–22–94; 8:45 am]

BILLING CODE 6560–50–P

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**[OPP–34053; FRL 4764–2]**

## Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

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

**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

**DATES:** Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on June 21, 1994.

**FOR FURTHER INFORMATION CONTACT:** By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

### II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 12 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before June 21, 1994, to discuss withdrawal of the applications for amendment. This 90–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

| EPA Registration No. | Product Name | Delete From Label |
|---|---|---|
| 000016–00152 | Dragon Fruit Tree Spray Wettable | Peaches |
| 001624–00117 | 20 Mule Team Boric Acid Technical Grade | Carpets, rugs, upholstery |
| 003125–00102 | Guthion 2L | Cranberries, almonds, artichokes, eggplant, peppers, trunk spray application on plums and prunes |
| 003125–00123 | Guthion 2S | Cranberries, almonds, artichokes, eggplant, peppers, trunk spray application on plums and prunes |
| 003125–00193 | Guthion 50% Wettable Powder | Artichokes, eggplant, peppers, truck spray application on plums and prunes |
| 003125–00301 | Guthion Solupak 50% Wettable Powder | Artichokes, eggplant, peppers, trunk spray application on plums and prunes |

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

| EPA Registration No. | Product Name | Delete From Label |
|---|---|---|
| 003125–00378 | Guthion 35% Wettable Powder | Artichokes, eggplant, peppers, trunk spray application on plums and prunes |
| 003125–00379 | Guthion Solupak 35% Wettable Powder | Artichokes, eggplant, peppers, trunk spray application on plums and prunes |
| 005905–00055 | 4 Lb. Methyl Parathion | Sorghum |
| 005905–00414 | 7.5 Lb. Methyl Parathion | Sorghum |
| 007501–00127 | Flo-Pro-Imz | Seed treatment of cotton |
| 039967–00003 | 49-155 Ortho-Phenyl-phenol | Apples, cantaloupes, carrots, cucumbers, kiwi fruit, peaches, peppers (bell), pineapples, plums (fresh prunes), sweet potatoes, tomatoes, swimming pools, related swimming pool/spa uses |

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

| Company No. | Company Name and Address |
|---|---|
| 000016 | Dragon Corporation, P.O. Box 7311, Roanoke, VA 24019. |
| 001624 | U.S. Borax Inc., 26877 Tourney Rd., Valencia, CA 91355. |
| 003125 | Miles Inc., P.O. Box 4913, 8400 Hawthorn Road, Kansas City, MO 64120. |
| 005905 | Helena Chemical Co., 6075 Poplar Ave., Suite 500, Memphis, TN 38119. |
| 007501 | Gustafson, Inc., P.O. 660065, Dallas, TX 75266. |
| 039967 | Miles Inc., Mobay Road, Pittsburgh, PA 15205. |

### III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

### List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: March 9, 1994.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 94–6553 Filed 3–22–94; 8:45 am]
BILLING CODE 6560–50–F

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**[PF–594; FRL–4766–1]**

## NOR-AM Chemical Co. et al.; Filings of Pesticide Petitions

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of pesticide petitions (PP) proposing the establishment of regulations for residues of certain pesticide chemicals (inert ingredients) in or on certain agricultural commodities.

**DATES:** Comments, identified by the document control number [PF-594], must be received on or before April 22, 1994.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Tina Levine, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703)-308-8393.

**SUPPLEMENTARY INFORMATION:** This notice announces that EPA has received initial filings of pesticide petitions (PPs) as follows proposing the establishment of regulations for residues of certain pesticide chemicals (inert ingredients) in or on various agricultural commodities.

1. *PP 1E3959 and PP 1E3960.* NOR-AM Chemical Co., Little Falls Centre One, 2711 Centerville Rd., Wilmington, DE 19808, proposes to amend 40 CFR part 180 to establish a tolerance exemption for residues of *N*-(*n*-octyl)-2-pyrrolidone (PP 1E3959) and *N*-(*n*-dodecyl)-2-pyrrolidone (PP 1E3960) as inert ingredients (solvents) applied to growing crops.

2. *PP 4E4297.* Roussel Uclaf Corp., 94 Chestnut Ridge Rd., P.O. Box 30, Montvale, NJ, proposes to amend 40 CFR part 180 to establish a tolerance exemption for residues of triphenyl

phosphate as an inert ingredient (stabilizer) applied to animals.

3. *PP 3E4246.* American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08543-0400, proposes to amend 40 CFR part 180 to establish a tolerance exemption for residues of polyvinyl chloride as an inert ingredient (carrier) applied to growing crops.

**List of Subjects**

Environmental protection, Agricultural commodities, Pesticides and pests.

**Authority:** 21 U.S.C. 346a and 348.

Dated: March 10, 1994.

**Stephen L. Johnson,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 94-6836 Filed 3-22-94; 8:45 am]

BILLING CODE 6560-50-F

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[OPPTS-211035A; FRL-4766-9]

## TSCA Section 21 Petition; Response to Citizens' Petition

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

**ACTION:** Response to citizens' petition.

**SUMMARY:** On December 16, 1993, the Board of Supervisors of the County of Imperial, California, petitioned EPA under section 21 of the Toxic Substances Control Act (TSCA), to issue a test rule under section 4 of TSCA to require monitoring of the New River for chemical pollutants and subsequent health and environmental effects testing of the identified chemicals, in addition to other requested actions. This Notice announces EPA's response to Imperial County's petition.

**FOR FURTHER INFORMATION CONTACT:** Michelle Price, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. EB-67, 401 M St., SW., Washington, DC 20460, (202) 260-3790.

**SUPPLEMENTARY INFORMATION:**

### I. Summary of Petition and Response

On December 16, 1993, EPA received a petition under section 21 of TSCA from the Board of Supervisors of the County of Imperial, California. The petitioner has requested that EPA take the following actions: Require monitoring of the New River to determine the presence and level of contaminants under section 4 of TSCA; require health and environmental effects testing of detected chemicals under section 4 of TSCA; and take appropriate action under TSCA or other Federal laws to protect human health and the environment, based on the results of the testing. The petitioner requests the actions because the Board believes there are insufficient monitoring data on the chemicals in the River as well as insufficient health and environmental effects data on those chemicals.

The petitioner alleges that there may be a serious health risk to the citizens of Imperial County, California resulting from toxic chemicals and pathogens present in the New River. The petitioner also alleges that the presence of these chemicals and pathogens results from discharges by facilities located in Mexico in the vicinity of the City of Mexicali. The petitioner argues that discharges of a chemical into the New River in Mexico, where the river-borne chemical subsequently crosses the U.S. border, constitute "import" into the U.S. under TSCA. The petitioner also argues that manufacturers and processors of the pollutants in Mexico should bear the burden of conducting the testing.

In addition to the request for action under section 21 of TSCA, the petitioner states that the poor and predominantly Hispanic citizens of Imperial County who live and work along the New River, as a matter of environmental equity, are entitled to the same rigorous enforcement of environmental laws regarding water quality as citizens in other areas of the United States. Imperial County also requested that EPA raise the need for a solution to the New River problem with Mexican officials through mechanisms under the North American Free Trade Agreement (NAFTA).

The County Board has simultaneously petitioned the Agency for Toxic Substances and Disease Registry (ATSDR) for a health assessment of the New River under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. section 9601, *et. seq.*

EPA believes that additional monitoring of the New River is necessary to adequately characterize the chemical contamination in the River, and that obtaining such information is an important step in addressing New River pollution. To expedite EPA's review of the New River situation, EPA will fund work with the California Regional Water Quality Control Board (CRWQCB) to develop the monitoring data that, along with other currently available information, will allow EPA to determine with a reasonable level of confidence the identities and amounts of chemical pollutants in the New River and whether additional testing is necessary. A more detailed discussion of the proposed monitoring activities is located in Unit IV.A. of this Notice.

In light of its decision to fund the CRWQCB monitoring, EPA has determined that the imposition of a test rule to require monitoring of the River is unnecessary. The Agency will obtain the data requested by the petition by more expeditious means. Promulgating a test rule could require several years due to the notice-and-comment procedures required for agency rulemaking and the complexity of the New River situation.

With regard to the petitioner's request to impose testing to evaluate the ecological and health risks of the River pollutants, the Agency has decided that it is not currently in a position to conclude that the requisite section 4 criteria have been met. This is true even for the pollutants identified in the petition or in existing monitoring data. EPA believes it will be better able to evaluate whether it is necessary and appropriate to promulgate a section 4 test rule for ecological and health effects testing after the Agency has received and evaluated up-to-date monitoring information on the identities, levels and environmental partitioning of pollutants in the River. A more detailed discussion of this issue is contained in Unit III. of this Notice.

EPA is also continuing and/or taking a number of additional initiatives as described in Unit IV. of this Notice. These activities are aimed at addressing the pollution problems in the New River that appear to result from both international pollution coming from Mexico and pollution contributions from Imperial County.

### II. Background

*A. Statutory Requirements*

Section 21 of TSCA provides that any person may petition EPA to initiate proceedings for the issuance of rules under sections 4, 6, and 8 of TSCA.

A section 21 petition must set forth the facts which the petitioner believes establish the need for the rules requested. EPA is required to grant or deny the petition within 90 days. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons in the **Federal Register**.

Within 60 days of denial, the petitioner may commence a civil action in a U.S. district court to compel the initiation of the rulemaking requested in its petition. The court must, for a petition for a new rule, provide the

opportunity for the petition to be considered de novo.

After hearing the evidence, the court can order EPA to initiate the action requested if the petitioner has demonstrated, by a preponderance of the evidence, support for particular conclusions described in section 21.

In a challenge to an EPA denial of a section 21 petition requesting a section 4 rule, the petitioner would have to demonstrate by a preponderance of the evidence that information available to the Agency is insufficient to permit a reasoned evaluation of the effects of a chemical, that the chemical either may present an unreasonable risk or will be produced in substantial amounts and may result in significant or substantial human exposure or substantial environmental release, and that testing is necessary to characterize the risks.

Section 21 does not provide specific direction as to how the Agency should evaluate a citizen's petition, but merely states that EPA must grant or deny within 90 days. However, there are standards under section 4 for issuing regulations, and in determining whether to grant or deny, EPA must consider whether the requirements for section 4 rulemaking can be met.

Under section 4 of TSCA, EPA may issue rules to require chemical manufacturers and processors to test the chemical substances and mixtures that they produce. To issue a section 4 rule on a chemical, EPA must find either that activities involving the chemical may present an unreasonable risk of injury to health or the environment, or that the chemical is or will be produced in substantial quantities and that there is or will be significant or substantial human exposure to the chemical or that the chemical is or will be released to the environment in substantial quantities. In addition, EPA must find that existing data are insufficient to determine or predict the effects of the chemical and that testing is necessary to develop that data. EPA must be able to make all of the above findings to issue a test rule; if EPA believes on the basis of the information obtained from the petition, and from its investigation during the 90–day review period, that it cannot make all of the necessary findings, EPA will deny the section 21 petition.

One of the criteria most relevant to this petition is whether testing is necessary. Section 4 expands the concept of sufficiency provided in the section 21 standards established for the purposes of district court review, requiring that EPA find that testing is necessary to develop the data needed to evaluate a chemical before it may issue a test rule. In making this finding, EPA considers whether there are other means of obtaining data without resorting to a test rule.

The relief available under section 21 is limited to the initiation of a proceeding to issue, amend, or appeal a rule under either section 4, 6, or 8, or an order under section 5(e) or 6(b)(2). Consequently, some of the remedies requested in the petition are not within the scope of actions available through a section 21 petition.

*B. Description of the New River Problem*

The population of Mexicali, Mexico, and Calexico, U.S., like other major sister cities in the border area has grown rapidly in the last 50 years, and has paralleled the expansion of the industrial base of Mexicali. The rapid population growth in Mexicali and all along the border, coupled with rapid urban growth and unanticipated land use, has resulted in serious problems. One of these problems has been severe pressures on the urban infrastructure (e.g., wastewater treatment and collection systems).

Mexicali's existing wastewater treatment systems are inadequate for the existing volume of wastewater being generated. Since the existing treatment systems are overloaded, it is likely that the influent to the systems is not receiving sufficient treatment. In addition, Mexicali's rapid growth has resulted in communities which are not yet connected to the treatment system. In 1990, this uncollected sewage averaged about 13 million gallons per day (mgd) and, after recent improvements to the Mexicali system by the Mexican government, the uncollected flow is about 8 mgd. These flows also end up in the New River. Once the New River crosses the international boundary, it flows through Imperial County, where it is augmented by more agricultural drainage, to the Salton Sea which is also located in Imperial County.

In addition to agricultural drainage and domestic sewage, industrial wastewater reaches the New River in Mexico, either via discharge to the sewer system or direct discharge to the River. Mexican law requires that industries treat their waste, prior to discharge, to minimize impacts to the sewer system and to receiving waters. However, monitoring data from both the International Boundary and Water Commission (IBWC), the binational commission responsible for border sanitation issues, and the CRWQCB have indicated the significant presence of industrial waste in the River. Studies by CRWQCB, throughout the 1980's consistently found trace organics and trace metals in fish, water, and sediment samples. Reports describe the River as very discolored, often with a foam layer, and not swimmable or fishable. CRWQCB continued to monitor the River from 1990–1993. These monitoring data and visual observations show the flow crossing the international boundary has generally been less than in the previous decade, observations of foam are less frequent, but trace organics and metals are still detected, and the River at the international boundary is still not considered fishable or swimmable.

Pesticide runoff from Mexico into the New River is not well documented, although the petition implies that this is a problem. CRWCQB monitoring data indicate that although some DDT, DDT breakdown products, and toxaphene are emanating via the New River flow from Mexico, the primary contribution originates from normal agricultural practices within the Imperial Valley. Although no longer used in Imperial Valley, DDT, toxaphene, and possibly other pesticide residues remain on cropland from former years of usage and enter drainageways, including the New River, via tailwater runoff during cropland irrigation. Due to historical use of DDT and toxaphene, this phenomenon is common throughout the southwestern U.S.

Both the U.S. and Mexican governments have recognized the seriousness of the contamination problem of the New River, as evidenced by the Integrated Environmental Plan for the Mexican-U.S. Border Area which was released in 1992. The IBWC, with assistance from EPA, the California State Water Resource Control Board, and the CRWQCB, have negotiated binational agreements to address the New River problem. Although some steps have been taken, the problem of partially treated and untreated wastewater in the New River continues to exist.

All references for the information contained in this Unit (II.B.) can be found in the administrative record under the following heading, "Memorandum on References for the Description of the New River Problem."

## III. EPA Analysis of Approaches to Obtaining Information on Condition of the New River

EPA acknowledges that the New River appears to have serious pollution problems that have resulted from pollution coming across the border from Mexico and from within Imperial County, California. EPA recognizes that it is important to continue to work with Mexico to try to resolve border pollution

problems as well as continuing to work with the State of California and Imperial County to resolve pollution problems on the U.S. side of the border. As demonstrated in the EPA activities described below, EPA considers clean-up of the New River a high priority and is pursuing solutions to the problem domestically as well as internationally.

EPA believes that additional monitoring of the New River is necessary to adequately characterize the chemical contamination in the River, and that obtaining such information is an important step in addressing New River pollution. EPA does not believe that initiating a section 4 test rule under TSCA is the best or most expeditious way to obtain the information necessary to characterize the chemical contamination in the River. First, it could take EPA several years to initiate and complete a test rule, and the complex legal and policy issues involved in this rulemaking could further delay the process. Consequently EPA would not receive the monitoring information for several years which would result in a large gap in the monitoring data available to the Agency on the condition of the New River. Second, if monitoring is delayed because it must occur through implementation of a test rule, EPA would not be able to track the planned improvements in the Mexicali treatment facilities or identify possible currently unknown risks that immediate monitoring would enable the Agency to identify. Finally, a test rule may not cover all of the parameters of concern to the petitioner because of the limited scope of TSCA. For instance, EPA may not be able to require testing for E. coli, where it may be difficult to identify manufacturers, importers, and/or processors who would be subject to a rule.

Consequently, EPA will fund work with the CRWQCB to develop the monitoring data that, along with other currently available information, will allow the Agency to determine with a reasonable level of confidence the identities and amounts of chemical pollutants in the New River and whether additional testing is necessary. The petitioner submitted a monitoring proposal developed by the CRWQCB, similar to monitoring being considered by EPA. EPA will work with the CRWQCB to ensure that the monitoring proposal covers the parameters of concern to EPA, the CRWQCB, and the petitioner. Once the monitoring information is available, EPA, in conjunction with ATSDR, will determine what further steps are necessary and appropriate to address the concerns about the New River raised by the petitioner.

Because the additional monitoring sought by the petitioner is available more expeditiously through other mechanisms, the Agency has concluded that it is unnecessary at this time to initiate a section 4 test rule as requested by Imperial County. The potential risks that might be posed by the pollution in the New River merit a more expeditious response than would be possible by initiating a regulatory proceeding as requested by the petitioner.

With regard to the petitioner's request to impose testing to evaluate the ecological and health risks of the River pollutants, the Agency has decided that it is not currently in a position to conclude that the requisite section 4 criteria have been met. This is true even for the pollutants identified in the petition or in existing monitoring data. Much of the available information is several years old, and may not reflect a current profile of the River and its pollutants. In addition, much of the previous sampling was conducted throughout the length of the River, and as a result, the Agency cannot definitively determine the identity and extent of any pollutants entering the River from Mexico. Also, certain kinds of information that would be valuable to the Agency's assessment (e.g., sediment contamination levels) are either missing or very limited. EPA believes it will be better able to evaluate whether it is necessary and appropriate to promulgate a section 4 test rule for ecological and health effects testing after the Agency has received and evaluated up-to-date monitoring information on the identities, levels, and environmental partitioning of pollutants in the River. Moreover, EPA will be better able to coordinate with ATSDR on data needs for any health assessment it conducts once the Agency has a clearer picture of the condition of the New River--a picture that will be greatly enhanced by the additional monitoring data from the EPA-initiated tests. In the meantime, EPA will work with ATSDR to evaluate available health and ecological effects data to determine whether there are data gaps which need to be filled.

In summary, the Agency recognizes that the New River may be a significant source of human exposure to an unquantified mixture of industrial and chemical pollutants. Moreover, EPA shares Imperial County's concerns and agrees that efforts to better characterize the pollutants in the River, and their potential health effects should be continued and expanded. EPA believes it is prudent to minimize human exposure to these chemicals where reasonable, and has initiated or will initiate in the near future, actions that will significantly further this goal. Finally, as a matter of policy, the Agency believes that efforts on the part of domestic and foreign manufacturers to reduce and pretreat their industrial discharge should be strongly encouraged.

## IV. Specific Actions to Address the New River Problem

The actions that follow listed under Units A., B., and C. are not actions contemplated as a result of EPA receiving the petition. They are specific actions planned by EPA through the 1983 La Paz binational workgroup structure and by EPA unilaterally through its program offices.

### *A. Monitoring and Other Testing*

EPA will provide financial assistance to the CRWQCB, by the fall of 1994, to implement their monitoring proposal for the New River watershed. This monitoring proposal was submitted to EPA as part of the petition, and was submitted to EPA's Region 9 office by CRWQCB prior to receipt of the petition. The petitioner has indicated that the CRWQCB monitoring proposal is along the lines contemplated by the petitioner. Prior to funding, EPA and the CRWQCB will verify that the comprehensive monitoring study incorporates the parameters of concern mentioned in the petition, including pesticides.

The U.S. and Mexico will discuss a proposed program for monitoring contaminants of domestic, industrial, and agricultural origin in the Colorado River for implementation in 1994.

EPA will provide financial assistance for a study of the New River that addresses organic chemical contamination of the New River as it flows to the Salton Sea using monitoring data and water quality modelling to determine the fate of organic pollutants in the River.

EPA will coordinate with ATSDR as they conduct any activities to assess the New River. EPA will work to provide, collect, or develop additional necessary information, such as exposure or hazard information, to determine the health and environmental risks from the New River. In the event ATSDR decides not to undertake any action in response to the CERCLA 104 petition it has received, EPA will continue to independently assess the hazards and risks associated with the New River.

### *B. Wastewater Treatment*

EPA is pursuing specific authorization for Border-area projects from the "Hardship Communities"

funds set aside in EPA's FY 94 appropriation, which will include funding for the U.S. share of costs to start the New River project described in the IBWC's Minute 288. EPA will also explore additional funding mechanisms, such as the Border Environment Cooperation Commission (BECC) and the North American Development Bank (NADBank), which are currently under development in both the U.S. and Mexican financial communities.

The U.S. section of the IBWC has responded to Mexico's submittal of the proposed wastewater treatment facilities it plans to construct. The U.S. section has requested that Mexico submit a more detailed facility plan on projects that include funding by the U.S.

The U.S. and Mexico, in accordance with IBWC Minute 288, will undertake the following actions: Review and approve the specific projects; complete final design of the Mexicali II wastewater treatment plant; define the terms of financial participation for the U.S.; and agree on arrangements for the IBWC to design, construct, operate, and maintain the system.

EPA and the State of California have offered and provided technical assistance to IBWC and to Mexico in planning and designing the wastewater collection and treatment facilities for Mexicali. EPA will continue to offer similar assistance.

EPA is designing an industrial wastewater pretreatment training course for Mexican officials. This pilot training course will be taught in the Nogales, Sonora, area. Efforts will be made to subsequently target the training in Mexicali. EPA will also encourage those Mexican officials who attend the course in Nogales to share their knowledge with State of Baja California and City of Mexicali officials.

*C. Pesticides*

EPA has been informed that the CRWQCB has requested that the Imperial Irrigation District (IID) put together a list of Best Management Practices (BMP) for the control of agricultural pollutants. The IID has responded with a letter which describes their plan for developing BMP and a Drain Water Quality Improvement Plan by January 1996. CRWQCB will work with the County to implement these plans.

EPA will provide bilingual training and outreach programs on border pesticide-related issues. This training will be designed to promote the safe and appropriate use of pesticides in order to prevent future pesticide contamination in these areas. Funds will be provided to and utilized by the California Department of Pesticide Regulation and the Texas Department of Agriculture to develop and conduct bilingual pesticide training for pesticide applicators and outreach to the affected border communities along the Imperial Valley-Mexicali and the Lower Rio Grande Valley (Texas-Tamaulipas) border areas.

*D. Information Collection*

EPA has taken three interim actions to collect information on the nature of the pollutants: Sending a letter to the U.S. section of the IBWC on January 18, 1994, to ask them to request information from the Mexican section of the IBWC; sending a letter to Mexico's Secretariat for Social Development (SEDESOL) on January 25, 1994; and issuing a **Federal Register** Notice on January 26, 1994 (59 FR 3687). The U.S. section of the IBWC has requested information from the Mexican section of the IBWC.

In the letters and the **Federal Register** Notice, EPA requested any information Mexican authorities and the public may have regarding New River pollution. In the letters to the IBWC and SEDESOL, EPA also proposed contacting U.S. parent companies of maquiladoras operating in Mexicali and requesting information on releases to the New River. A maquiladora is a foreign owned industry operating in Mexico which can import raw materials into Mexico without tariffs and must export all products, including hazardous waste generated, back to the country of origin. If Mexico agrees that this action is appropriate, EPA will contact the companies and provide any information received to ATSDR or other appropriate parties. EPA will do the same with any information received from the IBWC or in response to the **Federal Register** Notice.

*E. California Action*

EPA has been informed that the State of California has requested that California-based parent companies of maquiladoras located along the California/Mexico border voluntarily provide Toxics Release Inventory (TRI) reports for those facilities. The California Environmental Protection Agency has agreed to provide EPA with copies of those reports and EPA will use those data, to the extent they can be verified, to determine possible pollutants entering the New River.

*F. Additional Action*

Notwithstanding the Agency's response to this petition, EPA may decide additional action is necessary, under TSCA or other Federal laws, to address the apparent pollution problems in the New River. EPA will make this decision by evaluating the results of any ATSDR activities, through review of the monitoring data or any other data gathered through EPA activities, and through review of the issues raised in a second TSCA section 21 petition on the New River that EPA received on February 23, 1994. This petition was submitted by the Environmental Health Coalition, the Comite Ciudadano Pro Restauracion del Canon del Padre y Servicios Comunitarios, and the Southwest Network for Environmental and Economic Justice. This new petition builds upon the Imperial County petition and requests additional actions by EPA. See Unit VIII of this Notice for more information on this second petition.

**V. Environmental Justice**

To the greatest extent practicable and permitted by law, EPA will ensure that environmental justice concerns are considered in any decision to take additional action under TSCA or other Federal laws, to address the apparent pollution problems in the New River. EPA will also ensure that any action taken with respect to the New River is consistent with the directives embodied in President Clinton's February 11, 1994 Environmental Justice Executive Order.

**VI. North American Agreement on Environmental Cooperation**

The petitioner requested EPA to pursue available remedies under the NAFTA to address the issue of pollution entering Imperial County from Mexico via the New River. The NAFTA-related approaches available to Mexico and the United States for dealing with transboundary pollution are provided by the North American Agreement on Environmental Cooperation and the U.S.-Mexico agreement establishing the BECC and the NADBank, rather than the NAFTA itself.

EPA and other agencies of the U.S. Government have just begun the process of implementing the North American Agreement on Environmental Cooperation. Many provisions of the Agreement under which the U.S. Government could potentially take action in an effort to improve the water quality of the New River as it enters the United States from Mexico are of limited utility at the present time because they require the participation of institutions that are not yet fully established, such as the Secretariate and the Council of Ministers acting within the North American Commission on Environmental Cooperation.

In addition, several of the provisions of the Agreement relating to transboundary pollution are linked to

the date on which the Agreement entered into force — January 1, 1994. In particular, action under Articles 22 through 36 of the Agreement relating to allegations by one Party of another Party's "persistent pattern of non-enforcement" of environmental law, is limited at the present time because the term "persistent pattern" is defined by Article 45 of the Agreement as "a sustained or recurring course of action or inaction beginning after the date of entry into force of [the] Agreement." Therefore, it would be extremely difficult if not impossible for the U.S. Government to demonstrate a persistent pattern of nonenforcement under the Agreement with respect to pollution of the New River in Mexico because any allegations would be limited to events since January 1, 1994.

Given the current limitations on action under the North American Agreement on Environmental Cooperation, other cooperative environmental agreements between the U.S. and Mexico may be more useful to address expeditiously pollution of the New River. Accordingly, EPA, as the U.S. National Coordinator under the 1983 U.S.-Mexico Agreement of Cooperation for the Protection and Improvement of the Environment in the Border Area (the "La Paz Agreement"), has requested from the Mexican Government any information that it may have relating to pollution of the New River in Mexico from chemical substances or mixtures. A similar request has been made of the Mexican section of the IBWC by the U.S. section of the IBWC. EPA has also determined that the La Paz Agreement, in conjunction with domestic statutes, would provide sufficient legal authority to undertake testing of the New River for chemical and other pollutants on both sides of the border, in cooperation with the Government of Mexico.

However, a remedy may be available to the petitioner (as opposed to the U.S. Government acting in behalf of the petitioner) under Article 6 of the North American Agreement on Environmental Cooperation. Under that Article, the petitioner can request Mexico to investigate possible violations of Mexico's environmental law that may be resulting in contamination of the New River. Mexico, as the requested Party, must give such requests "due consideration in accordance with law."

### VII. Public Record

EPA has established a public record of those documents the Agency considered in reviewing this petition. The record consists of documents located in the file designated by Docket Number OPPTS-211035A and Administrative Record Number 2194001, located at the TSCA Nonconfidential Information Center (NCIC). This Docket is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in TSCA NCIC, Rm. E-G102, 401 M St., SW., Washington, DC 20460. The public record consists of all documents in the OPPTS-211035A file and all documents cited in the documents in that file.

### VIII. New TSCA Section 21 Petition

On February 23, 1994, EPA received a second TSCA section 21 petition on the New River. This petition was submitted by the Environmental Health Coalition, the Comite Ciudadano Pro Restauracion del Canon del Padre y Servicios Comunitarios, and the Southwest Network for Environmental and Economic Justice. This second petition reasserts and incorporates by reference the facts alleged in the Imperial County Board of Supervisors petition, particularly the introduction, and sections III and IV. EPA will address all of the issues raised in the new petition by May 24, 1994. EPA will consider the actions described in this petition response, as well as the need for expanded action by EPA, in the response to the second petition.

### List of Subjects

Environmental protection.

Dated: March 16, 1994.

**Lynn R. Goldman,**

*Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

[FR Doc. 94-6833 Filed 3-22-94; 8:45 am]

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[OPPT-59334; FRL 4768-6]

## Certain Chemicals; Approval of a Test Marketing Exemption

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

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-94-7. The test marketing conditions are described below.

**EFFECTIVE DATES:** March 16, 1994. Written comments will be received until April 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Shirley Howard, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, D.C. 20460, (202) 260-3780.

**SUPPLEMENTARY INFORMATION:** Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-94-7. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Inadvertently the notice of receipt of the application was not published. Therefore, an opportunity to submit comments is being offered at this time. The complete nonconfidential document is available in the TSCA nonconfidential information center (NCIC), Rm. ETG-102 at the above address between 12:00 noon and 4:00 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME-94-7. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

**TME–94–7**

*Date of Receipt:* February 2, 1994. The extended comment period will close April 7, 1994.

*Applicant:* Toranaga Technologies, Inc.

*Chemical:* (G) Aliphatic Ester Oligomer.

*Use:* (G) Adhesion promoter in electrically conductive ink formulation and adhesion promoter in plastic substrate materials and coatings.

*Production Volume:* Confidential.

*Number of Customers:* 25.

*Test Marketing Period:* 24 months. Commencing on first day of commercial manufacture.

*Risk Assessment:* EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

**List of Subjects**

Environmental protection, Test marketing exemptions.

Dated: March 16, 1994.

**Charles M. Auer,**

*Director, Chemical Control Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 94–6839 Filed 3–22–94; 8:45 am]

BILLING CODE 6560–50–F

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**[OPP–00375; FRL–4764–8]**

## Guidance for Pesticides and Ground Water State Management Plans; Notice of Availability

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

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of EPA's Appendices to the Guidance for Pesticides and Ground Water State Management Plans. Appendix A outlines the process EPA will use to review, approve, and evaluate State Management Plans. Appendix B provides detailed information on a range of options a State can choose in developing the more complicated, technical aspects of a Plan, including assessments, prevention, monitoring and response methods. Appendix B also lists sources of technical information.

**ADDRESSES:** Copies of the Appendices are available at the public docket in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, Telephone number: 703–305–5805.

**FOR FURTHER INFORMATION CONTACT:** By mail: Linda Strauss, Field Operations Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1100, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA 22202, 703–305–5239.

**SUPPLEMENTARY INFORMATION:** EPA intends to propose for public comment regulations that designate individual pesticides to be subject to EPA-approved State Management Plans as a condition of their legal sale and use.

**List of Subjects**

Environmental protection.

Dated: March 10, 1994.

**Susan H. Wayland,**

*Acting Director, Office of Pesticide Programs.*

[FR Doc. 94–6834 Filed 3–22–94; 8:45 am]

BILLING CODE 6560–50–F

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## FEDERAL RESERVE SYSTEM

## CBC Bancshares, Inc., et al.; Formations of, Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 15, 1994.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. CBC Bancshares, Inc.*, Collierville, Tennessee, to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens Bank of Collierville, Collierville, Tennessee.

*2. Community Corporation*, Cannelton, Indiana, to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Perry County, Indiana, Cannelton, Indiana.

**B. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Community First Bancorp, Inc.*, Denver, Colorado, to become a bank holding company by acquiring 80 percent of the voting shares of Buffalo Bank Corporation, Buffalo, Wyoming, and thereby indirectly acquire Wyoming Bank & Trust Company, Buffalo, Wyoming.

Board of Governors of the Federal Reserve System, March 17, 1994.

**William W. Wiles,**

*Secretary of the Board.*

[FR 94–6776 Filed 3–22–94: 8:45 am]

BILLING CODE 6210–01–M

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## Citco Community Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the

Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 15, 1994.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Citco Community Bancshares, Inc.*, Elizabethton, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Citco Bancshares, Inc., Elizabethton, Tennessee, and thereby indirectly acquire Citizens Bank, Elizabethton, Tennessee.

**B. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. CNB Bancshares, Inc.*, Evansville, Indiana; to acquire through its subsidiary, OCB Acquisition Company, 100 percent of the voting shares of Oakland City Bancshares Corp., Oakland City, Indiana, and thereby indirectly acquire First Bank & Trust Company of Oakland City, Oakland City, Indiana. In connection with this application, OCB Acquisition Company, Evansville, Indiana, has applied to become a bank holding company by acquiring 100 percent of the voting shares of Oakland City Bancshares Corp., Oakland City, Indiana, and thereby indirectly acquire First Bank & Trust Company of Oakland City, Oakland City, Indiana.

**C. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Citizens State Bancshares, Inc.*, Wichita, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Bank of Cheney, Cheney, Kansas.

*2. Farmers State Bank of Hardtner ESOP*, Hardtner, Kansas; to become a bank holding company by acquiring 50 percent of the voting shares of B-K Agency, Inc., Hardtner, Kansas, and thereby indirectly acquire The Farmers State Bank, Hardtner, Kansas.

*3. First National Bank Shares, Ltd.*, Great Bend, Kansas; to merge with Urban Bancshares, Inc., Kansas City, Missouri, and thereby indirectly acquire Missouri Bank & Trust Company of Kansas City, Kansas City, Missouri.

Board of Governors of the Federal Reserve System, March 17, 1994.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 94-6779 Filed 3-22-94; 8:45 am]

BILLING CODE 6210-01-F

## Country Bancorp; Inc., Notice of Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources decreased or unfair competition, conflicts, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reason a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 12, 1994.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Country Bancorp, Inc.*, Litchfield, Illinois, to engage *de novo* in the offering of fixed rate annuity products at the offices of its three depository institution subsidiaries located in Hillsboro and Mt. Olive, Illinois, both towns of less than 5000 in population, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 17, 1994.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 94-6777 Filed 3-22-94; 8:45 am]

BILLING CODE 6210-01-M

## Financial Corporation of Louisiana, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 15, 1994.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Financial Corporation of Louisiana*, Crowley, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Crowley, Crowley, Louisiana, and Progressive Bancorporation, Inc., Houma, Louisiana, and thereby indirectly acquire 8.25 percent of Progressive Bank & Trust Company, Houma, Louisiana.

In connection with this application, Applicant also proposes to engage *de novo* in acting as principal, agent, or broker for insurance that is directly related to extensions of credit by Applicant of its subsidiaries, and limited to assuring repayment of such extensions of credit in the event of the death, disability, or involuntary unemployment of the debtor, and by making, acquiring, or servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

**B. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. First Ozaukee Capital Corp.*, Cedarburg, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of First Ozaukee Savings Bank, Cedarburg, Wisconsin.

In connection with this application, Applicant also proposes to engage *de novo* in making, acquiring, or servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

*2. TSB Financial, Inc.*, Tremont, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Tremont Savings Bank, Tremont, Illinois.

In connection with this application, Applicant also proposes to engage *de novo* in making, acquiring, or servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 17, 1994.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 94-6780 Filed 3-22-94; 8:45 am]

BILLING CODE 6210-01-F

## Heartland Financial USA, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 15, 1994.

**A. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Heartland Financial USA, Inc.*, Dubuque, Iowa; to acquire Keokuk Bancshares, Inc., Keokuk, Iowa, and thereby indirectly acquire the First Community Bank, a Federal Savings Bank, Keokuk, Iowa, and its wholly owned subsidiary, KFS Services, Inc., Keokuk, Iowa, and thereby engage in the nonbanking activity of operating a savings association pursuant to § 225.25(b)(9); and the nonbanking activity of discount brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 17, 1994.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 94-6781 Filed 3-22-94; 8:45 am]

BILLING CODE 6210-01-F

## Lee and Mary Ann Liggett Family Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 11, 1994.

**A. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Lee and Mary Ann Liggett Family Trust*, Utica, Nebraska, Lee B. Liggett, Houston, Texas; James P. Liggett, Portland, Oregon; and Scott P. Liggett, Lincoln, Nebraska, Co-Trustees; to acquire 33 percent of the voting shares of First National Utica Company, Utica, Nebraska, and thereby indirectly acquire First National Bank, Utica, Nebraska.

*2. Lewis L. & Jeane I. Lowe*, Buena Vista, Colorado; to acquire an additional 5.0 percent of the voting shares of Collegiate Peaks Bancorporation, Buena Vista, Colorado, for a total of 29.9 percent, and thereby indirectly acquire Collegiate Peaks Bank, Buena Vista, Colorado.

Board of Governors of the Federal Reserve System, March 17, 1994.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 94-6782 Filed 3-22-94; 8:45 am]

BILLING CODE 6210-01-F

### Norwest Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 11, 1994.

**A. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota, through its subsidiary American Land Title Co., Inc., to acquire a joint venture interest in Title Network Agency, Buffalo, New York, and thereby engage, *de novo*, in title insurance agency and real estate settlement activities pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y and *Norwest Corporation*, 76 Federal Reserve Bulletin 1058 (1990).

Board of Governors of the Federal Reserve System, March 17, 1994.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 94-6783 Filed 3-22-94; 8:45 am]

BILLING CODE 6210-01-F

### Robert G. Porter, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 12, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Robert G. Porter, North Salem, Indiana, to retain 10 percent and acquire an additional .45 percent, for a total of 10.45 percent of the voting shares of The North Salem State Bancorporation, North Salem, Indiana, and thereby indirectly acquire The North Salem State Bank, North Salem, Indiana.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. David T. Chen, Portland, Oregon, to acquire an additional 11.74 percent, for a total of 12.92 percent of the voting shares of American Pacific Bank, Aumsville, Oregon.

Board of Governors of the Federal Reserve System, March 17, 1994.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 94-6778 Filed 3-22-94; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Health Care Policy and Research; Filing of Annual Reports of Federal Advisory Committees

Notice is hereby given that, pursuant to section 13 of the Federal Advisory Committee Act (5 U.S.C. App. 2), the Annual Reports prepared for the public by the committees set forth below have been filed with the Library of Congress:

Dissertation Grant Review Committee
Health Care Policy and Research Contracts Review Committee
Health Care Technology Study Section
Health Services Research and Developmental Grants Review Committee
Health Services Research Dissemination Study Section
Health Services Research Training Advisory Committee
National Advisory Council for Health Care Policy, Research, and Evaluation

Copies of these reports, prepared in accordance with section 10(d) of the Federal Advisory Committee Act, are available to the public for inspection at: (1) The Library of Congress, Special Forms Reading Room, Main Building, on weekdays between 9 a.m. and 4:30 p.m.; and (2) the Information Resource Center, Agency for Health Care Policy and Research, Suite 501, 2101 East Jefferson Street, Rockville, Maryland, on weekdays between 9 a.m. and 4:30 p.m.

Copies may be obtained from Mr. James E. Owens, Committee Management Officer, Agency for Health Care Policy and Research, Suite 601, 2101 East Jefferson Street, Rockville, Maryland 20852.

Dated: March 16, 1994.

**J. Jarrett Clinton,**

*Administrator.*

[FR Doc. 94-6767 Filed 3-22-94; 8:45 am]

BILLING CODE 4160-90-P

### Agency for Health Care Policy and Research

### Notice of Assessment of Medical Technology

The Agency for Heath Care Policy and Research (AHCPR), through the Office of Health Technology Assessment (OHTA), announces that it is initiating an assessment of the safety and effectiveness of isolated pancreas transplants in the treatment of insulin dependent diabetes mellitus. This assessment will also be concerned with the specific criteria for the selection of patients for pancreas transplantation and the cost effectiveness of the technology.

The assessment consists of a synthesis of information found in the published literature and obtained from appropriate organizations in the private sector and from Public Health Service (PHS) agencies and others in the Federal Government. AHCPR assessments are conducted in accordance with sections 904(b) and (d) of the PHS Act (42 U.S.C. 299a–2(b) and (d)). Based on the assessment, a recommendation will be formulated to assist the Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS) in establishing CHAMPUS coverage policy. The information being sought by this notice is a review and evaluation of past, current, and planned research related to this technology, as well as a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characteristics of the patient population most likely to benefit from pancreas transplantation, as well as information on the clinical acceptability, effectiveness, and the extent of use of this technology is also being sought.

The AHCPR is interested in receiving information which would help in the evaluation or review of the technology as described above. To enable the interested scientific community to evaluate the information included in the assessment, AHCPR will discuss in the assessment only those data and analyses for which a source(s) can be cited. Respondents are therefore encouraged to include with their submissions a written consent permitting AHCPR to cite the sources of the data and comments provided. Otherwise, in accordance with the confidentiality statute governing information collected by AHCPR, 42 U.S.C. 299a–1(c), no information received will be published or disclosed which could identify an individual or entity described in the information, or could identify an entity or individual supplying the information.

Any person or group wishing to provide AHCPR with information relevant to this assessment should do so in writing no later than June 21, 1994 to the Office of Health Technology Assessment at the address below.

Thomas V. Holohan, M.D., Director, Office of Health Technology Assessment, AHCPR, 6000 Executive Boulevard, suite 309, Rockville, MD 20852, phone: (301) 594–4023.

Dated: March 16, 1994.

**J. Jarrett Clinton, M.D.,**

*Administrator.*

[FR Doc. 94–6768 Filed 3–22–94; 8:45 am]

BILLING CODE 4160–90–P

## Administration for Children and Families

### Agency Information Collection Under OMB Review

Under the provisions of the Federal Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of an information collection instrument to conduct a participant impact evaluation of the Transitional Living Program for Homeless Youth. This study is sponsored by the Family and Youth Services Bureau in the Administration on Children, Youth and Families (ACYF) of the Administration for Children and Families. (ACF).

**ADDRESSES:** Copies of the Information Collection Request may be obtained from Edward E. Saunders, Office of Information Systems Management, ACF, by calling (202) 205–7921.

Written comments and questions regarding the required approval for information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

**Information on Document**

*Title:* Evaluation of The Transitional Living Program (TLP) for Homeless Youth.

*OMB No.:* 0980-New OMB Request.

*Description:* The Transitional Living Program (TLP) for Homeless Youth is authorized under the Runaway Youth Act, Title III of the Juvenile Justice and Delinquency Prevention Act (JJDPA) of 1974, as amended in 1988. The legislation requires the Secretary of the Department of Health and Human Services (DHHS) to submit an annual report to Congress on the status and accomplishments of the TLP projects (Title III, part D, sec. 361(b)).

The goal of the TLP is to promote transition to selfsufficient living and to prevent long-term dependency on social services. TLP is implemented through grants to public entities (State and local governments) and to private, non-profit organizations. In 1990, 45 projects were funded, 32 were funded in 1991, and 9 were funded in 1992. Each grant is for a 3-year period, with annual continuation renewals required.

The evaluation focuses on measuring three types of particular outcomes: (1) Self-sufficiency, (2) independent living, and (3) personal income. The central feature of the participant impact evaluation design is a prospective study of TLP participants, in comparison with similar homeless youth in the same communities. The purpose of studying comparison groups is to measure what might have happened to participant youth had they not participated in the program. The impact evaluation will be conducted at 10 sites. Participant data will be collected using project management information systems and instruments adapted from other concurrent studies, to the extent possible.

*Annual Number of Respondents:* 2,882.

*Annual Frequency:* 1.

*Average Burden Hours Per Response:* .5–1.

*Total Burden Hours:* 1,807

Dated: March 11, 1994.

**Larry Guerrero,**

*Deputy Director, Office of Information Systems Management.*

[FR Doc. 94–6706 Filed 3–22–94; 8:45 am]

BILLING CODE 4184–01–M

## Food and Drug Administration

### Advisory Committee; Notice of Meeting

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

**ACTION:** Notice.

**SUMMARY:** This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

**MEETING:** The following advisory committee meeting is announced:

### Psychopharmacologic Drugs Advisory Committee

*Date, time, and place.* April 25 and 26, 1994, 8:30 a.m., conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

*Type of meeting and contact person.* Open public hearing, April 25, 1994, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open public hearing, April 26, 1994, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Michael A. Bernstein, Center for Drug Evaluation and Research (HFD–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4020.

*General function of the committee.* The committee reviews and evaluates

data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of psychiatry and related fields.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 18, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* On April 25, 1994, the committee will discuss the safety and effectiveness of Deracyn® (adinazolam mesylate), new drug application (NDA) 20–158, Upjohn, for use in the treatment of panic disorder. On April 26, 1994, the committee will discuss the safety and effectiveness of Prozac® (fluoxetine HCL), NDA 18–936, Eli-Lilly, for use in the treatment of bulimia.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: March 17, 1994.

**Jane E. Henney,**

*Deputy Commissioner for Operations.*

[FR Doc. 94–6765 Filed 3–22–94; 8:45 am]

BILLING CODE 4160–01–F

## Health Resources and Services Administration

**[PN 2202]**

**RIN 0905–ZA14**

## Healthy Start Initiative—Special Project Grants

**AGENCY:** Health Resources and Services Administration (HRSA), PHS.

**ACTION:** Notice of availability of funds.

**SUMMARY:** The Health Resources and Services Administration (HRSA) announces the availability of fiscal year 1994 funds for an open competition for Healthy Start Initiative—Special Projects grants (HSI–SP). The purpose of the HSI–SP is to expand the Healthy Start Initiative to include community-based programs that will significantly reduce infant mortality through the development and implementation of special targeted interventions. Competition is open to rural and urban community-based programs that are developing and implementing innovative strategies for the purpose of reducing infant mortality. Awards will be made by the Maternal and Child Health Bureau under the program authority of Section 301 of the Public Health Service Act. Funds for the HSI–SP Grants were appropriated under Public Law 103–112. Up to $4,000,000 is available for four projects at up to $1,000,000 per year, renewable for a second year, subject to funds availability.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS led national activity for setting priority areas. The HSI–SP grant program will directly address the Healthy People 2000 objectives related to maternal and infant health, and especially health status objective 14.1, to reduce the infant mortality rate to no more than 7 per 1000 live births. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202 783–3238).

**ADDRESSES:** Grant applications (Revised PHS form 5161–1, approved under OMB clearance number 0937–0189) and guidance for applicants must be obtained from, and applications submitted to: Grants Management Branch, Maternal and Child Health Bureau, HRSA, room 18–12, Parklawn Building, 5600 Fishers Lane, Rockville

Maryland 20857, telephone 301 443–1440.

**DATES:** The application deadline date is May 23, 1994. Applications will be considered to be on time if they are either: (1) Received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants should request a legibly dated receipt from a commercial carrier or the U.S. Postal Service, or obtain a legibly dated U.S. Postal Service postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications or those sent to an address other than specified in the ADDRESS section will be returned to the applicant.

**FOR FURTHER INFORMATION CONTACT:** Requests for technical or programmatic information should be directed to Thurma McCann, M.D., M.P.H., Director, Division of Healthy Start, Maternal and Child Health Bureau, HRSA, 12300 Twinbrook Parkway, Suite 200, Rockville, Maryland 20852, telephone 301 443–0543. Requests for information concerning administration and business management issues should be directed to Jeanne Conley, Grants Management Specialist, at the address listed in the ADDRESS section above.

**SUPPLEMENTARY INFORMATION:**

**Program Background and Objectives**

The specific goal of the Healthy Start Initiative—Special Projects is to significantly reduce in two years high infant mortality rates in rural or urban designated project areas through accelerated implemention of innovative strategies. Therefore, it is expected that the programs will incorporate the principles of innovation, community commitment, and personal responsibility and, in doing so, improve access to care. To accomplish this goal, prospective applicants must have an established consortium which has a minimum of two years experience with planning and implementation of infant mortality strategies, including an extensive public information campaign. In addition, applicants must have the capacity and willingness to develop a management information system to track project interventions and to participate in an extensive national evaluation with currently funded Healthy Start projects.

Finally, Federal Healthy Start Initiative—Special Projects grant funds may only be used to supplement, and not to supplant or replace, either existing State or local funds, or State or local funds that would otherwise be made available to the project.

**Eligible Project Areas**

Areas targeted under the Healthy Start Initiative—Special Projects are those in which infant mortality problems are most severe, resources can be concentrated, implementation is manageable, and progress can be measured. A project area is defined as one which is composed of one or more contiguous geographic areas or neighborhoods for which improvements have been planned and are being implemented with the principles of: Innovation, community commitment and involvement, increased access, service integration, and personal responsibility. Project areas must represent a reasonable and logical catchment area in which a consortium for delivering services is already operational, and for which infant mortality reduction strategies are already designed.

To be eligible for funding under the HSI–SP, a project area must have at least 50 but no more than 200 infant deaths per year, and must have an average infant mortality rate of at least 14.5 deaths per 1000 live births, from vital statistics data, for the 3-year period 1988–1990. The minimum of fifty infant deaths per year is meant to assure selection of communities with a sufficient magnitude of the problem to justify concentrating resources to reduce infant mortality. The upper limit of 200 infant deaths per year is meant to assure projects of a manageable size. The eligibility thresholds are identical for urban and rural areas.

**Eligible Applicants**

Eligible applicants are public or nonprofit private organizations, and tribal organizations, applying on behalf of an existing community-based consortium. Applications must be approved by the chief elected official of the city or county in which the project area is located (or, if there is more than one such entity, the chief elected officials acting in concert), or by the tribal leadership of the tribe or tribal organization which has jurisdiction over the project area. No more than one application may be made for a given project area.

The 15 entities that are currently receiving Healthy Start Initiative funds are not eligible for Special Project grants.

**Review Criteria**

Applications for grants will be reviewed and evaluated according to the following criteria:

1. Existence of an operational consortium that includes appropriate representation of project area providers and consumers.

2. The effectiveness of the consortium's activities over the previous two years, as demonstrated by implemented strategies to reduce infant mortality.

3. The extent to which the applicant's proposed activities appear feasible and likely to achieve the project's goals and objectives within the two year project period.

4. Demonstrated ability to maximize and coordinate existing resources and acquire additional resources.

5. Substantial involvement of the State and local Maternal and Child Health and other agencies.

6. Demonstrated ability to effectively manage the project's fiscal resources.

7. Demonstrated leadership capability in achieving project goals and objectives in the last two years.

8. Reasonableness of the proposed budget.

9. Other factors which the Secretary determines will increase the potential of the project to significantly reduce the rate of infant mortality in the project area.

**Preference and Priorities**

Funding preference will be given to an approved applicant who: (1) Has an operational infant mortality initiative of at least two years duration; (2) has a strong established community-based consortium that has identified and begun to address local needs and priorities; and (3) has demonstrated the ability to generate private sector funding. Within any group of preferred applicants, priority will be given to applicants from States that do not already have a funded Healthy Start Initiative grant. Because of time constraints, public comments on the funding preference and the funding priority are not being solicited.

**Allowable Costs**

The Health Resources and Services Administration will support reasonable and necessary costs of Healthy Start Initiative Special Project grants within the scope of approved activities. Allowable costs may include salaries, equipment and supplies, travel, contractual, consultants, and others, as well as indirect costs. HRSA adheres to administrative standards reflected in the Code of Federal Regulations 45 CFR part 92 and 45 CFR part 74. All other sources of funding to support this project must be accurately reflected in the applicant's budget.

**Reporting Requirement**

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR part 74, subpart J, Monitoring and Reporting of Program Performance, with the exception of State and local governments, to which 45 CFR part 92, subpart C reporting requirements will apply. Financial reporting will be required in accordance with 45 CFR part 74, subpart H, with the exception of State and local governments, to which 45 CFR 92.20 will apply.

**Public Health System Reporting Requirements**

This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, community-based nongovernmental applicants must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions. Community-based non-governmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date: (a) A copy of the face page of the application (SF 424).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

**Executive Order 12372**

This program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for review. Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date.

The OMB Catalog of Federal Domestic Assistance number is 93.926.

Dated: March 1, 1994.

**Ciro V. Sumaya,**

*Administrator.*

[FR Doc. 94–6692 Filed 3–22–94; 8:45 am]

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[PN #2187]

RIN 0905–ZA10

## Special Project Grants and Cooperative Agreements; Maternal and Child Health Services; Federal Set-Aside Program

**AGENCY:** Health Resources and Services Administration (HRSA), PHS.

**ACTION:** Notice of availability of funds.

**SUMMARY:** The Maternal and Child Health Bureau (MCHB), HRSA, announces that fiscal year (FY) 1994 funds are available for grants and cooperative agreements for the following activities: Maternal and Child Health (MCH) Special Projects of Regional and National Significance (SPRANS), including special MCH improvement projects which contribute to the health of mothers, children, and children with special health care needs (CSHCN); MCH research and training; and genetic disease testing, counseling and information services. Awards will be made under the program authority of section 502(a) of the Social Security Act, the MCH Federal Set-Aside Program.

Of the approximately $101.4 million available for SPRANS activities in FY 1994, about $29.6 million will be available to support approximately 146 new and competing renewal projects at an average of $202,700 per award for one year under the MCH SPRANS Federal Set-Aside Program. The remaining funds will be used to support continuation of existing SPRANS activities. The actual amounts available for awards and their allocation may vary, depending on unanticipated program requirements and the volume and quality of applications. Awards are made for grant periods which generally run from 1 up to 5 years in duration. Funds for the MCH Federal Set-Aside Program are appropriated by Public Law 103–112. The regulation implementing the Federal Set-Aside Program was published in the March 5, 1986, issue of the **Federal Register** at 51 FR 7726 (42 CFR part 51a).

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The MCH Block Grant Federal Set-Aside Program addresses issues related to the Healthy People 2000 objectives of improving maternal, infant, child and adolescent health and developing service systems for children with special health care needs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office Washington, DC 20402–9325 (telephone: 202 783–3238).

**ADDRESSES:** Grant applications for the MCH SPRANS Federal Set-Aside Program must be obtained from and submitted to: Chief, Grants Management Branch, Office of Program Support, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1440. Applicants for research projects will use Form PHS 398, approved by the Office of Management and Budget (OMB) under control number 0925–0001. Applicants for training projects will use Form PHS 6025–1, approved by OMB under control number 0915–0060. Applicants for all other projects will use application Form PHS 5161–1 with revised face page DHHS Form 424, approved by OMB under control number 0937–0189. Requests should specify the category or categories of activities for which an application is requested so that the appropriate forms, information and materials may be provided.

**DATES:** Potential applicants are invited to request application packages for the particular program category in which they are interested, and to submit their applications for funding consideration. Deadlines for receipt of applications differ for the several categories of grants and cooperative agreements. These deadlines are as follows:

MCH FEDERAL SET-ASIDE COMPETITIVE GRANT AND COOPERATIVE AGREEMENTS ANTICIPATED DEADLINE, AWARD, FUNDING, AND PROJECT PERIOD INFORMATION, BY CATEGORY, FY 1994

| Funding source category | Application deadline | Estimated number of awards | Estimated amounts available | Project period |
|---|---|---|---|---|
| (1) Grants in the following areas: | | | | |
| 1.1 Research | Cycle 1: March 1, 1994 | Up to 20 | $2.5 million | Up to 5 years. |
| 1.2 Training | Cycle 2: August 1, 1994.. | | | |
| 1.2.1 Long term | April 15, 1994 | Up to 28 | $13.4 million | Up to 5 years. |
| 1.2.2 Continuing education | July 1, 1994 | Up to 16* | $750,000 | Up to 3 years. |
| 1.3 Genetic Disease Testing, Counseling and Information. | April 25, 1994 | Up to 18 | $3 million | 3 years. |
| 1.4 Special MCH Improvement Projects (MCHIP) of Regional and National Significance in the following areas: | | | | |
| 1.4.1 Maternal, infant, child, and adolescent health. | May 19, 1994* | Up to 12* | $1.25 million* | Up to 4 years.* |
| 1.4.1.1 School Health Program | (Date to be announced) | Up to 10 | $2.5 million | Up to 2 years. |
| 1.4.2 Health Care Reform for CSHCN | May 10, 1994 | Up to 24* | $3.5 million | 4 years. |
| 1.4.3 Data Utilization (cooperative agreements). | June 15, 1994 | 3* | $500,000 | Up to 3 years. |
| 1.4.4 Healthy Tomorrows Partnership for Children. | May 2 | Up to 10 | $500,000 | 5 years. |
| 1.4.5 Field-Initiated Projects | April 1 , 1994, August 15, 1994 | Up to 10 | Up to $500,000 . | Up to 5 years. |
| (2) Cooperative Agreements (MCHIPs) in the following areas: | | | | |
| 2.1 CSHCN Child and Adolescent Service System Program (CASSP). | May 10, 1994 | 1 | $1.5 million | Up to 5 years. |

* This is a change from information in an Advance Notice of Application Dates published in the **Federal Register** on February 2 at 59 FR 4925.

Applications will be considered to have met the deadline if they are either: (1) Received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants should request a legibly dated receipt from a commercial carrier or the U.S. Postal Service, or obtain a legibly dated U.S. Postal Service postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications or those sent to an address other than specified in the **ADDRESSES** section will be returned to the applicant.

**FOR FURTHER INFORMATION CONTACT:** Requests for technical or programmatic information should be directed to: Audrey H. Nora, M.D., M.P.H., Director, Maternal and Child Health Bureau, HRSA, Room 18–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Requests for category-specific technical information should be directed to the contact persons identified below for each category covered by this notice. Requests for information concerning business management issues should be directed to: John Gallicchio, Grants Management Officer (GMO), Maternal and Child Health Bureau, at the address specified in the **ADDRESSES** section.

**SUPPLEMENTARY INFORMATION:** To facilitate the use of this announcement, information in this section has been organized, as outlined in the Table of Contents below, into a discussion of: Program Background, Special Concerns, Overall Review Criteria, SPRANS Program, and Eligible Applicants. In addition, discussion of the SPRANS program is divided into specific funding categories and sub-categories and for each category and sub-category, information is presented under the following headings:

- Application Deadline
- Purpose
- Priorities/Special Concerns
- Grants/Amounts
- Contact

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## 1. Program Background and Objectives

Under Section 502 of the Social Security Act, as amended by the Omnibus Budget Reconciliation Act (OBRA) of 1989, 12.75 percent of amounts appropriated for the Maternal and Child Health Services Block Grant in excess of $600 million are set aside by the Secretary of Health and Human Services (HHS) for special Community Integrated Service Systems projects under Section 501(a)(3) of the Act. Of the remainder of the total appropriation, 15 percent of the funds are to be retained by the Secretary to support (through grants, contracts, or otherwise) special projects of regional and national significance, research, and training with respect to maternal and child health and children with special health care needs (including early intervention training and services development); for genetic disease testing, counseling, and information development and dissemination programs; for grants (including funding for comprehensive

hemophilia diagnostic treatment centers) relating to hemophilia without regard to age; and for the screening of newborns for sickle cell anemia, and other genetic disorders and follow-up services. The MCH SPRANS set-aside was established in 1981. Support for projects covered by this announcement will come from the SPRANS set-aside.

**2. Special Concerns**

In its administration of the MCH Services Block Grant, the MCHB places special emphasis on improving service delivery to women and children from culturally identifiable populations who have been disproportionately affected by barriers to accessible care. This means that SPRANS projects are expected to serve and appropriately involve in project activities members of ethnoculturally distinct groups, unless there are compelling programmatic or other justifications for not doing so. The MCHBs intent is to ensure that project outcomes are of benefit to culturally distinct populations and to ensure that the broadest possible representation of culturally distinct and historically underserved groups is supported through programs and projects sponsored by the MCHB.

Projects supported under SPRANS are expected to be part of community-wide, comprehensive initiatives, to reflect appropriate coordination of primary care and public health activities, and to target HRSA resources effectively to fill gaps in the Nation's health system for at-risk mothers and children. This applies especially to projects in the 15 communities in the Nation which have received grants from HRSA under the Healthy Start initiative. Grantees in these communities providing services related to activities of a Healthy Start program are expected to coordinate their projects with the Healthy Start program efforts. Healthy Start communities include: Aberdeen Area Indian Nations, NE/ND/SD; Baltimore, MD; Birmingham, AL; Boston, MA; Chicago, IL; Cleveland, OH; Detroit, MI; Lake County, IN; New Orleans, LA; New York, NY; Oakland, CA; Philadelphia, PA; Pittsburgh, PA; PeeDee Region, SC; Washington, DC.

**3. Project Review and Funding**

The Secretary will review applications for funds under the specific project categories in section 4 below as competing applications and will fund those which, in the Secretary's judgement, are consistent with the statutory mandate, with special emphasis on improving service delivery to women and children from culturally distinct populations; and which best address achievement of the Healthy People 2000 objectives related to maternal, infant, child and adolescent health and service systems for children at risk of chronic and disabling conditions, and otherwise best promote improvements in maternal and child health.

*3.1 Criteria for Review*

The following criteria are used, as pertinent, to review and evaluate applications for awards under all SPRANS grants and cooperative agreement project categories announced in this notice. Further guidance in this regard is supplied in application guidance materials, which may specify variations in these criteria.

—The quality of the project plan or methodology.
—The need for the services, research, training or technical assistance.
—The cost-effectiveness of the proposed project relative to the number of persons proposed to be benefitted, served or trained, considering, where relevant, any special circumstances associated with providing care or training in various areas.
—The extent to which the project will contribute to the advancement of MCH and/or CSHCN services.
—The extent to which rapid and effective use of grant funds will be made by the project.
—The effectiveness of procedures to collect the cost of care and service from third-party payment sources (including government agencies) which are authorized or under legal obligation to make such payment for any service (including diagnostic, preventive and treatment services).
—The extent to which the project will be integrated with the administration of the Maternal and Child Health Services block grants, State primary care plans, public health, and prevention programs, and other related programs in the respective State(s).
—The soundness of the project's management, considering the qualifications of the staff of the proposed project and the applicant's facilities and resources.
—The extent to which the project gives special emphasis to improving service delivery to women and children from culturally identifiable populations who have been disproportionately affected by barriers to accessible care and ensures that members of culturally distinct groups are appropriately represented in the activities of approved grants and cooperative agreements.
—In communities with Healthy Start projects, a commitment by applicants whose projects are related to activities of a Healthy Start program to coordinate their projects with Healthy Start program efforts.
—The strength of the project's plans for evaluation.
—The extent to which the application is responsive to special concerns and program priorities specified in this notice.

*3.2 Funding of Approved Applications*

Final funding decisions for SPRANS grants are the responsibility of the Director, MCHB. In considering scores for the ranking of approved applications for funding, preferences may be exercised for groups of applications, e.g., competing continuations may be funded ahead of new projects. Within any category of approved projects, the score of an individual project may be favorably adjusted if the project addresses specific priorities identified in this notice. In addition, special consideration in assigning scores may be given by reviewers to individual applications that address areas identified in this notice as special concerns.

**4. Special Projects of Regional and National Significance**

Project categories for SPRANS awards are grouped in this notice under two sections: Grants and Cooperative Agreements.

*4.1. Grants*

Four major categories of SPRANS grants [1] are discussed below: Research; Training; Genetic Disease Testing, Counseling and Information; and Maternal and Child Health Improvement Projects (in 5 sub-categories):

4.1.1. Category: Research

• *Application Deadline:* March 1 and August 1, 1994.

• *Purpose:* To encourage research in maternal and child health which has the potential for ready transfer of findings to health care delivery programs.

• *Priorities/Special Concerns:* Special consideration will be given to projects which address the factors and processes that lead to disparities in health status and use of services among minority and other disadvantaged groups.

Research grants may be made only to public or nonprofit institutions of higher learning and public or nonprofit private agencies and organizations

[1] This year, hemophilia treatment centers will all be funded as noncompeting continuation grants, subject to evaluation for proper performance.

engaged in research or in maternal and child health or programs for CSHCN.

• *Grants/Amounts:* Approximately $2.5 million will be available to support up to 20 new or competing renewal research projects at an average of $125,000 per award for one year. Project periods are up to 5 years.

• *Contact:* For programmatic or technical information, contact: Gontran Lamberty, Dr. P.H., telephone: 301 443–2190.

4.1.2. Training

Training projects are announced in two sub-categories: Long Term Training and Continuing Education.

4.1.2.1. Long Term Training

• *Application Deadline: April 15, 1994.*

• *Purpose:* Awards to institutions of higher learning to support and strengthen MCH programs through long term training of health professionals at the graduate and postgraduate levels, with a special focus on family-centered, community-based care. The programs are designed to develop leadership personnel to provide for comprehensive health, including health promotion and disease prevention, and related services to mothers and children and to address special issues, such as HIV; injury; minority health concerns; and substance abuse. Training is provided to a wide range of health professionals who serve mothers and children.

• *Priorities/Special Concerns:* The following categories have been identified for competition under the MCH long term training program in FY 1994:

—MCH Training in Schools of Public Health.
—University Affiliated Programs.

Training grants may be made only to public or nonprofit private institutions of higher learning.

• *Grants/Amounts:* About $13.4 million will be available to support up to 28 new or competing renewal long term training projects in the listed priority areas. Grant awards in different priority areas vary between $178,000 and $895,000 for one year. Project periods are up to 5 years.

• *Contact:* For programmatic and technical information, contact Elizabeth Brannon, M.S., R.D., telephone: 301 443–2190.

4.1.2.2. Continuing Education

• *Application Deadline:* July 1, 1994.

• *Purpose:* To support and strengthen MCH programs through short term, non-degree related training of health professionals and others providing health and related services for mothers and children; workshops; seminars; institutes; and other related activities intended to develop or improve standards, practices or delivery of health care for the MCH population.

• *Priorities/Special Concerns:* Funding preference in this category will be given to directed continuing education projects (i.e., those in solicited formats) in the following areas:

—MCH Leadership Skills Training Institute.
—Maternal Nutrition.
—Pediatric Emergency Care Systems.
—Genetics.

Funding priority, in the form of a favorable priority score adjustment of 0.5 points in a 4 point range, will be given to nondirected projects (i.e., those whose formats are unspecified) in one or more of the following areas, although projects on other topics are acceptable:

—Adolescent Development.
—Curriculum Development.

In addition, a funding priority will also be placed on projects from historically Black colleges and universities (HBCUs). An approved proposal from an HBCU will receive a 0.5 point favorable adjustment of the priority score in a 4 point range before funding decisions are made.

Training grants may be made only to public or nonprofit private institutions of higher learning.

• *Grants/Amounts:* Approximately $750,000 will be available to support up to 16 new or competing renewal continuing education training projects. This is a change from information in an Advance Notice of Application Deadline Dates published in the **Federal Register** on February 2 at 59 FR 4925. Of this amount, $275,000 will fund one MCH Leadership Skills Training Institute, $75,000 will fund one Maternal Nutrition project, $50,000 will fund up to 2 Pediatric Emergency Care Systems projects and $75,000 will fund up to 4 genetics projects. Approximately $275,000 will be available to support up to 10 new or competing renewal nondirected continuing education training projects, at about $25,000 per award for one year. Project periods are up to 3 years.

• *Contact:* For programmatic or technical information, contact Elizabeth Brannon, M.S., R.D., telephone: 301 443–2190.

4.1.3. Genetic Disease Testing, Counseling and Information.

• Application Deadline: April 25, 1994

• *Purpose:* To increase access to effective genetic information, education, testing and counseling services.

• *Priorities/Special Concerns:* Applicants in the genetic services program are invited to submit proposals in the areas of:

—Genetics in primary care.
—Ethnocultural barriers.
—Regional genetic services networks.
—Cooley's Anemia/Thalassemia.
—Comprehensive care for children with Sickle Cell Disease.
—Transition from pediatric to adult care.

• *Grants/Amounts:* About $3 million will be available to support up to 6 competing renewal projects and up to 12 new projects. An average of about $166,500 per award for one year is anticipated. Project periods are up to 3 years.

• *Contact:* For programmatic or technical information, contact: Jane S. Lin-Fu, M.D., telephone: 301 443–1080.

4.1.4. Maternal and Child Health Improvement Projects

Maternal and Child Health Improvement Projects (MCHIP) are divided into 5 sub-categories: Maternal, Infant, Child, and Adolescent Health; Health Care Reform for Children with Special Health Care Needs; Data Utilization and Enhancement; Healthy Tomorrows Partnerships for Children; and Field-Initiated Projects.

4.1.4.1. Maternal, Infant, Child, and Adolescent Health

• *Application Deadline:* May 19, 1994 (Revised deadline).

• *Purpose:* To improve the health of all mothers, infants, children, and adolescents. Demonstration projects in this category will focus on developing preventive intervention strategies to improve reproductive health, promote infant health, and reduce infant mortality and morbidity in rural areas and smaller urban communities.

• *Priorities/Special Concerns:* A funding priority will be placed on projects from historically Black colleges and universities (HBCUs). An approved proposal from an HBCU will receive a 0.5 point favorable adjustment of the priority score in a 4 point range before funding decisions are made.

• *Grants/Amounts:* About $1.25 million will be available to support up to a total of 12 new projects, at an average of about $100,000 per award for one year. Project periods are up to 4 years except where otherwise noted. This is a change from information in an Advance Notice of Application Deadline Dates published in the **Federal Register** on February 2 at 59 FR 4925.

• *Contact:* For programmatic or technical information, contact David

Heppel, M.D., telephone: 301 443–2250.

4.1.4.1.1 School Health Program

• *Application Deadline: Date to be announced*

• *Purpose:* To address critical health problems and health-damaging behaviors of the school age population, including children with special health care needs. This initiative, a demonstration of concepts currently under consideration as a health care reform measure, is designed to improve accessibility and increase utilization of comprehensive health and health-related services geared to developmental needs; and to assist States to develop πfull service schoolsλ which meet communities need for provision of comprehensive, culturally competent and integrated health, psychosocial, and education services to all children and adolescents. Coordination and collaboration among State MCH programs, local health departments, community and migrant health centers, State and local education agencies, and community-based organizations will be emphasized. Projects will be supported in staff development, service demonstrations, and consumer health education and promotion demonstrations.

This activity is a joint program initiative with the Bureau of Primary Health Care (BPHC), HRSA, and will shortly be announced in greater detail in a separate **Federal Register** notice, with a separate due date.

• *Priorities/Special Concerns:* Priorities and special concerns have yet to be determined.

• *Grants/Amounts:* About $1.5 million will be available to support up to 10 school health staff development projects, at an average of $150,000. An additional $1.0 million, together with funds to be made available by BPHC, will be available for combined projects to address service demonstrations and consumer health education and promotion demonstrations. Additional details will be announced.

• *Contact:* Contact(s) to be announced.

4.1.4.2. Health Care Reform for Children With Special Health Care Needs

• *Application Deadline:* May 10, 1994.

• *Purpose:* To address issues in the current environment of cost containment, managed care, and the anticipated movement toward universal, basic health insurance coverage that relate to children with special health care needs, their families and providers, and the public health system's role in their care. The focus is on elimination of barriers to adequate, appropriate and high quality care that may not be overcome through assurance of universal coverage.

• *Priorities/Special Concerns:* Applicants in this MCHIP category are invited to submit proposals in the following program areas:

—Personnel preparation and assistance.
—Quality assurance.
—Cost and utilization.
—Promotion of public/consumer education.

A funding priority will be placed on projects from historically Black colleges and universities (HBCUs). An approved proposal from an HBCU will receive a 0.5 point favorable adjustment of the priority score in a 4 point range before funding decisions are made.

• *Grants/Amounts:* About $3.5 million will be available for this MCHIP category, to support up to 24 new projects. This is a change from information in an Advance Notice of Application Deadline Dates published in the **Federal Register** on February 2 at 59 FR 4925. The project period is up to 4 years.

• *Contact:* For programmatic or technical information, contact Merle McPherson, M.D., Director, Division of Services for Children With Special Health Care Needs; telephone: 301 443–2350.

4.1.4.3. Data Utilization and Enhancement

• *Application Deadline:* June 15, 1994.

• *Purpose:* To enable Federal, State, and local MCH/CSHCN agencies, in collaboration with State primary care planning, to develop data and data systems required under Title V that facilitate needs assessment, planning, monitoring or evaluation of maternal and child agencies and comprehensive health services.

• *Priorities/Special Concerns:* Applicants in this MCHIP category are invited to submit proposals in the following program areas:

—Enhancement of data collection and analysis capabilities of State and local health agencies.
—Compilation of new data and development and application of analytic techniques regarding the health status of and delivery of comprehensive health care to mothers and children.
—Networking, coordination, and integration of existing and proposed resources and data and analysis systems developed in other States or organizations.
—Increasing State and local entities capacity to respond to and implement changes in the organization of health care resources.

Special consideration will be given to applications which demonstrate capabilities in a range of data and analysis areas relevant to MCH training and information model development.

• *Grants/Amounts:* An estimated $500,000 will be available to support three cooperative agreements. This is a change from information in an Advance Notice of Application Deadline Dates published in the **Federal Register** on February 2 at 59 FR 4925. Project periods are up to 3 years.

• *Contact:* For programmatic or technical information, contact Russ Scarato, telephone: 301 443–2340.

4.1.4.4. Healthy Tomorrows Partnerships for Children

• *Application Deadline:* May 2, 1994.

• *Purpose:* To support projects for children that improve access to health services and utilize preventive strategies. The initiative encourages additional support from the private sector and from foundations to form community-based partnerships to coordinate health resources for pregnant women, infants and children.

• *Priorities/Special Concerns:* Special consideration will be given by the reviewers to proposals in this MCHIP category which address particularly well both of the areas identified below:

—Local initiatives that are community-based, family-centered, comprehensive and culturally relevant and improve access to health services for infants, children, adolescents, or CSHCN.
—Evidence of a capability to meet cost participation targets by securing funds required for the second and sequential years in an amount not less than 66.7 percent of the total budget.

In the interest of equitable geographic distribution, funding priority, in the form of a 1.0 point favorable adjustment in the priority score in a 4 point range, will be given to projects from States without a currently funded project in this category. These States are listed in the application guidance.

• *Grants/Amounts:* About $500,000 will be available to support up to 10 new Healthy Tomorrows projects, at an average of $50,000 per award for one year. The project period is 5 years.

• *Contact:* For programmatic or technical information, contact Latricia Robertson, M.S.N., M.P.H., telephone: 301 443–3163.

4.1.4.5. Field-Initiated Projects

• *Application Deadlines:* April 1 and August 15, 1994.

• *Purpose:* To support projects of high priority that are so time sensitive that they cannot be delayed for submission against normal MCHB category deadlines. Applications must be preceded by contact with an appropriate program official to justify why the proposed project is so time sensitive that the application cannot be submitted against normal MCHB category deadlines. Wherever possible, prospective applicants are urged to submit their proposals in other announced categories. Applications submitted in this category may not be under consideration under any other category during FY 1994. Research applications are not supportable under this sub-category. The Director of MCHB will be the final arbiter of the acceptability of special project applications for review. Prospective applicants are urged to make contact with a program official listed below well in advance of submitting a formal application, so that the work of proposal development can be avoided if the proposed project is judged as inappropriate for submission under this category.

• *Grants/Amounts:* About $500,000 will be available to support up to 10 new or competing renewal field-initiated projects. Project periods are up to 5 years.

• *Contact:* Potential applicants for field-initiated grants should contact: Chief, Grants Management Branch, or the MCHB Division Director responsible for the area of project interest: Director, Division of Maternal, Infant, Child and Adolescent Health, telephone: 301 443–2251; Director, Division of Services for CSHCN, telephone: 301 443–2350; or Director, Division of Systems, Education, and Science, telephone: 301 443–2340. The address for each of them is: Maternal and Child Health Bureau, Health Resources and Services Administration, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

*4.2. Cooperative Agreements*

A cooperative agreement will be awarded in one category: Children with Special Health Care Needs Child and Adolescent Service System Program (CASSP). It is anticipated that substantive Federal programmatic involvement will be required in this cooperative agreement. Federal involvement may include planning, guidance, coordination and participation in programmatic activities. Periodic meetings, conferences, and/or communications with the award recipient are held to review mutually agreed upon goals and objectives and to assess progress. Additional details on the degree of Federal programmatic involvement will be included in the application guidance for this cooperative agreement.

4.2.1. Children With Special Health Care Needs Child and Adolescent Service System Program (CASSP)

• *Application Deadline:* May 10, 1994.

• *Purpose:* To support the development of a network of community-based, family-focused, and culturally competent systems of care for children with special health care needs. This network will: (1) Link the public and private sectors within the context of current efforts to reform the Nation's health and mental health care delivery systems and related reform efforts in education, child welfare, and juvenile justice; (2) within the broader context, establish a Child and Adolescent Service System Program (CASSP) Technical Assistance Center to focus on the needs of children and adolescents with serious emotional disturbances and their families and to address the psychosocial needs of all children with special health care needs and their families; and (3) work with critical State and local agencies serving children and Native American reservations to ensure support for integrated service delivery systems for children at all levels.

This cooperative agreement will be jointly funded by the MCHB and the Center for Mental Health Services (CMHS), SAMHSA. Preference for funding will be given to public or private non-profit organizations with prior experience in the areas described above, especially those which can show: (1) The extent to which technical assistance efforts have focused on the needs of children and adolescents with serious emotional disorders; and (2) the degree to which prior networking efforts have been designed to link together health, mental health, education and other human services to address the psychosocial needs of all children with special health care needs and their families.

• *Amount:* Up to $1.5 million per year will be available to support one project. The award will be made for a project period of up to 5 years.

• *Contact:* For programmatic or technical information, contact John Shwab, telephone: 301 443–2370.

The categories, priorities, special considerations and preferences described above are not being proposed for public comment this year. In July 1993, following publication of the Department's Notice of Proposed Rulemaking to revise the MCH special project grant regulations at 42 CFR 51a, the public was invited for a 60-day period to submit comments regarding all aspects of the SPRANS application and review process. Public comments regarding SPRANS priorities received during the comment period were considered in developing this announcement. In responding to these comments, the Department noted the practical limits on Secretarial discretion in establishing SPRANS categories and priorities owing to the extensive prescription in both the statute and annual Congressional directives. Comments on this SPRANS notice which members of the public wish to make are welcome at any time and may be submitted to: Director, Maternal and Child Health Bureau, at the address listed in the ADDRESS section. Suggestions will be considered when priorities are developed for the next solicitation.

**5. Eligible Applicants**

Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b), is eligible to apply for grants or cooperative agreements for MCHIP demonstration project categories. Training grants may be made only to public or nonprofit private institutions of higher learning. Research grants may be made only to public or nonprofit private institutions of higher learning and public or nonprofit private agencies and organizations engaged in research in maternal and child health or programs for CSHCN.

**6. Public Health System Reporting Requirements**

This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

(a) A copy of the face page of the application (SF 424).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State and local health agencies.

7. Executive Order 12372

The MCH Federal set-aside program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

The OMB Catalog of Federal Domestic Assistance number is 93.110.

Dated: February 7, 1994.

**William A. Robinson,**

*Acting Administrator.*

[FR Doc. 94–6693 Filed 3–22–94; 8:45 am]

BILLING CODE 4160–15–P

## Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of April 1994:

*Name:* National Advisory Council on Migrant Health.

*Date and Time:* April 23–24, 1994—9 a.m.

*Place:* Mayflower Park Hotel, 405 Olive Way, Seattle, Washington 98101, 202/623–8700.

The meeting is open to the public.

*Purpose:* The Council is charged with advising, consulting with, and making recommendations to the Secretary and the Administrator, Health Resources and Services Administration, concerning the organization, operation, selection, and funding of Migrant Health Centers and other entities under grants and contracts under section 329 of the Public Health Service Act.

*Agenda:* The agenda includes a overview of Council general business activities and priorities; discussion of the 1994 National Advisory Council on Migrant Health Recommendations and the November Public Hearing in Texas; and subcommittee meetings.

The Council meeting is being held in conjunction with the National Conference on Migrant and Seasonal Farmworkers, April 23–24, Seattle Washington. The Council will have a workshop at this conference to talk about 1994 Recommendations, nominations and Council activities.

Anyone requiring information regarding the subject Council should contact Helen Kavanagh or Rosa Torres, Migrant Health Program, Staff Support to the National Advisory Council on Migrant Health, Bureau of Primary Care, Health Resources and Services Administration, 4350 East West Highway, room 7A6–1, Rockville, Maryland 20857, Telephone (301) 594–430.

Agenda Items are subject to change as priorities dictate.

Dated: March 17, 1994.

**Jackie E. Baum,**

*Advisory Committee Management Officer, HRSA.*

[FR Doc. 94–6766 Filed 3–22–94; 8:45 am]

BILLING CODE 4160–15–P

## National Institutes of Health

## National Institute on Deafness and Other Communications Disorders; Meeting of an Ad Hoc Subcommittee of the National Deafness and Other Communication Disorders Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of a meeting of an ad hoc subcommittee of the National Deafness and Other Communication Disorders Advisory Council on April 21, 1994. The meeting will be held at the National Institutes of Health, Building 31, room 3C07, 9000 Rockville Pike, Bethesda, MD 20892.

The meeting will be open to the public from 8:30 a.m. to adjournment at approximately 4 p.m. The meeting is being held to discuss several concept clearances for the National Institute on Deafness and Other Communication Disorders. Attendance by the public will be limited to space available.

Further information concerning the meeting may be obtained from Mr. Howard Hoffman, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Executive Plaza South, room 432, 6120 Executive Blvd., Bethesda, Maryland 20892, 301–402–1843. A summary of the meeting and roster of the members may also be obtained from his office. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Mr. Hoffman.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communication Disorders)

Dated: March 16, 1994.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 94–6750 Filed 3–22–94; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for a Residential Development in Brevard County, FL

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

**ACTION:** Notice.

**SUMMARY:** Ocean Ridge, Ltd., (Applicant) a Florida limited partnership, is seeking an incidental take permit from the Fish and Wildlife Service (Service) pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act). The proposed permit would authorize for a period of 10 years the incidental take of a threatened species, the Florida scrub jay, *Aphelocoma coerulescens coerulescens*, incidental to construction of Ocean Ridge, a development consisting of 29 single family residences and necessary infrastructure on approximately 9.4 acres (Project). The Project is located along State Road A1A south of the city of Melbourne, located north of an apartment complex known as The Hamptons, Sections 20 and 21, Township 28S, Range 38E, Brevard County, Florida.

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making a request to the Regional Office address below. The Service is soliciting data on *Aphelocoma coerulescens coerulescens* in order to assist in the requirement of the intra-Service consultation. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

**DATES:** Written comments on the permit application, EA, and HCP should be received on or before April 22, 1994.

**ADDRESSES:** Persons wishing to review the application, HCP, and EA may

obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, or the Jacksonville, Florida, Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–*787965* in such comments.

Assistant Regional Director, U.S. Fish and Wildlife Service, 1875 Century Boulevard, suite 200, Atlanta, Georgia 30345, (telephone 404/679–7110, fax 404/679–7081).

Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, suite 310, Jacksonville, Florida 32216–0912, (telephone 904/232–2580, fax 904/232–2404).

**FOR FURTHER INFORMATION CONTACT:** Dawn Zattau at the Jacksonville, Florida, Field Office, or Rick G. Gooch at the Atlanta, Georgia, Regional Office

**SUPPLEMENTARY INFORMATION:** *Aphelocoma coerulescens coerulescens* is geographically isolated from other subspecies of scrub jays found in Mexico and the Western United States. The scrub jay is found almost exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the scrub jay population has been reduced by at least half in the last 100 years. The scrub jay survey provided by the Applicant indicates that two families, one consisting of a mating pair with helpers and the other consisting of a mating pair without helpers, currently use the site and surrounding suitable habitat areas. The Applicant proposes to impact a portion of the territories of both scrub jay families. Initial construction of roads and utilities and subsequent development of individual homesites may therefore result in death of, or injury to, *Aphelocoma coerulescens coerulescens* incidental to the carrying out of these otherwise lawful activities. Habitat alternation associated with property development may reduce the availability of feeding, shelter, and nesting habitat.

The EA considers the environmental consequences of three alternatives. The no action alternative may result in some loss of habitat for *Aphelocoma coerulescens coerulescens* and exposure of the Applicant under Section 9 of the Act. This action is inconsistent with the purposes and intent of Section 10 of the Act. The delisting of the *Aphelocoma coerulescens coerulescens* as an alternative was rejected as biologically unjustifiable. Modification of the HCP as an alternative was in part accommodated during the preapplication phase through negotiations between the Applicant and the Service. The proposed action alternative is issuance of the incidental take permit. This provides for restrictions of construction activity, purchase of offsite suitable *Aphelocoma coerulescens coerulescens* habitat, the establishment of an endowment fund to manage the purchased habitat, protection of active nesting areas during construction of the Project, exotic plant removal and control, and provisions for placement of native plant species within the Project. The HCP also provides a funding mechanism for these mitigation measures.

Dated: March 11, 1994.

**Warren T. Olds, Jr.,**

*Assistant Regional Director.*

[FR Doc. 94–6703 Filed 3–22–94; 8:45 am]

BILLING CODE 4310–55–P

## Letters of Authorization To Take Marine Mammals

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

**ACTION:** Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

**SUMMARY:** In accordance with section 101(a)(5) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations (50 CFR 18.27), notice is hereby given that the following Letter of Authorization to take polar bears and Pacific walruses incidental to oil and gas industry activities (exploration (E), development (D), and production (P)) has been issued to the following company:

| Company | Activity | Date issued |
|---|---|---|
| BP Exploration (Alaska) Inc.. | E, D, P | 2/08/94 |

**FOR FURTHER INFORMATION CONTACT:** John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 4230 University Drive, suite 310, Anchorage, AK 99508, (800) 362–5148 or (907) 271–2394.

**SUPPLEMENTARY INFORMATION:** The above Letter of Authorization was issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations "Marine Mammals; Incidental Take During Specified Activities" (58 FR 60402; November 16, 1993).

Dated: March 3, 1994.

**Walter O. Stieglitz,**

*Regional Director.*

[FR Doc. 94–6702 Filed 3–22–94; 8:45 am]

BILLING CODE 4310–55–M

## Bureau of Land Management

**[AZ–930–4210–06; AZA–28487]**

## Proposed Withdrawal and Opportunity for Public Meeting; Arizona

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

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture, Forest Service, has filed application AZA–28487, to withdraw 9,873.31 acres of National Forest System lands from location and entry under the mining laws for the Oak Creek Canyon Recreation Area. The purpose of the withdrawal is to protect the area from possible mineral development for its recreational values. The Forest Service estimates the area receives in excess of 650,000 visitors per year.

This application is in compliance with regulations found in 43 CFR 2310.1–2 and the Coconino National Forest Plan. Publication of this notice closes the land for up to 2 years from location and entry under the United States mining laws only, the land will remain open to all other uses applicable to National Forest System lands.

**DATES:** Comments and requests for a meeting should be received on or before June 21, 1994.

**ADDRESSES:** Comments and meeting requests should be sent to the Arizona State Director, Bureau of Land Management (BLM), 3707 North 7th Street, Phoenix, Arizona 85014, or P.O. Box 16563, Phoenix, Arizona 85011–6563.

**FOR FURTHER INFORMATION CONTACT:** John Mezes, BLM, Arizona State Office, 602–650–0509.

**SUPPLEMENTARY INFORMATION:** On February 25, 1994, the U.S. Department of Agriculture, Forest Service, filed application AZA–28487 to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

**Gila and Salt River Meridian**

T. 17 N., R. 6 E.,
Sec. 2, lots 3 to 6, inclusive, 11 to 14, inclusive, 19 and 20;
Sec. 3, lots 1 to 3, inclusive, E½NE¼SE¼, SW¼NE¼SE¼, and S½SE¼;

Sec. 4, lots 2, 3, and 7, and W½;
Sec. 5, lots 1 to 5, inclusive, and S½N½, N½N½NW¼SW¼, NE¼SW¼, N½SE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 8, NE¼, E½SE¼NW¼, SE¼NE¼NW¼, E½NE¼SW¼, N½SE¼, SE¼NE¼NE¼NW¼, and S½NE¼NE¼NE¼NW¼;
Sec. 9, lots 1 to 8, inclusive, and NW¼;
Sec. 10, N½, and NW¼NE¼SE¼;
Sec. 11, lots 3 and 4.
T. 18, N., R. 6 E.,
Sec. 4, lots 2 and 5, SE¼NW¼, and SW¼;
Sec. 5, lot 1, S½NE¼, and SE¼;
Sec. 8, E½, and E½E½W½;
Sec. 9, W½NW¼;
Sec. 16, W½NW¼, SW¼, and SW¼SE¼;
Sec. 17, E½;
Sec. 20, E½NE¼NE¼;
Sec. 21, NE¼, N½NW¼, E½SW¼NW¼, SE¼NW¼, N½NE¼SW¼, SE¼NE¼SW¼, and SE¼;
Sec. 22, W½SW¼;
Sec. 23, SE¼SW¼SW¼, S½SE¼SW¼, NE¼SE¼SW¼, S½SE¼, SE¼NW¼SE¼, and S½NE¼SE¼;
Sec. 24, S½S½NE¼, SW¼, and SE¼;
Sec. 25, N½NE¼NE¼, SE¼NE¼NE¼, N½NW¼NE¼, N½NE¼NW¼, SW¼NE¼NW¼, and NW¼NW¼;
Sec. 26, N½, N½SW¼, N½S½SW¼, SW¼SW¼SW¼, and N½NW¼SE¼;
Sec. 27, All;
Sec. 28, E½NE¼, E½W½NE¼, and E½E½SE¼;
Sec. 33, lots 1, 2, 6 to 11, inclusive, E½E½NE¼, SW¼SE¼NE¼, and SE¼SW¼NE¼;
Sec. 34, All;
Sec. 35, lots 3 and 4.
T. 18 N., R. 7 E.,
Sec. 20, lots 6, 7, and 12;
Sec. 29, lot 1.
T. 19 N., R. 6 E.,
Sec. 14, lots 8, 16 to 19 inclusive;
Sec. 15, E½SE¼;
Sec. 22, lots 2 to 4, inclusive, 11, 12, 15, 16, 23 and 24;
Sec. 27, lots 1 to 3, inclusive, 10 to 15 inclusive, and 21 to 25, inclusive;
Sec. 34, lots 2 to 5, inclusive, 9 to 13, inclusive, 17 to 20, inclusive, and 23 to 25 inclusive.

The area described aggregate approximately 9,873.31 acres in Coconino County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that at least one public meeting is required by regulations found in 43 CFR 2310.3–1(2)(v). Time and date of the meeting will be announced at a later date and will be published in the **Federal Register** at least 30 days before the scheduled meeting date.

All interested persons who desire being heard at this meeting must submit a written request to the undersigned officer within 90 days from the date of publication of this notice.

The application will be processed in accordance with regulations as set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless an application is denied or cancelled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are all those applicable to U.S. Forest Service administered lands except those under the mining laws.

The temporary segregation of the lands in connection with this application shall not affect the administrative jurisdiction over the lands.

Dated: March 11, 1994.

**Herman L. Kast,**

*Deputy State Director, Lands and Renewable Resources.*

[FR Doc. 94–6701 Filed 3–22–94; 8:45 am]

BILLING CODE 4310–32–P

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**[NM–030–4210–04; NMNM 66372]**

## Issuance of Exchange Conveyance Document and Order Providing for Opening of Public Land in Hidalgo County, New Mexico

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

**ACTION:** Notice.

**SUMMARY:** This notice informs the public of the conveyance of 175.05 acres of public land (surface estate) out of Federal ownership. This notice will also open 6,364.54 acres of acquired land to the operation of the public land laws.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Hargrove, Acting Area Manager, Mimbres Resource Area, 1800 Marquess, Las Cruces, New Mexico 88005.

**SUPPLEMENTARY INFORMATION:** The United States issued an exchange conveyance document to Joe S. Jackson and Melba J. Jackson on January 12, 1989, for the following described land (surface estate) in Dona Ana County, New Mexico, pursuant to Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

**New Mexico Principal Meridian**

T. 22 S., R. 3 E.,
Sec. 6, lots 6, 7, S½S½SE¼NW¼, and E½SW¼.

Containing 175.05 acres.

In exchange for the above-described land, the United States acquired the following land (surface estate) in Hidalgo County, New Mexico:

**New Mexico Principal Meridian**

T. 28 S., R. 20 W.,
Sec. 17, W½SW¼;
Sec. 18, E½SE¼;
Sec. 19, E½NE¼ and SE¼;
Sec. 20, W½NW¼ amd SW¼;
Sec. 27, NW¼, N½SW¼, SW¼SW¼, and N½SE¼SW¼;
Sec. 28,
Sec. 29, E½;
Sec. 33, N½;
Sec. 34, S¼NE¼NW¼, W½NW¼, SE¼NW¼, and SW¼.
T. 28 S., R. 21 W.,
Sec. 26, N½, N½S½, and SE¼SE¼.
T. 29 S., R. 21 W.,
Sec. 3, lots 1, 2, SE¼NE¼, and N½SE¼;
Sec. 10, E½SW¼, E½SE¼, N½NW¼SE¼, and S½SW¼SE¼;
Sec. 11, NW¼NE¼ and W½;
Sec. 14, NW¼NW¼;
Sec. 15, N½, N½S½, and SW¼SW¼;
Sec. 16, N½, N½N½SW¼, SE¼NE¼SW¼, N½SE¼, E½SW¼SE¼, and SE¼SE¼;
Sec. 22, W½NW¼, SE¼NW¼, and SW¼;
Sec. 23, NE¼SW¼, S½SW¼, and W½SE¼;
Sec. 26, NW½NE¼, NW¼, and W½SW¼;
Sec. 27, S½NE¼, NW¼, and N½SE¼;
Sec. 34, E½SE¼;
Sec. 35, S½NE¼NE¼, W½NE¼, E½NW¼, SW¼SW¼, and W½SW¼.
T. 30 S., R. 21 W.,
Sec. 3, lot 1.

Containing 6,364.54 acres.

The purpose of this exchange was to consolidate public land into areas that provide habitat for desert bighorn sheep, mule and white-tail deer, javelina, small game, and a great variety of nongame species including several listed as threatened or endangered by the State of New Mexico and to consolidate public land for better management opportunities and legal hunter access. The public interested was served through completion of this exchange.

The values of the Federal public land and the non-Federal land in the exchange were equal.

At 9 a.m. on April 22, 1994, the land acquired by the United States shall be open to the operation of the public land laws, generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All applications received at or prior to 9 a.m. on April 22, 1994, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: March 11, 1994.

**Frank Splendoria,**

*Acting State Director.*

[FR Doc. 94–6700 Filed 3–22–94; 8:45 am]

BILLING CODE 4310–FB–M

## Minerals Management Service

### Outer Continental Shelf (OCS) Advisory Board—Policy Committee; Notice and Agenda for Meeting

The Policy Committee of the OCS Advisory Board will meet Wednesday, April 27 and Thursday, April 28, 1994, at the Adam's Mark Hotel, 64 Water Street, Mobile, Alabama (205) 438–4000.

The agenda will cover the following principal subjects:

**Wednesday, April 27**

—Domestic Natural Gas and Oil Initiative: OCS Focus.
—Oil Pollution Act (OPA 90) Update and National Petroleum Study on Financial Responsibility.
—Application of 3-Dimensional Seismic in the Gulf.
- Deep Water.
- Salt Plays.

—Burning as an Oil Spill Clean Up Technique.
- Results of the Newfoundland Burn and the In Situ Burn Workshop.
- Pre- and Post-Spill Approval Process for Burning Oil Slicks.

**Thursday, April 28**

—State Ocean Resources Planning Activities.
—MMS Alternative Dispute Resolution Initiatives.
—Update on OCS Legislative Subcommittee Report.
—Congressional Update.
—Committee Roundtable and Discussion with Director.

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the Policy Committee. Such requests should be made no later than April 8, 1994, to the Office of OCS Advisory Board Support, Minerals Management Service, 381 Eldon Street, MS–4110, Herndon, Virginia, 22070, Attention: Terry Holman.

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information, call Terry Holman at (703) 787–1211.

Minutes of the Policy Committee meeting will be available for public inspection and copying at the Minerals Management Service in Herndon, Virginia. This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: March 14, 1994.

**Thomas Gernhofer,**

*Associate Director for Offshore Minerals Management.*

[FR Doc. 94–6704 Filed 3–22–94; 8:45 am]

BILLING CODE 4310–MR–M

## DEPARTMENT OF INTERIOR

## National Park Service

### Golden Gate National Recreation Area; Request for Statements of Qualification to Lease Buildings and Grounds in the Letterman Complex at the Presidio of San Francisco

The National Park Service is requesting Statements of Qualification from interested organizations which demonstrate capability to undertake a long-term lease for all or a portion of the Letterman Complex buildings and grounds. The Complex is located in the historic Presidio of San Francisco, which will become part of the Golden Gate National Recreation Area on October 1, 1994.

Successful submittals must have the demonstrated capacity to plan, finance, and implement the full reuse of the Letterman Complex or specified portions thereof. Following evaluation of submittals, the National Park Service may choose to commence exclusive lease negotiations with one or more parties during the summer of 1994. The National Park Service reserves the right to reject any or all submittals or terminate lease negotiations at any time.

Submittals must be received by the National Park Service Presidio Project Office by close of business May 6, 1994. The U.S. Congress has authorized the lease of the Letterman Complex through Public Law 103–175.

The ultimate availability of buildings and grounds proposed for lease under this Request for Qualifications as well as the proposed uses and goals specified herein for these same facilities are subject to the filing of the Record of Decision adopting the Final General Management Plan Amendment and Environmental Impact Statement for the Presidio of San Francisco, and execution of a proposed Use and Occupancy Agreement between the U.S. Army and the National Park Service. Information regarding the legislative and legal framework for the Presidio Project as well as the specific leasing authority for this Request is contained in the Request for Statements of Qualification document available from the National Park Service Presidio Project Office.

For further information and to receive the Request for Statements of Qualifications for Leasing of the Letterman Complex, please contact the National Park Service Presidio Program Development Office at (415)556–3097, or by facsimile at (415)922–9897. Correspondence may be sent to the Office of the General Manager, National Park Service Presidio Project, Building 102, P.O. Box 29022, Presidio of San Francisco, CA 94129.

Dated March 11, 1994.

**Patricia Neubacher,**

*Acting Regional Director, Western Region.*

[FR Doc. 94–6690 Filed 3–22–94; 8:45 am]

BILLING CODE 4310–70–P

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

## Agency for International Development

### Board for International Food and Agricultural Development and Economic Cooperation; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the One Hundred and Nineteenth Meeting of the Board for International Food and Agricultural Development and Economic Cooperation (BIFADEC) on April 14, 1994, from 8:30 a.m. to 3:30 p.m.

The purposes of the meeting are: (1) To consider issues the Agency for International Development may bring before the Board concerning development; (2) to receive a report on the status of proposed revisions of the USAID procurement and personnel systems; (3) to receive a status report on work of the Board's Community College Task Force; (4) to receive a report from the Budget Panel; and (5) to review and comment upon the global plans of Collaborate Research Support Programs as may be brought before the Board.

This meeting will be held in the Pa American Health Organization Building (PAHO), located at 525 23rd Street, NW. (between 23rd and Virginia Avenue). At this address it will be held in Conference Room C. Any interested person may attend and may present oral statements in accordance with procedures established by the Board and to the extent time available for the meeting permits.

Jiryis S. Oweis, Chief Program Support Staff will be the A.I.D. Advisory Committee Representative at this meeting. Those desiring further information may write to Jiryis S. Oweis in care of the Agency for International Development, Room 900, SA–38,

Washington, DC 20523–3801 or telephone him on (703) 816–0264.

Dated: March 14, 1994.

**Robert S. McClusky,**

*Acting Director, Agency Center for University Cooperation in Development.*

[FR Doc. 94–6697 Filed 3–22–94; 8:45 am]

BILLING CODE 6116–01–M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–683 (Preliminary)]**

### Fresh Garlic from China

### Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from The People's Republic of China (China) of fresh garlic, provided for in subheadings 0703.20.00, 0710.80.70, and 0710.80.97 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

### Background

On January 31, 1994, a petition was filed with the Commission and the Department of Commerce by the Fresh Garlic Producers Association, consisting of the A&D Christopher Ranch, Gilroy, CA; Belridge Packing Co., Wasco, CA; Colusa Produce Corp., Colusa, CA; Denice & Filice Packing Co., Hollister, CA; El Camino Packing, Gilroy, CA; The Garlic Company, Shafter, CA; and Vessey and Company, Inc., El Centro, CA, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of fresh garlic from China. Accordingly, effective January 31, 1994, the Commission instituted antidumping investigation No. 731–TA–683 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of February 9, 1994 (59 FR 6043). The conference was held in Washington, DC, on February 22, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 17, 1994. The views of the Commission are contained in USITC Publication 2755 (March 1994), entitled "Fresh Garlic from China: Investigation No. 731–TA–683 (Preliminary)."

By order of the Commission.

Issued: March 18, 1994.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 94–6817 Filed 3–22–94; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

**[Investigation No. 337–TA–148/169]**

### Commission Determination to Apply a Modified Procedure for Considering Two Petitions for Modification of Exclusion Order and Request for Order Compelling Full Accounting

In the Matter of Certain Processes for the Manufacture of Skinless Sausage Casings and Resulting Product.

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined, pursuant to rule 201.4(b), to waive in part the interim rules normally applicable to consideration by the Commission of petitions for modification of an exclusion order, and to follow instead a modified procedure for considering the petitions filed by counsel on behalf of Viskase Corporation and Teepak, Inc. in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3093.

**SUPPLEMENTARY INFORMATION:** On January 18, 1994, counsel for Viskase Corporation, successor in interest to complainant in the above-captioned investigation, filed a petition requesting, *inter alia*, modification of the exclusion order issued at the conclusion of the investigation. On February 24, 1994, counsel for Teepak, Inc., also filed a petition requesting, *inter alia*, modification of that exclusion order. Commission interim rule 211.57 sets forth procedures for processing such petitions. In this investigation, however, the Commission determined to waive in part the application of that interim rule and instead to apply a revised procedure. The revised procedure is similar to the procedure set forth in proposed final rule 210.76, published in the Federal Register on November 5, 1992 (57 FR 52830, 52883). Interim rule 211.57 is waived for this investigation to the extent that it conflicts with the procedure set forth below.

Commission rule 201.4(b) provides for waiver of rules when in the judgment of the Commission there is good and sufficient reason therefor. The Commission determined that these criteria are met here. Accordingly, consideration of the petitions for modification of the exclusion order in this investigation will be according to the following procedure:

1. Any person may file an opposition to the petitions within 21 days of publication of this notice in the Federal Register.

2. The Commission may thereafter institute a proceeding to modify the exclusion order by publishing notice of the proceeding in the Federal Register. Such notice will establish deadlines for submissions by interested persons. The Commission may hold a public hearing and afford interested persons the opportunity to appear and be heard. The Commission may delegate any hearing to the Chief Administrative Law Judge for designation of a presiding administrative law judge, who shall certify a recommended determination to the Commission.

3. After consideration of the petitions, any responses thereto, any information placed on the record at a public hearing or otherwise, and any recommended determination, the Commission shall take such action as it deems appropriate.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337, 19 U.S.C. 1335), and § 201.4(b) of the Commission's Rules of Practice and Procedure (19 CFR 201.4(b)). Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: March 15, 1994.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 94–6814 Filed 3–22–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 337-TA-357]

## Certain Sports Sandals and Components Thereof; Receipt of Initial Determination terminating Respondent on the Basis of Consent Order Agreement

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondent on the basis of a consent order agreement: G.H. Bass & Co., Inc.

**SUPPLEMENTARY INFORMATION:** This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on March 14, 1994.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**WRITTEN COMMENTS:** Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

**FOR FURTHER INFORMATION CONTACT:** Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205-1802.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

Issued: March 14, 1994.

[FR Doc. 94-6814 Filed 3-22-94; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337-TA-357]

## Certain Sports Sandals and Components Thereof; Decision not to Review Initial Determinations Granting Joint Motions to Terminate the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 4) issued on February 2, 1994, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motion of complainant Deckers Corporation and respondent Smith's Food & Drug Centers, Inc. to terminate the investigation as to Smith's on the basis of a settlement agreement. The Commission has also determined not to review three IDs (Orders Nos. 5-7) issued on February 3, 1994, granting the joint motions of complainant Deckers Corporation and respondents Cougar U.S.A., Inc.; Sears, Roebuck and Co.; and Burch's Fine Footwear, Inc., respectively, to terminate the investigation as to Cougar, Sears, and Burch's, on the basis of consent orders.

**FOR FURTHER INFORMATION CONTACT:** Rhonda M. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3083.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, the sale for importation, and the sale within the United States after importation of sports sandals that infringe three claims of U.S. Letters Patent 4,793,075, on September 8, 1993.

On December 10, 1993, Deckers and Smith's filed a joint motion to terminate the investigation on the basis of a settlement agreement. Joint motions were filed by Deckers and Cougar on December 21, 1993; by Deckers and Sears on December 21, 1993; and by Deckers and Burch's on December 30, 1993, to terminate the investigation as to those respondents on the basis of consent orders. The ALJ issued IDs granting the joint motions and terminating the investigation as to Smith's on February 2, 1994, and as to Cougar, Sears, and Burch's on February 3, 1994. No petitions for review, or agency or public comments were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the IDs and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Issued: March 15, 1994.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 94-6815 Filed 3-22-94; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 22-54]

## Wheat, Wheat Flour, and Semolina

**AGENCY:** International Trade Commission.

**ACTION:** Rescheduling of public hearing.

**SUMMARY:** The Commission has rescheduled to April 28, 1994, from May 12, 1994, its Washington, DC public hearing in this investigation.

The schedule for filing notices of appearances and briefs and the holding of a prehearing conference in conjunction with the Washington hearing has been revised as follows: Requests to appear at the hearing must be filed with the Secretary to the Commission not later than April 21, 1994; the deadline for filing prehearing briefs is the close of business on April 25, 1994; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on April 25, 1994; the hearing will be held at the U.S. International Trade Commission at 9:30 a.m. on April 28, 1994; and the deadline for filing posthearing briefs is May 5, 1994.

EFFECTIVE DATE: March 17, 1994.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: The subject investigation was instituted by the Commission on January 18, 1994. Notice of the investigation and the schedule for its conduct, including the May 12 hearing, was published in the Federal Register of January 26, 1994 (59 F.R. 3736). Notice of the scheduling of two additional hearings in Bismarck, ND, and Shelby, MT, was published in the Federal Register of March 16, 1994 (59 F.R. 12346).

For further information concerning the conduct of this investigation and rules of general application see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 204 (19 CFR part 204).

This notice is published pursuant to section 204 of the Commission's rules (19 CFR 204.4).

By order of the Commission.

Issued: March 18, 1994.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 94–6818 Filed 3–22–94; 8:45 am]

BILLING CODE 7020–02–P

## INTERSTATE COMMERCE COMMISSION

### Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, room 3219, Washington, DC 20423, (202) 927–6212 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability: AB–57 (SUB-NO. 35X), Soo Line Railroad Company—Abandonment—In Dakota County, Minnesota. EA available 3/18/94. Comments on the following assessment are due 30 days after the date of availability: NO. AB–1 (SUB-NO. 249X), Chicago and North Western Transportation Company—Abandonment Between Norfolk and Merriman, Nebraska. EA available 3/18/94.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 94–6788 Filed 3–22–94; 8:45 am]

BILLING CODE 7035–01–P

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Bell Communications Research, Inc.

Notice is hereby given that, on December 27, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") has filed written notifications on behalf of Bellcore and Wiltel, Inc. ("Wiltel") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of involving the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; and Wiltel, The Woodlands, TX. Bellcore and Wiltel entered into an agreement effective as of December 10, 1993, to engage in cooperative research related to technologies for ATM/SONET networking of video and other multimedia communications services to better understand the feasibility and application of these technologies for exchange and exchange access services, including experimental prototypes for the demonstration of such technologies.

**Joseph H. Widmar,**

*Deputy Assistant Attorney General, Antitrust Division.*

[FR Doc. 94–6722 Filed 3–22–94; 8:45 am]

BILLING CODE 4410–01–M

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.

Notice is hereby given that, on January 21, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following parties have become members of CableLabs: ITC, Bala Cynwyd, PA; and Northern Cablevision Ltd., Edmonton, Alberta, CANADA.

No other changes have been made in either the membership or planned activity of CableLabs. The membership remains open.

On August 8, 1988, CableLabs filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on September 7, 1988 (53 FR 34593). The last notification was filed on August 31, 1993. A notice was published in the Federal Register pursuant to section 6(b) of the Act on December 17, 1993 (58 FR 66022).

**Joseph H. Widmar,**

*Deputy Assistant Attorney General, Antitrust Division.*

[FR Doc. 94–6803 Filed 3–22–94; 8:45 am]

BILLING CODE 4410–01–M

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Corporation for National Research Initiatives—Cross Industry Working Team Project

Notice is hereby given that, on December 28, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Corporation for National Research Initiatives ("CNRI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to the membership of the Cross Industry Working Team Project ("XIWT"). The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under

specified circumstances. Specifically, the following parties have become Primary Members of XIWT: Apple Computer, Inc., Cupertino, CA; BellSouth Telecommunications, Inc., Atlanta, GA; NYNEX Science & Technology, Inc., White Plains, NY; Silicon Graphics, Inc., Mountain View, CA; and Sun Microsystems, Inc., Mountain View, CA. The following parties have become Associate Members of XIWT: Sprint Communications, Limited Partnership, Herndon, VA; cisco Systems, Inc., Menlo Park, CA; 3Com Corporation, Santa Clara, CA; and Financial Services Consortium, New York, NY.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CNRI intends to file additional written notification disclosing all changes in membership.

On September 28, 1993, CNRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 17, 1993 (58 FR 66022).

**Joseph H. Widmar,**

*Deputy Assistant Attorney General, Antitrust Division.*

[FR Doc. 94-6721 Filed 3-22-94; 8:45 am]

BILLING CODE 4410-01-M

## Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Frame Relay Forum

Notice is hereby given that, on January 24, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Frame Relay Form ("FRF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership.

The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the additional members of FRF are: GTE Telephone, Irving, TX; LightStream Corp., Billerica, MA; Financial Paradigms, Deer Park, NY; Telco Systems, Fremont, CA; CrossComm Corp., Marlborough, MA; Hypercom Inc., Phoenix, AZ; Telefonica de Espana, Madrid, Spain; and Swiss Telecom PTT, Bern, Switzerland.

The following are no longer members of FRF: ADAX Inc.; AMNET, Inc.; Coral Network Corporation; General Datacom, Inc., Microcom, Inc.; Octocom Systems, Scientific Atlanta; Sun Microsystems; Xyplex; and Zilog, Inc.

Helsinki Telephone Co., a member of FRF, has changed its name to Helsinki Telephone Co. Ltd.

No other changes have been made in either the membership or planned activities of the FRF. Membership remains open, and FRF intends to file additional written notifications disclosing all changes in membership.

On April 10, 1992, FRF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on July 2, 1992 (57 FR 29537).

The last notification was filed with the Department on September 28, 1993. A notice was published in the Federal Register pursuant to section 6(b) of the Act on November 22, 1993 (58 FR 61717).

**Joseph H. Widmar,**

*Deputy Assistant Attorney General, Antitrust Division.*

[FR Doc. 94-6804 Filed 3-22-94; 8:45 am]

BILLING CODE 4410-01-M

## Notice Pursuant to the National Cooperative Research and Production Act of 1993—MCI Telecommunications Corporation

Notice is hereby given that, on January 24, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), MCI Telecommunications Corporation ("MCI") has filed written notifications on behalf of MCI and Northern Telecom ("Northern Telcom") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are MCI, Washington, DC; and Northern Telecom, Richardson, TX. This venture was created to investigate deployment strategies for personal communications services (PCS) in the United States initially utilizing the Global System for Mobile Communications (GSM) platform structure and open architecture, to develop widely-available specifications for PCS network equipment and to identify changes necessary to adapt existing GSM platform to the U.S. marketplace.

**Joseph H. Widmar,**

*Deputy Assistant Attorney General, Antitrust Division.*

[FR Doc. 94-6720 Filed 3-22-94; 8:45 am]

BILLING CODE 4410-01-M

## Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Research Corp.

Notice is hereby given that, on February 15, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Semiconductor Research Corporation ("SRC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SRC has added as an affiliate member, Solid State Systems, Inc., Santa Clara, CA. Praxair Inc. Danbury, CT has spun off from Union Carbide Corporation and replaces Union Carbide as an affiliate member. Electrical Engineering Software, Inc., has changed its name to ANACAD Electrical Engineering Software. The following companies have been deleted from SRC membership: E.I. duPont de Nemours and Company, General Motors Corporation, Honeywell, Incorporated, Rockwell International Corporation and WYCO Corporation.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SRC intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, SRC filed its original notification pursuant to section 6(a) of the Act. The Department published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 30, 1985 (52 FR 4281).

The last notification was filed with the Department on November 19, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 30, 1993, (58 FR 69409).

**Joseph H. Widmar,**

*Deputy Assistant Attorney General, Antitrust Division.*

[FR Doc. 94-6723 Filed 3-22-94; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Award Design Medals*, Civil Action No. Civ–93–749-R, was lodged on March 1, 1994 with the United States District Court for the Western District of Oklahoma.

On April 26, 1993, the government filed an action against Award Design alleging that its facility in Noble, Oklahoma had been in repeated violation of federal pretreatment regulations for the metal finishing industry promulgated pursuant to the Clean Water Act. The consent decree resolves Award Design's liability for the allegations in that complaint.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Award Design Medals*, DOJ Ref. 90–5–1–1–3618.

The proposed consent decree may be examined at the office of the United States Attorney, room 4434, U.S. Courthouse and Federal Office Building, Oklahoma City, OK 73102; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, TX 75202–2733; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $2.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**John C. Cruden,**

*Chief, Environment and Natural Resources Division.*

[FR Doc. 94–6724 Filed 3–22–94; 8:45 am]

BILLING CODE 4410–01–M

### Lodging of Consent Decree

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that on March 3, 1994, a proposed Consent Decree in *United States* v. *BCF Oil Refining, Inc.*, Civil No. CV–90–2018, was lodged with the United States District Court for the Eastern District of New York. The proposed Consent Decree settles the United States' claims that the defendant had violated provisions of the Resource Conservation and Recovery Act.

Under the terms of the Consent Decree, settling defendant will pay $100,000 in civil penalties, and implement a detailed work plan that contains comprehensive testing, employee training, and record-keeping requirements.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *BCF Oil Refining, Inc.*, D.O.J. Ref. 90–7–1–493.

The proposed Consent Decree may be examined at the Region II Office of the United States Environmental Protection Agency, 26 Federal Plaza, New York, NY 10278 and at the Environmental Enforcement Section Document Center, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202 624–0892). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $10.25 (25 cents per page reproduction cost) made payable to Consent Decree Library.

**John C. Cruden,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 94–6725 Filed 3–22–94; 8:45 am]

BILLING CODE 4410–01–M

### Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Benny's Pipe and Muffler Shops, Inc., et al. (E.D. Tenn.)*, Civil Action No. CIV–2–92–300, was lodged on March 1, 1994 with the United States District Court for the Eastern District of Tennessee.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Benny's Pipe and Muffler Shops, Inc., et al.* DOJ Ref. #90–5–2–1–1578.

The proposed consent decree may be examined at the office of the United States Attorney, Federal Building, 101 U.S. Courthouse, 101 W. Summer St., Greenville 37743, the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, NE. Street, Atlanta, Georgia 30365, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $2.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**John D. Cruden,**

*Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.*

[FR Doc. 94–6729 Filed 3–22–94; 8:45 am]

BILLING CODE 4410–01–M

### Lodging of the Consent Order Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent order in *United States* v. *Berlin and Farro Liquid Incineration, Inc.*, Civil Action No. 84–CV–8473–FL, and *United States* v. *Amway Corp.*, Civil Action No. 89–CV–40290–FL, has been lodged with the United States District Court for the Eastern District of on February 25, 1994.

The Consent Decree resolves claims against all but one viable defendant by the United States under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, for past and future response costs at the Berlin & Farro Liquid Incineration Site ("Site"), Swartz Creek, Michigan. The Consent Decree provides for the payment to the United States of $2,576,539 for past response costs and interest. The Consent Decree also settles litigation among fifteen major and eighty *de minimis* parties. The settlement by the United States with *de minimis* parties include a covenant not to sue for response action at the site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent order. Comments should be addressed to the

Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Berlin and Farro Liquid Incineration, Inc.*, D.J. Ref. 90–11–2–77A and *United States* v. *Amway Corp.*, D.J. Ref. 90–11–2–77B.

The proposed consent order may be examined at the office of the United States Attorney for the Eastern District of Michigan, 210 Federal Building, 600 Church Street, Flint, Michigan 48502, at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Chicago, Illinois 60604, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may also be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $82.25 (25 cents per page reproduction costs) payable to the Consent Decree Library.

**John C. Cruden,**

*Chief, Environmental Enforcement Section.*

[FR Doc. 94–6730 Filed 3–22–94; 8:45 am]

BILLING CODE 4410–01–M

## Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States, State of Ohio* v. *Board of County Commissioners of Lawrence County, Ohio*, Civil Action No. C–1–91–302, was lodged on February 28, 1994 with the United States District Court for the Southern District of Ohio. The Consent Decree provides for penalties and injunctive relief for defendant's violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, its National Pollutant Discharge Elimination Systems Permit, and a U.S. EPA Administrative Order. The Consent Decree requires Defendant Board of County Commissioners to implement a comprehensive compliance program for eliminating all bypasses and overflows from the defendant's sewer system and wastewater treatment plant, and pay a civil penalty of $15,000 for its past violations of the Clean Water Act.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States, State of Ohio* v. *Board of County Commissioners of Lawrence County, Ohio* DOJ Ref. # 90–5–1–1–3634.

The proposed consent decree may be examined at the office of the United States Attorney, 220 U.S. Post Office and Courthouse, Fifth and Walnut Streets, Cincinnati, Ohio, 45202; the Region Five Office of the Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois, 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $11.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**John C. Cruden,**

*Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 94–6731 Filed 3–22–94; 8:45 am]

BILLING CODE 4410–01–M

## Lodging of Consent Decree Pursuant to the Toxic Substances Control Act ("TSCA"), 15 U.S.C. 2601 et seq.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *New Waterbury, Ltd., et al.*, Civil Action No. 91CV00688 (WWE), was lodged on March 1, 1994 with the United States District Court for the District of Connecticut. The consent decree resolves an action based on violations which occurred at the New Waterbury industrial facility located at 59 Mill Street in Waterbury, Connecticut ("facility"). The facility is approximately 100 buildings on 100 acres in downtown Waterbury, Connecticut and was used for years in the manufacture of brass and copper products. New Waterbury, Ltd., a real estate development limited partnership, acquired the manufacturing facility in 1987 from the former Century Brass Products, Inc.

Settling defendants are storing PCB equipment and drums of PCB waste in a building that does not comply with the structural requirements for PCB storage areas established by 40 CFR 761.65(b) (it lacks an adequate roof and walls to prevent contact with rain water, adequate spill containment, and surfaces impervious to PCB penetration). Until the filing of the complaint settling defendants had not been conducting monthly leak inspections as required by 40 CFR 761.65(c)(5).

The PCB equipment and waste drums have been stored at the facility since before 1987, in violation of 40 CFR 761.65(a). In addition, settling defendants are operating a commercial PCB storage facility without having applied for and received Region I approval, in violation of 40 CFR 761.65(d).

Pursuant to this proposed consent decree, settling defendants will remove and properly dispose of all PCB equipment and PCB waste by August 15, 1995. Settling defendants will also clean up any spills of PCBs derived from the storage of PCB equipment and PCB waste. The cost of PCB removal and disposal under the consent decree is estimated at nearly $500,000.

Pending proper disposal, settling defendants will provide and maintain adequate temporary storage measures to prevent and contain PCB leaks and minimize the risks of fire and vandalism, will keep proper records on the stored PCBs, and will report monthly to EPA.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *New Waterbury, Ltd., et al.*, DOJ Ref. # 90–5–1–1–3713.

The proposed consent decree may be examined at the office of the United States Attorney, 141 Church Street, New Haven, Connecticut; the Region I Office of the Environmental Protection Agency, 1 Congress Street, Boston, Massachusetts; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $12.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**John C. Cruden,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 94–6728 Filed 3–22–94; 8:45 am]

BILLING CODE 4410–01–M

### Lodging of Consent Decree

### United States v. Olin Corporation

Notice is hereby given that a Consent Decree in *United States* v. *Olin Corporation*, Civil Action No. 4:91CV 1731 (N.D. Ohio), was lodged with the United States District Court for the Northern District of Ohio on March 3, 1994. This action was brought under section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9607. The Consent Decree provides that defendants will pay $1,542,540.82 to reimburse the U.S. Environmental Protection Agency for past response costs and prejudgment interest, $281,037.74 for past oversight costs, future oversight costs, and certain other costs incurred by the U.S. Environmental Protection Agency and U.S. Department of Justice in connection with the Big D Campground Superfund Site located in Ashtabula County, Ohio.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Olin Corporation*, D.O.J. Ref. No. 90–11–3–783.

The Consent Decree may be examined at the Office of the United States Attorney, Northern District of Ohio, 1404 East 9th Street, suite 500, Cleveland, Ohio and at the Region 5 office of the U.S. Environmental Protection Agency, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

A copy of the Consent Decree also may be examined at the Consent Decree Library, 1120 G Street NW., 4th floor, Washington, DC 20005, telephone number (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library. The proposed Consent Decree package consists of an 18 page Consent Decree. A request for a copy of the proposed Consent Decree should be accompanied by a check in the amount of $4.50 (25 cents per page reproduction charge) payable to "Consent Decree Library."

**John C. Cruden,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 94–6727 Filed 3–22–94; 8:45 am]

BILLING CODE 4410–01–M

### Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Arkansas Solid Waste Management Act, the Arkansas Hazardous Waste Management Act and the Arkansas Remedial Action Trust Fund Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States* v. *Vertac Chemical Corporation, et al.*, Civil Action No. LR–C–80–109 and *Arkansas Department of Pollution Control & Ecology* v. *Vertac Chemical Corporation, et al.*, Civil Action No. LR–C–80–110 (E.D. Ark.), was lodged with the United States District Court for the Eastern District of Arkansas on February 15, 1994.

The proposed Consent Decree concerns alleged violations of section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9607, as a result of the release or threatened release of hazardous substances at the Vertac Superfund Site in Jacksonville, Pulaski County, Arkansas. Both suits involve allegations that the United States, on behalf of the Department of Defense, is liable for a portion of the response costs incurred in connection with the Site by the Environmental Protection Agency and the State of Arkansas.

The Consent Decree requires the United States, on behalf of the Department of Defense, to pay a total of $1,900,000 as reimbursement of past and future response costs. Of that amount, $1,000,000 will be paid into the EPA Hazardous Substances Superfund, $400,000 will be paid to the State of Arkansas, and $500,000 will be paid to the Vertac Chemical Company. The $1,000,000 to be paid into the Superfund will be paid on behalf of the State of Arkansas and shall constitute a credit for the State's share of response costs at the Site if, pursuant to CERCLA section 104(c)(3), 42 U.S.C. 9604(c)(3), the State is required to pay or assure payment of at least 10 percent of the government-conducted remedial action at the Site. If the State is not responsible for 10 percent of the costs, the funds, or any portion thereof remaining, shall be retained by the Superfund.

The Department of Justice will receive written comments relating to the Consent Decree for a period of 30 days from the date of publication of this notice. Comments should be addressed to John A. Sheehan, Esquire, U.S. Department of Justice, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026–3986, and should refer to *United States* v. *Vertac Chemical Corporation, et al.*, Civil Action No. LR–C–80–109 (E.D. Ark.) (and consolidated case).

The Consent Decree may be examined at the Clerk's Office, United States District Court for the Eastern District of Arkansas (Western Division), United States Courthouse and Post Office, 600 West Capitol Street, Little Rock, Arkansas 72201.

**Lois J. Schiffer,**

*Acting Assistant Attorney General, Environment & Natural Resources Division.*

[FR Doc. 94–6726 Filed 3–22–94; 8:45 am]

BILLING CODE 4410–01–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (94–020)]**

### NASA Advisory Council; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

**DATES:** April 13, 1994, 9 a.m. to 3 p.m.; and April 14, 1994, 10:30 a.m. to 3 p.m.

**ADDRESSES:** National Aeronautics and Space Administration, Program Review Center, Ninth Floor, Room 9H40, 300 E Street, SW, Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anne L. Accola, Code IB, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0682.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Recent Senior Appointments and Organization Changes
—Management Initiatives
—Strategic Plans and Goals
—Update on International Space Station Program
—NASA Advisory Council Committee Reports

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: March 18, 1994.

**Timothy M. Sullivan,**

*Advisory Committee Management Officer.*

[FR Doc. 94–6848 Filed 3–22–94; 8:45 am]

BILLING CODE 7510–01–M

## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### Cooperative Agreement for Administration of a Conference of State Arts Agency Community Development Coordinators

**AGENCY:** National Foundation on the Arts and Humanities.

**ACTION:** Notification of availability.

**SUMMARY:** The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement for the administration of a Pre-conference of State Arts Agency Community Development Coordinators in Omaha, NE on October 25, 1994 in conjunction with the National Assembly of State Arts Agencies annual conference. The pre-conference will concern local cultural development. Those interested in receiving the Solicitation package should reference Program Solicitation PS 94–07 in their written request and include two (2) self-addressed labels. Verbal requested for the Solicitation will not be honored.

**DATES:** Program Solicitation PS 94–07 is scheduled for release approximately April 8, 1994 with proposals due May 9, 1994.

**FOR FURTHER INFORMATION CONTACT:** William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave., NW. Washington, DC 20506 (202/682–5482).

**William I. Hummel,**

*Director, Contracts and Procurement Division.*

[FR Doc. 94–6699 Filed 3–22–94; 8:45 am]

BILLING CODE 7537–01–M

### Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended notice is hereby given that a meeting of the Visual Arts Advisory Panel (Photography Fellowships Section) to the National Counsel on the Arts will be held on April 11–14, 1994 from 9 a.m. to 8 p.m. and from 10 a.m. to 4 p.m. on April 15, 1994. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 2:30 p.m. to 4 p.m. on April 15, 1994 for a Policy and Guidelines Discussion.

The remaining portions of this meeting from 9 a.m. to 8 p.m. on April 11–14, 1994 and from 10 a.m. to 2:30 p.m. on April 15, 1994 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 information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506, 202/682–5532, TYY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: March 11, 1994.

**Yvonne M. Sabine,**

*Director, Office of Panel Operation, National Endowment for the Arts.*

[FR Doc. 94–6698 Filed 3–22–94; 8:45 am]

BILLING CODE 7537–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–213, 50–245, 50–336 and 50–423]**

### Connecticut Yankee Atomic Power Co.; Northeast Nuclear Energy Co. Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 26.21(b) regarding fitness-for-duty (FFD) refresher training to Connecticut Yankee Atomic Power Company and Northeast Nuclear Energy Company (the licensees), for the Haddam Neck Plant, located in Middlesex County, Connecticut, and Millstone Nuclear Power Station, Unit Nos. 1, 2 and 3, located in New London County, Connecticut.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed action would exempt the licensees from the requirements of 10 CFR 26.21(b) regarding FFD refresher training on a nominal 12-month frequency. By letter dated February 10, 1994, the licensees requested a one-time exemption from 10 CFR 26.21(b) to allow the licensees to consolidate their response to several training requirements by extending the time requirement for providing FFD refresher training to approximately 21 months.

*The Need for the Proposed Action*

The proposed exemption is needed because the licensees perform FFD refresher training as part of a consolidation of various annual training requirements. While the consolidation of annual training requirements results in substantial gains in efficiency, it also results in the potential for individuals who would have been scheduled to receive FFD refresher training during January 1994, to go until October 1994, before receiving this training. In addition, there will be individuals whose scheduled training interval is extended for shorter durations. However, the 9-month delay is the most bounding, so an overall extension from 12 to 21 months has been requested by the licensees.

The licensees state in their February 10, 1994, application that they are confident that affected personnel understand the FFD program and requirements, and that no adverse impact will result from this requested change. Between the four units, approximately 15 percent of the on-shift personnel will fall outside of the nominal 12-month window. All of the individuals have received FFD training in the past, and will read and sign a synopsis of the FFD requirements prior to exceeding the nominal 12-month window. In addition, within each shift, the supervisory personnel will be trained within the nominal 12-month frequency pursuant to 10 CFR 26.22.

*Environmental Impacts of the Proposed Action*

The NRC staff evaluation of the proposed exemption from 10 CFR 26.21(b) indicates that the granting of the exemption will not impair the level of knowledge of personnel involved in the FFD program. Moreover, there will be no changes in plant operating conditions or associated routine or accidental effluents. Therefore, the Commission concludes that there are no measurable radiological or nonradiological environmental impacts

associated with the proposed exemption.

*Alternatives to the Proposed Action*

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed exemption, any alternatives will either have no environmental impact or have a greater environmental impact. The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributed to this facility and would result in forcing the licensees to separate the FFD refresher training from other annual training.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Haddam Neck Plant (October 1973), Millstone, Units 1 and 2 (June 1973) and Millstone, Unit 3 (December 1984).

*Agencies and Persons Consulted*

The Commission's staff consulted with the Connecticut State official regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, the Commission concludes 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 request for exemption dated February 10, 1994, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457 for the Haddam Neck Plant, and the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360 for the Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3.

Dated at Rockville, Maryland this 17th day of March 1994.

For the Nuclear Regulatory Commission.

**Ronald W. Hernan,**

*Acting Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 94–6762 Filed 3–22–94; 8:45 am]

BILLING CODE 7590–01–M

## Licensing Support System; Advisory Review Panel

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

The Licensing Support System Advisory Review Panel (LSSARP) will hold a meeting on April 14 and 15, 1994, at the Yucca Mountain Site Characterization Project Office, Conference Room 202, 101 Convention Center Drive, Las Vegas, Nevada. The entire meeting will be open to the public pursuant to the Federal Advisory Committee Act (Public Law 94–463, 86 Stat. 770–776).

The Nuclear Regulatory Commission (NRC) established the LSSARP in 1989 to provide advice and recommendations to the NRC and to the Department of Energy (DOE) on topics, issues, and activities related to the design, development and operation of an electronic information management system known as the Licensing Support System (LSS). This system will contain information relevant to the Commission's future licensing proceeding for a geologic repository for the disposal of high-level radioactive waste. Membership on the Panel consists of representatives of the State of Nevada, a coalition of effective units of local government in Nevada, the National Congress of American Indians, a coalition of organizations representing the nuclear industry, DOE, NRC and two other agencies of the Federal government which have experience with large electronic information management systems.

The meeting will begin on April 14, 1994 at 9 a.m. and conclude at 5 p.m. If additional time is needed, the meeting will reconvene at 8:30 a.m. on April 15, 1994 and conclude at approximately Noon. The primary agenda for the meeting will consist of a presentation by the NRC and continuation of discussion by the Panel of the modified approach for the design and operation of the LSS which was proposed by the NRC and discussed initially at the Panel's 1993 meeting.

Interested persons may make oral presentations to the Panel or file written statements. Requests for oral presentations should be made to the contact person listed below as far in advance as practicable so that appropriate arrangements can be made.

For further information regarding this meeting contact John C. Hoyle, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555: telephone 301–504–1968.

Dated: March 18, 1994.

**John C. Hoyle,**

*Advisory Committee Management Officer.*

[FR Doc. 94–6851 Filed 3–22–94; 8:45 am]

BILLING CODE 7590–01–M

**[Docket Nos. 50–413 and 50–414]**

## Duke Power Company; Correction to Biweekly Notice Applications and Amendments to Operating Licenses Involving no Significant Hazards Consideration

In the **Federal Register** for Wednesday, March 2, 1994, beginning on page 10005, please make the following correction to the BiWeekly Notice for the Catawba Nuclear Station, Units 1 and 2:

Under the "*Description of amendment request:*," the sentence "* * * High Relative Humidity (≤70%) * * * " should read "* * * High Relative Humidity (>70%) * * *"

Dated at Rockville, Maryland, this 16th day of March 1994.

For the Nuclear Regulatory Commission.

**Robert E. Martin,**

*Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 94–6761 Filed 3–22–94; 8:45 am]

BILLING CODE 7590–01–M

**[Docket No. 50–336]**

## Northeast Nuclear Energy Company; Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–65, issued to Northeast Nuclear Energy Company (NNECO/the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 2, located in New London County, Connecticut.

The proposed change to the Millstone Unit 2 Technical Specifications (TS) would provide a one-time extension of the surveillance frequency from the required 18-month to the next refueling outage but no later than September 30,

1994, of the power operated valves in the service water system (TS 4.7.4.4.1.b) and in the boran injection flow path (TS 4.1.2.2.c). This would extend the surveillance for these valves approximately 5 months.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

The proposed changes do not involve a SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

Technical Specification 4.1.2.2.c

The subject valve in the boron injection flowpath was exercised through a complete cycle on March 7, 1994, during the performance of SP 2601A. This surveillance verified the valve's operability. However, the performance of this surveillance did not satisfy literal compliance with Technical Specification 4.1.2.2.c, because it was not performed while the unit was shutdown. A one-time extension to the surveillance frequency for the subject valve in the boron injection system does not involve a significant increase in the probability or consequences of an accident previously analyzed.

Technical Specification 4.7.4.1.b

Service water valves 2–SW–3.1A and 2–SW–3.1B are normally open and are designed to fail in the "as is" position. The valves do not perform any active safety function (are not considered in any operational procedure to mitigate the effects of an abnormal event), nor do they provide isolation between the two service water headers. Their primary function is to isolate the downstream portion of the header for maintenance activities. Increasing the time interval between performance of surveillance testing 2–SW–3.1A and 2–SW–3.1B does not involve a significant increase in the probability or the consequences of a previously analyzed accident.

In addition, a review of the maintenance and operational history of the service water system valves did not identify any previous problems with the ability of the valves to open or close, or to meet any other design requirements.

Therefore, the one-time extension of the surveillance interval does not involve a significant increase in the probability of consequences of an accident.

2. Create the possibility of new or different kind of accident from any previously analyzed.

The proposed changes do not involve any physical modifications to any equipment, structures, or components, nor do they involve any changes to any plant operating procedures. The only change is a one-time extension of the surveillance intervals for one power-operated valve in the boron injection system and two power-operated valves in the service water system. Thus, the proposed changes do not introduce any new failure modes, and they do not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The proposed changes to Technical Specifications 4.1.2.2.c and 4.7.4.1.b do not involve any changes to any safety limits, setpoints, or design margins. Also the proposed changes do not affect any protective boundaries.

Technical Specifications 4.1.2.2.c

The subject value in the boron injection flowpath was exercised through a complete cycle on March 7, 1994. This surveillance did not satisfy literal compliance with Technical Specification 4.1.2.2.c, because it was not performed while the unit was shutdown. A one-time extension of the surveillance for the subject valve in the boron injection system does not involve a significant reduction in the margin of safety.

Service water valves 2–SW–3.1A and 2–SW–3.1B are normally open and are designed to fail in the "as is" position. The valves do not perform any active safety function (are not considered in any operational procedure to mitigate the effects of an abnormal event), nor do they provide isolation between the two service water headers. Their primary function is to isolate the downstream portion of the header for maintenance activities. Since service water valves 2–SW–3.1A and 2–SW–3.1B possess no risk significance, the proposed one-time extension to the surveillance frequency for service water valves 2–SW–3.1A and 2–SW–3.1B does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 22, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

If a request for 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 party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103–3499, 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 presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 14, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 16th day of March 1994.

For the Nuclear Regulatory Commission.

**Guy S. Vissing,**

*Senior Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 94–6760 Filed 3–22–94; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket Nos. 50–387 and 50–388]**

## Pennsylvania Power and Light Company, Allegheny Electric Cooperative, Inc.; Correction Notice

On February 16, 1994, the Federal Register published the "Bi-weekly Notice Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations." On Page 7704, the Susquehanna Steam Electric Station, Units 1 and 2, Amendment Nos. 132 and 99, the "Date of issuance:", "Effective date:", and "Safety Evaluation date" should read January 31, 1994.

Dated at Rockville, Maryland, this 16th day of March 1994.

For the Nuclear Regulatory Commission.

**Richard J. Clark,**

*Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 94–6763 Filed 3–22–94; 8:45 am]

BILLING CODE 7590–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–26005]**

## Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 16, 1994.

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 April 11, 1994, 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.

**Consolidated Natural Gas Company (70–8371)**

**Proposal to Issue, Sell and Acquire-Common Stock in Connection With Proposed Non-Employee Directors' Restricted Stock Plan; Exception From Competitive Bidding; Order Authorizing Proxy Solicitation**

Consolidated Natural Gas Company ("CNG"), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(c) and 12(e) of the Act and Rules 42, 50(a)(5), 62, and 65 thereunder.

On September 14, 1993, the CNG's Board of Directors adopted the Non-Employee Directors' Restricted Stock Plan ("Plan"). The purpose of the Plan is to assist CNG in retaining highly qualified persons to serve as non-employee directors by enabling such directors to acquire a proprietary interest in the company, and by providing such directors an incentive to continue to serve CNG.

The aggregate number of shares which may be granted as restricted stock ("Restricted Stock") under the Plan is 15,000 shares of CNG Common Stock, $2.75 par value per share, subject to adjustment in order to prevent dilution or enlargement of the participants' rights under the Plan in the event of a stock split, reverse stock split, reorganization or similar event. Such shares may be authorized but unissued shares or treasury shares of CNG. Any Restricted Stock granted under the Plan which is forfeited pursuant to the terms of the Plan is not available for further grants under the Plan.

The Plan provides for the automatic annual grant of 100 shares of Restricted Stock to each non-employee director following the annual shareholders meeting on the date of such meeting. Each non-employee director granted Restricted Stock shall be entitled to receive dividends on such Restricted Stock, to vote such Restricted Stock, and shall have all other rights of a shareholder of CNG, except that until restrictions on such stock expire, the Restricted Stock cannot be sold or otherwise transferred.

Restrictions on a director's Restricted Stock shall lapse in 25% installments on the anniversary date of each grant, or shall lapse in total upon: (1) The director's retirement at age 70; or (2) the director's ceasing to serve due to death or disability, whichever first occurs. In the event of a "change of control" of CNG, as that term is defined in CNG's 1991 Stock Incentive Plan, all restrictions on outstanding Restricted Stock will lapse and CNG will repurchase all such shares which were awarded more than six months prior to the change of control at the then fair market value.

The affirmative vote of holders of a majority of the shares of CNG's Common Stock outstanding on March 23, 1994 is required to authorize CNG: (1) To issue up to 15,000 shares of common stock to the Plan; (2) to acquire previously awarded shares of the Restricted Stock, through the forfeiture and repurchase provisions of the Plan; and (3) to adjust the number and par value of the common stock that may be issued under the Plan to implement the anti-dilution or anti-enlargement of rights provisions of the Plan. CNG intends to submit the proposals to its shareholders for their approval at the annual meeting of shareholders to be held on May 17, 1994. CNG requests authority to solicit proxies from its stockholders for approval of the Plan at the meeting. CNG has filed its proxy solicitation material and requests that the effectiveness of its declaration with respect to the solicitation be permitted to become effective as provided in rule 62(d).

It appearing to the Commission that CNG declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith, pursuant to rule 62:

*It is ordered*, that the declaration regarding the proposed solicitation of proxies, be, and it hereby is, permitted to become effective forthwith, under rule 62, and subject to the terms and conditions prescribed in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–6775 Filed 3–22–94; 8:45 am]

BILLING CODE 8010–01–M

## Requests Under Review by Office of Management and Budget

*Agency Clearance Office:* John J. Lane, (202) 942–8800.

*Upon Written Request Copy Available From:* Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

*Proposed Amendments:* Rule 15c2–12; File No. 270–330.

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 ("Commission") has submitted for Office of Management and Budget approval proposed amendments to rule 15c2–12 under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*). The proposed amendments to rule 15c2–12 would make it unlawful for a broker, dealer, or municipal securities dealer to act as an underwriter of an issue of municipal securities unless the issuer or its designated agent has undertaken in a written agreement or contract for the benefit of the holders of such municipal securities to provide certain information to a nationally recognized municipal securities information repository, and would require brokers, dealers, and municipal securities dealers, prior to recommending a transaction in a municipal security, to review the information the issuer of the municipal security has undertaken to provide. It is anticipated that approximately 12,003 brokers, dealers, municipal securities dealers, issuers of municipal securities, and nationally recognized municipal securities information repositories will spend a total of 65,050 hours complying with rule 15c2–12.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission rules and forms to John J. Lane,

Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, Paperwork Reduction Act Number 3235–0372, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 9, 1994.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–6774 Filed 3–22–94; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

**[License No. 04/04–0253]**

### Florida Capital Ventures, Ltd.; Filing of an Application for Transfer of Ownership and Control

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) by Florida Capital Ventures, LTD., 880 Riverside Plaza, 100 West Kennedy Boulevard, Tampa, Florida 33602, for transfer of ownership and control of its license under the Small Business Investment Act of 1958, as amended, (the Act) (15 U.S.C. *et seq.*). Florida Capital Ventures, LTD., was licensed March 5, 1990.

The applicant has transferred 99 percent of the ownership of the Licensee from 1 Limited Partner to 14 new Limited Partners. The New Limited Partners will not have any involvement in the day-to-day operations of the Licensee. The operations of the Licensee will continue to be conducted by its Corporate General Partner, Florida Venture Partners, Inc.

The New Limited Partners owning more than 10 percent of the Ownership of the Licensee are as follows:

| Name | Title | Percentage of ownership |
|---|---|---|
| American Bankers, Life Assurance Company of Florida, 11222 Quail Roost Drive, Miami, FL 33157 | Limited Partner | 35.0442 |
| John William Galbraith, 1 Beach Drive, #1802, St. Petersburg, FL 33701 | Limited Partner | 17.5221 |

The applicant will continue operations with a capitalization of $3,335,439.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3d Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Tampa, Florida.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: March 16, 1994.

**Robert D. Stillman,**

*Associate Administrator for Investment.*

[FR Doc. 94–6758 Filed 3–22–94; 8:45 am]

BILLING CODE 8025–01–M

**[License No. 05/07–5083]**

### Polestar Capital Inc.; Filing of an Application for Transfer of Ownership and Control and Capital Reorganization

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1993)) by Amoco Venture Capital Company, 200 East Randolph Drive, Chicago, Illinois 60601, for transfer of ownership and control and capital reorganization, of its license to Polestar Capital, Inc., under the Small Business Investment Act of 1958, as amended, (the Act) (15 U.S.C. *et. seq.*). Amoco Venture Capital Company was licensed December 22, 1970.

Management of Polestar Capital, Inc., is purchasing 100 percent of a new issue of common stock of Polestar Capital, Inc. Polestar Capital, Inc., in a tax free reorganization, is acquiring the common stock of Amoco Venture Capital Company in exchange for Junior Preferred Stock of Polestar, behind the Senior Preferred Stock owned by the Small Business Administration. Within 6 years of the date of the issuance of the Junior Preferred Stock to Amoco Corporation, Polestar Capital, Inc., must make a Preferential Payment to Amoco Corporation. If Polestar is unable to make the Preferential Payment to Amoco Corporation, then Amoco Corporation has the option to cause all common stock of Polestar Capital, Inc. to be transferred to Amoco Corporation. Prior to any Preferential Payment to Amoco Corporation, Polestar Capital, Inc., must pay the Small Business Administration any accrued but unpaid dividends on the Senior Preferred Stock owned by the Small Business Administration.

The proposed officers, directors and shareholders of Polestar Capital, Inc., are:

| Name | Title | Percentage of ownership |
|---|---|---|
| John W. Doerer, 71 East Division #1902, Chicago, IL 60610 | Chairman, President and Director | 50.00 |
| Wally Lenox, 1501C South Indiana, Chicago, IL 60605 | Executive Vice President, Secretary and Director. | 50.00 |
| Robert B. House, Amoco Corporation, 200 East Randolph Drive, Chicago, IL 60601 | Director | 00.00 |

The applicant will begin operations with a capital reorganization of $3,488,414.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new

company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Chicago, Illinois.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: March 10, 1994.

**Robert D. Stillman,**

*Associate Administrator for Investment.*

[FR Doc. 94–6759 Filed 3–22–94; 8:45 am]

BILLING CODE 8025–01–M

## DEPARTMENT OF STATE

**[Public Notice 1964]**

### Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Containers and Cargoes; Meeting

The Working Group on Containers and Cargoes of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct open sessions on April 13 and 14, 1994, in Room 6103 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. The Working Group's Panel on Multimodal Transport and Containers will meet from 1 p.m. to 4 p.m., April 13, 1994. The Working Group's Panel on Bulk Cargoes will meet from 1 p.m. to 4 p.m., April 14, 1994. The purpose of the meeting is to establish U.S. positions on matters to be addressed at the Thirty-third session of the International Maritime Organization's (IMO) Subcommittee on Containers and Cargoes (BC 33) to be held at IMO Headquarters in London, April 25–29, 1994.

Items of particular interest that will be discussed at the Working Group's Panel on Multimodal Transport and Containers include:

1. Acceptance of methods to assess the efficiency of securing arrangements for non-standardized cargo, to be adopted as part of the Code of Safe Practice for Cargo Stowage and Securing.

2. Stowage and securing of cargoes, which will include a proposal to have certain sections of the Code of Safe Practice for Cargo Stowage and Securing made mandatory through an amendment to Chapter VI of the International Convention for Safety of Life at Sea.

3. Review of the structural integrity standards for Fiberglass-Reinforced Plastic (FRP) containers with a discussion of the recommendations from the Coast Guard contracted study, "Suitability of Fiberglass-Reinforced Plastic Containers for Shipments of Hazardous Materials."

Items of particular interest that will be discussed at the Working Group's Panel an Bulk Cargoes include:

1. Amendments to IMO's Code of Safe Practice for Solid Bulk Cargoes for various solid bulk cargoes.

2. A proposal that compliance with IMO's Code of Safe Practice for Solid Bulk Cargoes be made mandatory through an amendment of the International Convention for Safety of Life at Sea.

3. Prevention of pollution by noxious solid substances.

Members of the public may attend either panel session or both panel sessions of this meeting up to the seating capacity of the room. Interested persons may seek information by writing LCDR D. A. Du Pont or Mr. Bob Gauvin, U.S. Coast Guard (G–MVI–2), 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 267–1181.

Dated: March 8, 1994.

**Geoffrey Ogden,**

*Chairman, Shipping Coordinating Committee.*

[FR Doc. 94–6712 Filed 3–22–94; 8:45 am]

BILLING CODE 4710–07–M

**[Public Notice 1966]**

### Fine Arts Committee; Meeting

The Fine Arts Committee of the Department of State will meet on Saturday, April 16, 1994 at 10:30 a.m. in the John Quincy Adams State Drawing Room. The meeting will last until approximately 12 p.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting in September 1993 and the announcement of gifts and loans of furnishings as well as financial contributions for calender year 1993.

Public access to the Department of State is strictly controlled. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office by Friday, April 11, 1994, telephone (202) 647–1990 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: February 25, 1994.

**Clement E. Conger,**

*Chairman, Fine Arts Committee.*

[FR Doc. 94–6714 Filed 3–22–94; 8:45 am]

BILLING CODE 4710–38–M

**[Public Notice 1963]**

### Shipping Coordinating Committee Subcommittee on Standards of Training and Watchkeeping; Meeting

The Shipping Coordinating Committee (SHC) will conduct open meetings at 10:30 a.m. on April 7, 1994, and on June 23, 1994, in room 3442 of the Nassif Building, 400 7th Street SW., Washington DC 20590. The purpose of the meetings is to review the actions taken by the twenty-fifth session of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping (STW) concerning the comprehensive review of the International Convention of Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW). Preparations for the twenty-sixth session of STW scheduled for July 11–16, 1994, in London, will also be discussed.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Christopher Young, U.S. Coast Guard (G–MVP–4), room 1210, 2100 Second Street SW., Washington, DC 20593–0001 or by calling: (202) 267–0229.

Dated: March 8, 1994.

**Geoffrey Ogden,**

*Chairman, Shipping Coordinating Committee.*

[FR Doc. 94–6713 Filed 3–22–94; 8:45 am]

BILLING CODE 4710–07–M

**[Public Notice 1965]**

### Shipping Coordinating Committee Maritime Safety Committee and International Conference; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Wednesday, May 11, 1994, in room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC to finalize preparations for the 63rd Session of the Maritime Safety Committee (MSC–63) of the International Maritime Organization (IMO) and the International Conference to amend the Safety of Life at Sea (SOLAS) convention which is scheduled for May 16–25, 1994 at the IMO Headquarters in London. At the

meeting papers received and the draft U.S. positions will be discussed.

Among other things, the items of particular interest are:

a. Amendments to SOLAS and Standards of Training, Certification and Watchkeeping for Seafarers (STCW) Conventions;

b. Role of the human element in maritime casualties;

c. Prevention and abatement of marine pollution incidents;

d. Reports of various Subcommittees (Fire Protection, Safety of Navigation, Bulk Chemicals, Carriage of Dangerous Goods, Stability, Load Lines and Fishing Vessels Safety; Radiocommunications; Containers and Cargoes; Life-Saving, Search and Rescue; Ship Design and Equipment; Training and Watchkeeping; Flag State Implementation.

In addition, the meeting will discuss draft U.S. position for the Conference to amend SOLAS in the following areas:

a. Amendments to Article VIII;

b. Operational requirement for port state control;

c. Enhance survey guidelines;

d. New Chapter IX on Safety Management, and

e. New Chapter X on High Speed Craft.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Gene F. Hammel, U.S. Coast Guard (G–CI), room 2114, 2100 Second Street SW., Washington, DC 20593–0001 or by calling (202) 267–2280.

Dated: March 7, 1994.

**Geoffrey Ogden,**

*Chairman, Shipping Coordinating Committee.*

[FR Doc. 94–6715 Filed 3–22–94; 8:45 am]

BILLING CODE 4710–07–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[CGD 94–006]

### Announcement of Global Positioning System (GPS) Initial Operational Capability (IOC) and Its Impact on Vessel Carriage Requirement Regulations

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense has notified the Department of Transportation that the Global Positioning System (GPS) has reached its Initial Operational Capability (IOC). A GPS receiver now meets the carriage requirements for electronic position fixing devices under 33 CFR 164.41 (a)(2).

**DATES:** Effective December 8, 1993, the Coast Guard will accept a GPS receiver as an electronic position fixing device satisfying the requirements of 33 CFR 164.41.

**ADDRESSES:** If so indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

**FOR FURTHER INFORMATION CONTACT:** LCDR Jean Butler, Chief, Radio Aids Applications and Developments Branch, Radionavigation Division, Office of Navigation Safety and Waterway Services, USCG Headquarters, Washington, DC 20593–0001, telephone 202–267–0298. A copy of this notice may be obtained by calling the Coast Guard's toll-free Boating Safety Hotline, 1–800–368–5647. In Washington, DC, call 267–0780.

**Background**

The Federal Radionavigation Plan (FRP), jointly prepared by the Department of Defense (DOD) and Department of Transportation (DOT) on a biennial basis, contains further information concerning navigation, radionavigation system descriptions, and plans for government operated radionavigation systems. It is available to the public through the National Technical Information Service (NTIS).

GPS is a DOD-developed, worldwide, satellite-based radionavigation system that will be the primary radionavigation system well into the next century. When fully operational, the GPS will be composed of 24 satellites in six orbital planes. The spacing of the satellites in orbit will be arranged so that a minimum of five satellites will be in view to users worldwide. Full Operational Capability will be achieved when 24 operational, production model satellites (Block II or newer) are operating in their assigned orbits and when the constellation has successfully completed testing for operational military functionality. This is not expected to occur until 1995. GPS Initial Operational Capability (IOC) has been met and means that 24 GPS satellites (any model) are operating in their assigned orbits, are available for navigation, and provide the SPS levels of service as defined in the FRP. Any planned disruption of the GPS in peacetime will be subject to a minimum 48-hour advance notice provided by the DOD to the Coast Guard GPS Information Center (GPSIC). A disruption is defined as periods in which the GPS is not capable of providing Standard Positioning Service as defined in the FRP. Unplanned system outages resulting from system malfunctions or unscheduled maintenance will be announced by the GPSIC as they become known.

GPS provides two levels of service: Standard Positioning Service (SPS) and Precise Positioning Service (PPS). SPS is the standard level of positioning, velocity, and timing accuracy that is available to any user on a continuous worldwide basis. The horizontal positioning accuracy of this service is 100 meters (2 distance root mean squared (drms), 95% probability) and 300 meters with 99.99% probability. PPS will be limited to authorized U.S. and allied Federal government and military users and to those civil users who can satisfy U.S. requirements. These requirements are: the use must be in the U.S. national interest; the user must meet specific GPS security requirements; and a reasonable alternative to the use of PPS must not be available. Unauthorized users will be denied access to PPS through encryption of the signals. PPS military user equipment will provide horizontal positioning accuracy of 21 meters (2 drms). The SPS is affected by a process called Selective Availability (SA), which degrades the basic accuracy of the SPS through adjustment and encryption of some of the signals and data.

One of the shortcomings of GPS for civil navigation use is its problem meeting integrity requirements. Integrity is the ability of a system to provide timely warnings to users when the system should not be railed upon for navigation. According to DOD's concept of operation, GPS satellites are monitored more than 95 percent of the time by a network of five monitoring stations spread around the world. The information collected by the monitoring stations is processed by the GPS Master Control Station (MCS) and used to periodically update the navigation message, including the satellite health message, transmitted by each satellite. The health message is transmitted as part of the GPS navigation message for reception by both PPS and SPS users. Additionally, satellite operating parameters such as navigation data errors, signal availability failures, and certain types of satellite clock failures are monitored internally within the satellite. If such internal failures are

detected, users are notified within six seconds. Other failures detectable only by the control segment may take from 15 minutes to several hours before users are notified of a problem. This is unsatisfactory for many modes and phases of navigation, and, from the maritime perspective, it is particularly deficient for the harbor and harbor approach (HHS) phase of navigation. The integrity required for HHA navigation will be provided through augmentation of the GPS SPS by the Coast Guard's Differential GPS (DGPS) service, now being implemented.

As with Loran-C and Transit (the Navy Navigation Satellite System), the GPS should not be used by itself in or near restricted waters. As described above, the accuracy of the system is not monitored continuously and it may take 2–6 hours to be aware of a problem or fix a problem with a satellite. Additionally, mariners need to be aware of the real accuracy of the system. GPS receivers may produce a latitude and longitude position that appears accurate to several decimal places, which may mislead a mariner to believe the system is really that accurate. GPS SPS will only give an accuracy to within 100 meters, with 95% probability. That means that the mariner can be anywhere within a 100 meter radius of the position indicated by the receiver. It also means that 5% of the time, the actual position could be greater than 100 meters from the indicated location. Mariners must constantly be aware of this and navigate with due caution, using all means available, most importantly in more restricted locations such as harbor and harbor approach areas.

The FRP outlines navigation accuracies required for the different phases of navigation. While the Ocean and Coastal phases have been satisfied for some time, the harbor and harbor-approach phase requirements have been unattainable with existing systems. Additionally, a similar need for higher accuracy exists for other Coast Guard missions such as positioning aids to navigation and Vessel Traffic Services. DGPS is a solution to all of these needs.

DGPS improves upon GPS signals by using a local reference receiver to correct errors in the standard GPS signals. An "all in view" GPS receiver is located at a site which has been geodetically surveyed. The receiver monitors all visible satellites and measures the pseudorange to each satellite. Since the satellite signal contains information on the precise satellite orbits and the reference receiver knows its position, the true range to each satellite can be calculated. By comparing the calculated true range and the measured pseudorange, a correction term can be determined for each satellite. These corrections are then broadcast to the user over the communications network, and can be received by the user with a DGPS receiver. The Coast Guard will be using selected marine radiobeacons to transmit the corrections to users. The corrections are then applied to the pseudorange measurements within the user's receiver, achieving a position accurate within 10 meters, with 95% probability. One advantage of DGPS is that it will provide radionavigation accuracy that is not possible with existing systems. It will also reduce the integrity check of satellites from hours to seconds, and will even allow for use of satellites considered unhealthy. By knowing its position, the reference station can detect immediately when a satellite may be sending erroneous data. DGPS accuracies cannot be achieved with either the GPS Standard Positioning Service, with Selective Availability on or off, or Precise Positioning Service. The Coast Guard will also implement an integrity monitoring system which will verify the accuracy of the corrections that it transmits on the selected radiobeacon. The Coast Guard's DGPS Service will be implemented for harbor and harbor approach areas of the continential U.S., Great Lakes, Puerto Rico, and most of Hawaii and Alaska by 1996.

**Information Availability**

Operational status and other information about GPS is available to worldwide users of GPS through the Coast Guard's GPS Information Center (GPSIC). The GPSIC sends GPS operational status information to civil users through Operational Advisory Broadcasts (OAB). These broadcasts contain the following general categories of GPS performance data: Current constellation status, Recent (past) outages, Scheduled (future) outages, and Almanac data. The OAB is disseminated or made available through the following media:

GPSIC Computer Bulletin Board System (BBS)
GPSIC 24-Hour Status Recording
WWV/WWVH worldwide high-frequency radio broadcasts
U.S. Coast Guard Marine Information Broadcasts (MIB)
DMAHTC Broadcast Warnings
DMAHTC Weekly Notice to Mariners
DMA Navigation Information Network (NAVINFONET)
NAVTEX Data Broadcast

Through a duty watchstander and an electronic bulletin board service (BBS), both available 24 hours per day, GPSIC also makes the following information available:

—Operational status of GPS as provided by DOD
—Precise GPS orbit data from the National Geodetic Survey
—Technical information on GPS
—Operational status and information on other Coast Guard operated radionavigation systems
—Instructions on the access and use of GPSIC services

The U.S. Air Force Second Space Operations Squadron (2SOPS), which operates the GPS Master Control Station (MCS) in Colorado Springs, CO, provides the following GPS information for the GPSIC:

Notice Advisories to NAVSTAR Users (NANU) are near real-time operational status capability reports. NANUs are issued to notify users of future, current, or past satellite outages, system adjustments, or any condition which might adversely affect users. NANUs are generated by 2SOPs as events occur. GPS Status Messages contain general information that is downloaded daily from the Air Force's (2SOPS) electronic bulletin board. The message contains information about the satellite orbit (plane/slot), clocks, and current or recent NANUs. Status Messages are generated by 2SOPS once a day Monday through Friday, except on Federal holidays.

Almanacs contain the orbital information and clock data of all the satellites. The almanac for all satellites can be obtained from downloading the continuously transmitted data stream from any satellite.

In addition to receiving information from the MCS, the GPSIC works with representatives of the National Geodetic Survey (NGS) to offer NGS computed precise GPS orbit data to the public via the GPSIC bulletin board. This data is called precise ephemeris data. Precise ephemeris data describes the orbit of each satellite as observed by numerous ground stations. It is useful in making a refined determination of where the satellites were at some time in the past. The time lag for this information is about eight days.

The BBS is an electronic version of a bulletin board, where information is made available in easy to access lists and files. Any user with a computer and modem can dial the BBS and browse through the information or copy files into their own computer for further use. The BBS is menu-driven and has an extensive set of on-line help utilities. If necessary, users can also page the GPSIC watchstander to request personal

assistance. The BBS is free and open to all. However, users will have to pay their own connection charges (long distance telephone or public data network costs). First-time callers are asked to register on-line (provide their names, addresses, etc.) before proceeding to the BBS main menu. Through the BBS, a wide range of information is available 24 hours a day. BBS information is updated whenever the other GPSIC sources are. Users may call the BBS via either telephone or SprintNet (a public data network). Ordinary telephone is the easiest for most people, but SprintNet offers a high speed error-free alternative for those (especially international callers) who may have difficulty in getting a good data connection over the voice phone lines. To contact the BBS, call: (tel) 703–313–5910. Modem speeds of 300 to 14,400 bps and most common U.S. or international protocols are supported. Communications parameters should be set to: 8 data bits, No parity, 1 stop bit (8N1), asynchronous comms, full duplex. We have eight phone lines at this number and two auxiliary numbers to accommodate modems which may be incompatible with the ones on 313–5910. The BBS SprintNet number is: 31102021323 (or abbreviate to 202 1328 if accessing SprintNet via telephone to one of their modems.) For SprintNet access, users must set up their own accounts with Sprint or a similar public data network which has a "gateway" to SprintNet. For more information, call: (800) 736–1130 (U.S.) or (913) 541–6876) (international).

Users who need further information or assistance may call the GPSIC watchstander at 703–313–5900, or write to Commanding Officer, USCG Omega Navigation System Center, 7323 Telegraph Road, Alexandria, VA 22310–3998.

In addition to the GPSIC watchstander and BBS already described, users can access the GPS OAB information from the services described below:

| Service | Availability | Info type | Contact No./Freq |
|---|---|---|---|
| GPS/Omega voice tape recording | 24 hours a day | Status forecasts historic | (703) 313–5905. |
| WWV | Minutes; 14 & 15 | Status forecasts | 2.5, 5, 10, 15 and 20 MHz. |
| WWVH | Minutes; 43 & 44 | Status forecasts | 2.5, 5, 10 and 15 MHz. |
| USCG MIB | When broadcast | Status forecasts | VHF–FM, med freq & high freq. |
| DMA broadcast warnings | When broadcast | Status forecast outages | |
| DMA weekly notice to mariners | Published & mailed weekly | Status forecast outages | (301) 227–3126. |
| DMA Navinfonet automated notice to mariners system. | 24 hours a day | Status forecasts historic almanacs | (301) 227–3351 300 baud, (301) 227–5925 1200 baud, (301) 227 4360 2400 baud. |
| | | For more info call | (301 227–3296. |
| Navtex data broadcast | When broadcast; 4-6 time/day | Status forecast outages | 518 KHz. |

(Authority 33 USC 1231, 46 USC 2103, 3703, 49 CFR 1.46)

Dated: March 15, 1994.

R.C. Houle,

*Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.*

[FR Doc. 94–6813 Filed 3–22–94; 8:45 am]

BILLING CODE 4910–14–M

## Federal Aviation Administration

[Docket No. 27648]

## Proposed Termination of Eligibility of Airport Grant Funds and Authority to Collect or Impose Passenger Facility Charges at Aspen-Pitkin County Airport, Pitkin County, CO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed termination.

SUMMARY: The Federal Aviation Administration (FAA) is proposing to terminate the eligibility of Pitkin County (County), Colorado, owner and operator of Aspen-Pitkin County Airport (ASE), for airport grant funds and to disapprove its application to impose or collect passenger facility charges (PFC) because it appears that Pitkin County has improperly imposed an aircraft access restriction at ASE. This notices is issued in accordance with Sections 9304(e) and 9307 of the Airport Noise and Capacity Act of 1990 (ANCA), 49 U.S.C. App. 2153(e) and 2156, and 14 CFR 161.505. This Notice has summarized the available information in order to facilitate any interested party's ability to comment or object.

DATES: Interested parties may file comments or objections to the FAA's proposed termination of the County's airport grant eligibility and disapproval of the of the County's passenger facility charge application. The FAA hereby sets the minimum 30-day comment period as provided in subpart F section 161.505(c).

Comments and objections must be postmarked on or before April 22, 1994.

ADDRESSES: Send or deliver comments and objections in triplicate to Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Docket No. 27594, Room 915G, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the Washington DC Docket weekdays except Federal holidays, between 8:30 a.m. and 5:00 p.m.

The FAA's Notice of Apparent Violation (NOAV) and the County's Response are available for review at the Washington DC docket office; the FAA regional office, 1601 Lind Avenue, SW, Renton, Washington 98055–4056, telephone (206) 227–2600; and at the FAA Airports District Office in Denver, 5440 Roslyn, Suite 300, Denver, Colorado 80216–6026, telephone (303) 286–5541. A copy is also available on the airport through the Aspen Airport Traffic Control Tower, Pitkin County Airport, 0150 West Airport Road, 81611; telephone (303) 925–3703. Contact those offices to determine review hours.

FOR FURTHER INFORMATION CONTACT: Victoria L. Catlett, Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591; telephone (202) 267–3263.

SUPPLEMENTARY INFORMATION:

### Background

The Airport Noise and Capacity Act of 1990 (ANCA) requires an airport proprietor, as a condition of receiving grant funds under the Airport Improvement Program and of collecting and imposing passenger facility charges: (1) To conduct a public review process and cost-benefit analysis of any noise or access restriction affecting Stage 2 aircraft if the restriction was not proposed before October 1, 1990; and (2) to obtain agreement from each affected operator or approval of the Secretary of Transportation for any restriction affecting Stage 3 aircraft not in effect before October 1, 1990.

ASE is a commercial service airport which serves Aspen, Colorado. Pitkin County is the proprietor of ASE and operates ASE through the Board of County Commissioners (Board). ASE is now open each day from 7 a.m. to one-half hour after sunset. An exception until 11 p.m. exists for two air carriers (United Express and Continental Express) that maintain private navigation aids at the airport. In its current form, the exception to ASE's nighttime curfew is only available to scheduled carriers operating Stage 3 or exempt aircraft, which arrive or depart before 11 p.m. and who have access to an on-site instrument landing system which is privately owned. The current operating hours of ASE are set out in County Ordinance 90–12.

In the past, Ordinance 89–3 (October 24, 1989) regulated hours of operation at ASE. It prohibited general aviation aircraft from taking off or landing during the period one-half hour after sunset to 7 a.m. Scheduled air carriers operating Stage 3 or exempt aircraft under Parts 135 or 121 of the Federal Aviation Regulations and who had access to privately-owned, on-site instrument landing systems were permitted to operate until 11 p.m. Ordinance 89–3 established a yearly, limited exception to the prohibition on nighttime operations for general aviation aircraft operators. General aviation aircraft operating under instrument flight rules (IFR) were permitted to depart on Fridays, Saturdays and Sundays until two and one-half hours past sunset local time during ski season each year. The airport manager was also authorized to grant similar departure exceptions during high-traffic holiday periods such as Christmas Eve, New Year's Day and President's Day.

On June 12, 1990 the Board introduced, first read, and set for public hearing a draft ordinance "(e) establishing the hours of airside operations at the Aspen-Pitkin County Airport (Sardy Field)." The draft ordinance would have expanded nighttime access at ASE to all aircraft until 10 p.m. and necessarily provided more liberal access than the ski season exception. The Board proposed this change, in part, in response to concerns voiced by the FAA and general aviation user groups about the potentially discriminatory nature of ASE's hours of operation. The Board did not adopt the June 12, 1990 draft ordinance. At an August 7, 1990 special session and hearing the Board tabled the June 12, 1990 draft ordinance indefinitely.

The Board introduced, first read, and set for public hearing Ordinance 90–12 on November 13, 1990. The Board adopted Ordinance 90–12 on November 27, 1990 which established the current operating hours. It also repealed the ski season exception under Ordinance 89–3.

Over approximately a two year period, the FAA attempted to informally resolve the ANCA issues with the County. The FAA repeatedly raised concerns that Ordinance 90–12 did not appear to be grandfathered either as to operations by Stage 2 or Stage 3 aircraft, nor exempt from requirements under ANCA Sections 9304 (b) and (c). After extensive correspondence and discussion, the FAA determined that the County had not provided sufficient evidence to demonstrate that repeal of the ski season exception through passage of Ordinance 90–12 was grandfathered. The FAA determined that informal resolution had not been successful and issued a Notice of Apparent Violation (NOAV) on September 30, 1993.

The NOAV advised the County of the FAA's position that the existence, and continued enforcement, of Ordinance 90–12 was an apparent ANCA violation and that the County's eligibility for airport grant funds and authority to impose and collect passenger facility charges was at issue, absent the County's agreement to rescind or permanently not enforce Ordinance 90–12. The NOAV indicated that contrary to the County's contentions, the June 12, 1990 draft ordinance did not reference an intent to repeal ASE's ski season exception as an alternative to liberalizing the curfew. The FAA interprets "proposed" in the context of ANCA and 14 CFR Part 161 to mean issuance of an official proposal by the government body with authority to adopt the proposal or ordinance. It does not appear that either the language of the June 12, 1990 draft ordinance or the published notice in the Aspen Times indicated that the Board was proposing to repeal the ski season exception as an alternative to liberalizing access to ASE.

The County provided a Response to the FAA's NOAV and made the following key arguments:

(1) When the Board tabled the draft ordinance by Resolution on August 7, 1990, the Board repealed the ski season exception,

(2) The conduct of its County Manager and Airport Manager proves that the ski season exception was repealed prior to October 1, 1990. That is, a Board Resolution of August 7, 1990 authorized the County Manager to direct the Airport Manager to notify the FAA National Flight Data Center to delete the ski season exception,

(3) Adoption of Ordinance 90–12 on November 27, 1990, merely codified, and/or ratified, the repeal of the ski season exception which, the County continued to contend, occurred on August 7, 1990; Ordinance 90–12 is irrelevant because it is merely a housekeeping and codification measure, and

(4) Repeal was necessary because the Board was concerned about the safety of its citizens.

In addition, the County responded that it would not agree to rescind or permanently not enforce Ordinance 90–12, an alternate method of compliance with ANCA or Part 161, as advised by the FAA in its NOAV.

The FAA has reviewed the evidence contained in the record and carefully evaluated the County's claims. It is the FAA's preliminary conclusion that the County's Response to the FAA's NOAV did not provide any additional evidence or arguments which would indicate that repeal of the ski season exception was proposed before October 1, 1990 within the meaning of ANCA.

First, the usual meaning of "tabled" as applied to a piece of legislation is that consideration of the legislation was postponed. Tabling the June 1990 draft ordinance on August 7, 1990 left the existing airport rules, including the ski season exception, in effect at ASE.

Second, while the County argues that the Airport Manager's revision of the FAA Airport Facilities Directory (A/FD) evidenced the County officials' intent to repeal the ski season exception, that argument is not dispositive of the ANCA issues. Revision of the A/FD did not have a regulatory effect. It was not supported by an official proposal by the Board of County Commissioners or any other government body with authority to adopt the proposal. The Airport Manager does not have the power to repeal or amend ordinances independent of the Board.

Third, the County's position that the notice and reading of Ordinance No. 90–12 was a mere housekeeping measure is contradicted by testimony at the August 7, 1990, hearing. In summarizing the options available to the Board at the August 7, 1990, hearing, Commissioner Ross noted that a significant change in the proposal to liberalize the curfew would require another reading (Minutes of the Pitkin County Board of County Commissioners, Special Meeting, August 7, 1990, p.2). The difference between the June 12, 1990 proposal to liberalize the curfew and repeal of the ski season exception appears to have been a significant change, requiring public notice through another reading. Therefore, the County appears to have been required to introduce and read Ordinance 90–12 on November 13, 1990. This supports a conclusion that repeal of the ski season exception was not proposed within the meaning of ANCA prior to October 1, 1990.

Fourth, the FAA invited the County to provide technical data or studies in support of its safety contentions. In its Response, the County has reasserted the arguments it has made previously against all night operations at Aspen (and other high-elevation mountain airports). The airport itself is certificated by the FAA under 14 CFR Part 139, and is served by an FAA air traffic control tower. The FAA does not find, and the County apparently does not argue, that there is any safety issue with the airport facility itself. With respect to arrival and departure routes for Aspen, the FAA Flight Standards Service has encouraged specialized training and planning for mountain flying generally, but has not found a need for a prohibition at Aspen or other Rocky Mountain airports.

**Corrective Action**

Pursuant to 14 CFR 161.505(c), the County may rescind or agree to permanently not enforce Ordinance 90–12.

**Related Matters**

Both the Aircraft Owners and Pilots Association and the National Business Aircraft Association have filed formal complaints under 14 CFR Part 13 which allege that the curfew violates the obligation of the County under its Federal grant assurances to allow access on fair and reasonable terms, without unjust discrimination. A decision by the County to adopt a restriction that relaxes the curfew and allows equal access to all operators could render both this proceeding and the formal complaints moot.

In accordance with Senate Report 103–150, the General Accounting Office (GAO) has issued a Report on Mountain Flying which examined the FAA's oversight of general aviation safety in mountainous areas. GAO Report to the Chairman, Subcommittee on Aviation, Committee on Commerce, Science, and Transportation, U.S. Senate. Aviation Safety, FAA Can Better Prepare General Aviation Pilots for Mountain Flying Risks, GAO/RCED–94–15 (December 1993) Overall, GAO recommended additional efforts to prepare general aviation pilots for the greater risks of flying in mountainous areas. In Chapter Four of the report GAO presents its views of the legal and safety issues involved with Pitkin County's prohibition against general aviation night operations at Aspen Airport, but makes no recommendations.

**Conclusion**

Based on the available information, the FAA has determined to issue this Notice of Proposed Termination. The FAA will review any additional comments, statements and data which are submitted and any other available information to determine whether the County has provided satisfactory evidence of compliance or has taken satisfactory corrective action. If the FAA finds satisfactory evidence of compliance, the FAA will provide written notice to the County and publish notice of compliance in the **Federal Register**. If the FAA determines that the County has imposed an access restriction in violation of ANCA or Part 161 the FAA will issue an order in accordance with Part 161 terminating eligibility for new airport grants and discontinuing payments of airport grant funds as well as disapproving the County's PFC application.

Issued in Washington, DC on March 17, 1994.

**David L. Bennett,**

*Assistant Chief Counsel, Airports and Environmental Law.*

[FR Doc. 94–6795 Filed 3–22–94; 8:45 am]

BILLING CODE 4910–13–M

## National Highway Traffic Administration

**[Docket No. 94–18; Notice 1]**

## Dow Corning Corporation; Receipt of Petition for Determination of Inconsequential Noncompliance

Dow Corning Corporation (Dow) of Midland, Michigan has determined that some of its brake fluid fails to comply with the requirements of 49 CFR 571.116, Motor Vehicle Safety Standard No. 116, "Hydraulic Brake Fluids," and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Dow has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S5.1.9, Water Tolerance, of Standard No. 116 states that:

> At low temperature, after humidification, "(1) The [brake] fluid shall show no sludging, sedimentation, crystallization, or stratification; (2) Upon inversion of the centrifuge tube, the air bubble shall travel to the top of the fluid in not more than 10 seconds; (3) If cloudiness has developed, the wet fluid shall regain its original clarity and fluidity when warmed to room temperature."

Between September 4, 1992, and October 29, 1993, Dow produced and sold 11 lots of DOT 5 silicone base brake fluid (SBBF) that do not comply with the requirements in Paragraph S5.1.9 of Standard No. 116. These 11 lots were broken down into 191 55 gallon drums, 1,112 one gallon retail packages, 11,458 one quart retail packages, and 33,091 12 ounce retail packages.

At some point near the end of the low temperature portion of the water tolerance test, these lots contained a very small amount of a soft, slush-like crystallation. The crystallization usually formed around the top of the specimen, where the SBBF met the vial headspace. The smallest amount of warming made the crystallization flow back into a liquid state.

Dow supports its petition for inconsequential noncompliance with the following:

> First, the low temperature portion of the water, tolerance test was designed to [simulate] excessive water in non-SBBF brake fluids. But as applied to SBBF, the humidification step results in a water content level for test samples that is nearly double that of in-service SBBF. SBBF test samples clearly do not accurately represent in-service SBBF. [Dow b]elieves this built-in error results in unrealistic and excess water. During this portion of the test, that excess water becomes a seed for crystallization of the SBBF itself. Without the humidification step, SBBF does not crystallize.
>
> Second, the soft, slush-like crystals are identical to the liquid SBBF; that is, 20 centistoke polydimethylsiloxane, some organic additives, and 350–400 [parts per million (ppm)] water. The SBBF crystals should not be considered as water-based "ice" crystals. These SBBF crystals do not exhibit any of the negative safety impacts that result from ice formation.

Dow also submitted the following additional material: (1) A 1982 petition for rulemaking it filed to amend this portion of the standard; (2) data to support this petition; (3) test data showing that the subject SBBF would pass the requirements of S5.1.9 when the humidification step is eliminated; and, (4) a statement by Ron Tecklenberg, Ph.D, a Dow chemist, supporting Dow's petition. This additional material is available for review in the HNTSA Docket Section.

Interested persons are invited to submit written data, views, and arguments on the petition of Dow, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested

but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 22, 1994.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: March 16, 1994.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 94–6694 Filed 3–22–94; 8:45 am]

BILLING CODE 4910–59–M

## Research and Special Programs Administration Office of Hazardous Materials Safety

### Applications for Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of Applicants for Exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before April 22, 1994.

**ADDRESS COMMENTS TO:** Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

NEW EXEMPTIONS

| Application | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|
| 11218–N | Allied Signal, Inc., Morristown, NJ. | 49 CFR 174.67(a) and (j) | To authorize tank cars containing ethylene oxide, Division 2.3, PIH, Zone C, to remain connected during unloading without the physical presence of an unloader. (Mode 2.) |
| 11219–N | Galiso, Inc., Montrose, CO | 49 CFR 173.34(e) | To authorize the ultrasonic inspection of 3A and 3AA cylinders for use in transporting various classes of hazardous materials, Class 3, 8, and Division 2.1, 2.2, 2.3 and 6.1. (Modes 1, 2, 3.) |
| 11220–N | Nalco Chemical Company, Naperville, IL. | 49 CFR 173.28(b)(2) | To authorize the reuse of certain stainless steel packagings without leakproofness air test for use in transporting various classes of hazardous materials, Class 1, 8, 9 and Division 5.1, 6.1. (Modes 1, 2, 3.) |
| 11221–N | Matrix Construction, Inc., Anchorage, AK. | 49 CFR 172.101, 173.315 | To authorize the bulk transportation of Propane, Division 2.1, in DOT–51 specification portable fuel tanks in quantities greater than those presently authorized by cargo air. (Mode 4.) |
| 11222–N | Alaska Helicopters, Inc., Anchorage, AK. | 49 CFR 172.101, 173.315 | To authorize the bulk transportation of Propane, Division 2.1 in DOT–51 specification protable fuel tanks in quantities greater than those presently authorized by cargo air. (Mode 4.) |
| 11226–N | Carpenter Co., Pasadena, TX | 49 CFR 174.67(a) and (j) | To authorize rail cars containing ethylene oxide, Division 2.3, PIH, zone C, to remain connected during unloading without the physical presence of an unloader. (Mode 2.) |
| 11227–N | Schlumberger Well Services, Houston, TX. | 49 CFR 173.62, Packing Method E–114. | To authorize an alternative packing method for transporting cartridges, power device, Division 1.4C. (Modes 1, 3, 4.) |
| 11228–N | High Voltage Environmental Applications, Inc., Miami, FL. | 49 CFR 173.315 | To authorize transportation of a specially designed packaging configuration containing sulfur hexafluoride, Division 2.2. (Mode 1.) |
| 11229–N | Airco Gases, Murray Hill, NJ | 49 CFR (11)(15), 15i, iv, v, (16)i, ii, 172.302(c), 173.302(c)(2)(3)(4), 173.34(e)(1)ii, iii, 173.34(e)(3)(4)(6)(7). | To authorize ultrasonic testing of 3A and 3AA cylinders for use in transportation various hazardous materials classed in Division 2.1, 2.2, 2.3, 6.1 and class 3 and 8. (Modes 1, 2, 3.) |
| 11230–N | Dyno Nobel, Inc., Salt Lake City, UT. | 49 CFR 49 CFR 173.62, E–124, PPR–33, Packing Method. | To authorize the transportation of detonating assembles, non-electric, Class 1 in IME 22 containers equipped with interior partitions with ¼ inch aluminum sheets to be shipped in the same vehicles with other Class 1 explosives and Division 5.1. (Mode 1.) |
| 11232–N | State of Alaska, Department of Transportation, Juneau, AK. | 49 CFR 172.101 and 176.905(1). | To authorize the transportation of limited quantity acetylene, Division 2.1, in permanently affixed 100 lb. bottles on state-owned maintenance/vehicles transported on passenger vessels for emergency repairs. (Mode 3.) |

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53 (e)).

Issued in Washington, DC, on March 17, 1994.

**J. Suzanne Hedgepeth,**

*Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.*

[FR Doc. 94-6807 Filed 3-22-94; 8:45 am]

BILLING CODE 4910-60-M

## Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applications for modification of exemptions or applications to become a party to an exemption.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications; they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

**DATES:** Comments must be received on or before April 7, 1994.

**ADDRESS COMMENTS TO:** Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

| Application No. | Applicant | Modification of exemption |
|---|---|---|
| 9676-X | EM Science, Cincinnati, OH (See Footnote 1) | 9676 |

(1) To modify exemption to provide for certain poisons, Division 6.1 and ORM-A as additional commodities for transportation in four-one-gallon bottles overpacked in non-DOT specification 12B65 boxes.

| Application No. | Applicant | Parties to exemption |
|---|---|---|
| 4453-P | Buckley Powder Company of Oklahoma, Inc., Mill Creek, OK | 4453 |
| 6691-P | George W. Fowler Company, Stuart, FL | 6691 |
| 7951-P | H.P. Hood, Inc., Boston, MA | 7951 |
| 7991-P | Southern California Regional Rail Authority, Los Angeles, CA | 7991 |
| 8228-P | U.S. Postal Inspection Service, Dulles, VA | 8228 |
| 8451-P | Physics International Company, Tracy, CA | 8451 |
| 8453-P | DYNO—Alaska, Olympia, WA | 8453 |
| 8453-P | DYNO—Northwest, Olympia, WA | 8453 |
| 8516-P | DYNO—Alaska, Olympia, WA | 8516 |
| 8516-P | DYNO—Northwest, Olympia, WA | 8516 |
| 8516-P | Pacific Power Company, Olympia, WA | 8516 |
| 8554-P | Buckley Powder Company of Oklahoma, Inc., Mill Creek, OK | 8554 |
| 8554-P | DYNO—Alaska, Olympia, WA | 8554 |
| 8554-P | DYNO—Northwest, Olympia, WA | 8554 |
| 8554-P | Pacific Powder Company, Olympia, WA | 8554 |
| 8582-P | Southern California Regional Rail Authority, Los Angeles, CA | 8582 |
| 8723-P | Buckley Powder Company of Oklahoma, Inc., Mill Creek, OK | 8723 |
| 8723-P | DYNO—Alaska, Olympia, WA | 8723 |
| 8723-P | DYNO—Northwest, Olympia, WA | 8723 |
| 8845-P | Black Warrior Wireline Corp. Columbus, MS | 8845 |
| 8958-P | Parks and Son, Inc., Advance, NC | 8958 |
| 9275-P | Nielsen-Massey Vanillas, Inc., Waukegan, IL | 9275 |
| 9617-P | Buckley Powder Company of Oklahoma, Inc., Mill Creek, OK | 9617 |
| 9623-P | Buckley Powder Company of Oklahoma, Inc., Mill Creek, OK | 9623 |
| 9623-P | DYNO—Alaska, Olympia, WA | 9623 |
| 9623-P | DYNO—Northwest, Olympia, WA | 9623 |
| 9623-P | Pacific Powder Company, Olympia, WA | 9623 |
| 9723-P | Marine Shale Processors, Inc., Morgan City, LA | 9723 |
| 9723-P | Tri-S Incorporated, Ellington, CT | 9723 |
| 10247-P | Thermo Analytical, Inc., Waltham, MA | 10247 |
| 10922-P | UltraTest Corp., Division of FIBA, Westboro, MA | 10922 |
| 10933-P | California Advanced Environmental Technology Corp., Hayward, CA | 10933 |
| 10982-P | Temple-Inland Forest Products Corporation, Diboll, TX | 10982 |
| 11139-P | DYNO—Alaska, Olympia, WA | 11139 |
| 11139-P | DYNO—Northwest, Olympia, WA | 11139 |
| 11139-P | Pacific Powder Company, Olympia, WA | 11139 |
| 11189-P | Morton Bendix, Maryville, TN | 11189 |
| 11207-P | Florida Power and Light Company, Miami, FL | 11207 |

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 18, 1994.

**J. Suzanne Hedgepeth,**

*Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.*

[FR Doc. 94-6808 Filed 3-22-94; 8:45 am]

BILLING CODE 4910-60-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

March 15, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 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 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Correction: This is a correction to FR Doc. 94-5472 Filed 03-09-94; 8:45 a.m., for a Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms information collection. The corrected information is as follows:

*OMB Number:* 1512-0460
*Form Number:* ATF REC 5110/12
*Type of Review:* Extension
*Title:* Equipment an Structure

The OMB Number was incorrectly typed as 1512-0466.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 94-6732 Filed 3-22-94; 8:45 am]

BILLING CODE: 4810-25-P

### Public Information Collection Requirements Submitted to OMB for Review

March 16, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 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 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545-0122
*Form Number:* IRS Form 1118, Schedule I and Schedule J
*Type of Review:* Revision
*Title:* Foreign Tax Credit—Corporations
*Description:* Form 1118 and separate Schedules I and J are used by domestic and foreign corporations to claim a credit against tax for taxes paid to foreign countries. The IRS uses Form 1118 and related schedules to determine if the corporation has computed the foreign tax credit correctly.
*Respondents:* Businesses or other for-profit
*Estimated Number of Respondents/ Recordkeepers:* 10,000
*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | Recordkeeping | Learning about the law or the form | Preparing and sending the form to the IRS |
|---|---|---|---|
| Form 1118 | 71 hr., 45 min | 18 hr., 19 min | 22 hr., 42 min. |
| Sched. I | 8 hr., 51 min | 1 hr | 1 hr., 11 min. |
| Sched. J | 89 hr., 12 min | 1 hr., 5 min | 2 hr., 35 min. |

*Frequency of Response:* Annually
*Estimated Total Reporting/ Recordkeeping Burden:* 3,397,363 hours
*OMB Number:* 1545-0295
*Form Number:* IRS Form 5064 Notice 210
*Type of Review:* Extension
*Title:* Media Label (5064) Preparation Instructions for Media Label, Form 5064 (Notice 210)
*Description:* "Notice 210" Preparation Instructions for Media Label, Form 5064 instructs the payer of the procedure in filing out this particular form. This form/label must be attached to each and every piece of media to identify 8 specific items needed so that the media can be processed by the Internal Revenue Service.
*Respondents:* States or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
*Estimated Number of Respondents:* 150,000
*Estimated Burden Hours Per Respondent:* 5 minutes
*Frequency of Response:* On occasion
*Estimated Total Reporting Burden:* 12,765 hours
*OMB Number:* 1545-0714
*Form Number:* IRS Forms 8027 and 8027-T
*Type of Review:* Extension
*Title:* Employer's Annual Information Return of Tip Income and Allocated Tips (8027); Transmittal of Employer's Annual Information Return of Tip Income and Allocated Tips (8027-T)
*Description:* To help IRS in its examinations of returns filed by tipped employees, large food or beverage establishments are required to report annually information concerning food or beverage operations receipts, tips reported by employees, and in certain cases, the employer must allocate tips to certain employees.
*Respondents:* Individuals or households, State or local governments, Businesses or other for-profit, Non-profit institutions
*Estimated Number of Respondents/ Recordkeepers:* 52,050
*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | Form 8027 | Form 8027-T |
|---|---|---|
| Record-keeping. | 5 hr., 59 min | 43 min. |
| Learning about the law or the form. | 35 min. | |
| Preparing and send-ing the form to the IRS. | 43 min | 1 min. |

*Frequency of Response:* Annually

*Estimated Total Reporting/ Recordkeeping Burden:* 358,170 hours
*OMB Number:* 1545–0957
*Form Number:* IRS Form 8508
*Type of Review:* Extension
*Title:* Request for Waiver From Filing Information Returns on Magnetic Media.
*Description:* Certain filers of information returns are required by law to file on magnetic media. In some instances, waivers from this requirement are necessary and justified. Form 8508 is submitted by the filer and provides information on which IRS will base its waiver determination.
*Respondents:* States or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
*Estimated Number of Respondents:* 3,000
*Estimated Burden Hours Per Respondent:* 45 minutes
*Frequency of Response:* On occasion
*Estimated Total Reporting Burden:* 2,250 hours
*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service Room 5571, 1111 Constitution Avenue, NW. Washington, DC 20224
*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. 94–6733 Filed 3–22–94; 8:45 am]
BILLING CODE: 4830–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974, New System of Records—National Chaplain Management Information System (NCMIS)-VA (84VA111K)

**ACTION:** Notice; new system of records.

**SUMMARY:** The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their system of records. Accordingly, the Department of Veterans Affairs (VA) published a notice of its inventory of personal records on September 27, 1977 (42 FR 49728). Notice is hereby given that VA is adding a new system of records entitled "National Chaplain Management Information System (NCMIS)-VA" (84VA111K).

**DATES:** Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed routine uses for the new system of records. All relevant material received before April 22, 1994, will be considered. All written comments received will be available for public inspection in room 170 at the address given below between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until May 2, 1994. If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by VA, the routine uses included herein are effective April 22, 1994.

**ADDRESSES:** Written comments concerning the proposed routine uses may be mailed to the Secretary, Department of Veterans Affairs (271A), 810 Vermont Avenue, NW., Washington, DC 20420.

**FOR FURTHER INFORMATION CONTACT:**

Thomas Harris, Ph.D., National Manager, Total Quality Improvement Research and Development, National VA Chaplain Center (301/111K), VA Medical Center, 100 Emancipation Road, Hampton, Virginia 23667 at (804) 728–3180.

**SUPPLEMENTARY INFORMATION:** Chaplain Service of the Veterans Health Administration, Department of Veterans Affairs, has developed a data base to maintain information that will be used as part of a comprehensive program in Total Quality Improvement (TQI). Maintenance of the information will facilitate more meaningful and effective management of the performance of individual chaplain services and will be used for staff development to enhance and improve the work-related activities of chaplains nationally. It will be used to assist in the personal growth and spiritual development of all chaplains over and above the performance of their duties. It will also support the documentation and tracking of credentialing and privileging for all chaplains providing patient care in the system.

A "Report of New System" and an advance copy of the new system notice have been to the Chairmen of the House Committee on Government Operations and the Senate Committee on Governmental Affairs, and the Director, Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (58 FR 36068), July 2, 1993.

Approved: March 14, 1994.

**Jesse Brown,**
*Secretary of Veterans Affairs.*

**84VA111K**

**SYSTEM NAME:**

National Chaplain Management Information System (NCMIS)–VA.

**SYSTEM LOCATION:**

The data base will reside on its own micro-computers at the National VA Chaplain Center (301/111K) at the Department of Veterans Affairs (VA) Medical Center (VAMC) located at 100 Emancipation Road, Hampton, Virginia 23667.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The personal data collected will be limited to VA Chaplains, other VA Chaplain Service staff, applicants for VA chaplain positions (VA employees and individuals seeking VA employment), and selected providers of services to the VA chaplaincy.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

1. The following data will be collected on individuals who are VA chaplains or chaplain candidates: Name, date of birth, Social Security Number, educational data (e.g., college degrees), membership in religious bodies and related religious experience, employment history relevant to the chaplaincy, name, location and dates of significant professional events (e.g., ordination), continuing education data (e.g., name, location and type of continuing education course), psychological and related survey data relevant to personal and professional development activities in support of chaplain development and research in the Chaplain Service (e.g., Myers-Briggs, 16PF Survey, leadership style surveys, etc.), data to verify and validate the effectiveness of affirmative action programs, work-related performance data, and performance data appropriate for national aggregation and management applications (e.g., bedside visits, number of chapel services, office visits, etc.), and

2. The following additional data may be maintained for resource providers who have or may assist in the work of the chaplaincy; names of consultants or providers, their organization, type of services provided, effectiveness and performance on contracts, special characteristics related to nature of their service (e.g., techniques or manner of teaching bereavement counseling, resources used, etc.), and nature of correspondence and related administrative matters.

PURPOSE(S):

The information will be used as part of a comprehensive program in Total Quality Improvement (TQI) in order to facilitate: (1) More meaningful and effective management of the functions and performance of Chaplain Services, (2) staff development to enhance and improve the work related activities of chaplains nationally, (3) the personal growth and spiritual development of all chaplains over and above improving the performance of their duties, (4) the documentation and tracking of credentialing and privileging for all chaplains providing patient care in the system, and (5) personnel related decisions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Sec. 7304(a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual inform the source of purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to a Department decision concerning the hiring or retention of any employee, the issuance or reappraisal of clinical privileges, the conducting of a security or suitability investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit.

2. A record from this system of records may be disclosed to an agency in the executive, legislative, or judicial branch, in response to its request, or at the initiation of VA, information in connection with the hiring of an employee, the issuance of security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, the issuance of a license, grant or other benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. Disclosure may be made to NARA (National Archives and Records Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

5. Information may be disclosed to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administration tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

6. Hiring, performance, or other personnel related information may be disclosed to any facility with which there is, or there is proposed to be, an affiliation, sharing agreement, contract, or similar arrangement, for purposes of establishing, maintaining, or expanding any such relationship.

7. Information may be disclosed to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

8. Disclosure may be made to the VA-appointed representative of an employee of all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for-duty) examination procedures or Department-filed disability retirement procedures.

9. Information may be disclosed to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

10. Information may be disclosed to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

11. Information may be disclosed to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised and matters before the Federal Service Impasses Panel.

12. In the event that a record maintained by VA to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on micro-computers.

RETRIEVABILITY:

Records are retrieved by the names. Social Security Numbers, or other assigned identifiers of the individuals on whom they are maintained.

SAFEGUARDS:

1. Access to VA working and storage areas is restricted to VA employees on a "need-to-know" basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. All chaplains and other VA employees who enter or use data in the data base will do so by direct access into the system, or by means of the national VA communications network (VADATS/IDCU). All users must have access and verify codes maintained by the National Chaplain Center. All staff access to the system data will be restricted to only that data required on a "need-to-know" basis consistent with the routine performance of their duties. Access to individual work stations will be protected under security protocols established at the user's facility. Computers will be maintained in the locked environment in the main computer room of the VA Medical Center, Hampton, Virginia.

RETENTION AND DISPOSAL:

Paper records and information stored on electronic storage media are maintained and disposed of in accordance with records disposition

authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Chaplain Service (301/111K), National VA Chaplain Center, VA Medical Center, 100 Emancipation Road, Hampton, Virginia 23667.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should write to the System Manager at the above address. Inquiries should include the individual's name, address, and social security number.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the System Manager at the above address.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the applicant/employee, or obtained from current or previous employers, references, educational institutions, religious bodies and/or their representatives and VA staff.

[FR Doc. 94–6734 Filed 3–22–94; 8:45 am]

BILLING CODE 8320–01–M

# Sunshine Act Meetings

Federal Register
Vol. 59, No. 56
Wednesday, March 23, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of a Matter To Be Withdrawn From the Agenda for Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be withdrawn from the "discussion agenda" for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 10 a.m. on Tuesday, March 22, 1994, in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC:

Memorandum and resolution re: Final amendments to Part 335 of the Corporation's rules and regulations, entitled "Securities of Nonmember Insured Banks," relating to registration and reporting requirements for nonmember insured banks with securities registered under section 12 of the Securities Exchange Act of 1934.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Acting Executive Secretary of the Corporation, at (202) 898-6757.

Dated: March 21, 1994.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Acting Executive Secretary.*

[FR Doc. 94-7028 Filed 3-21-94; 3:08 pm]

BILLING CODE 6714-01-M

## UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-94-10]

**TIME AND DATE:** March 28, 1994 at 11:00 a.m.

**PLACE:** Room 101, 500 E Street S.W., Washington, DC 20436.

**STATUS:** Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731-TA-684-685 (Preliminary) (Fresh Cut Roses From Colombia and Ecuador)—briefing and vote.
5. Outstanding action jackets: None

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Donna R. Koehnke, Secretary, (202) 205-2000.

Issued: March 18, 1994.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 94-6928 Filed 3-21-94; 11:12 am]

BILLING CODE 7020-02-P

## NUCLEAR REGULATORY COMMISSION

**DATE:** Weeks of March 21, 28, April 4, and 11, 1994.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of March 21**

There are no meetings scheduled for the Week of March 21.

**Week of March 28—Tentative**

*Wednesday, March 30*

9:00 a.m.
Discussion of Interagency Issues (Closed—Ex. 9)
1:00 p.m.
Discussions of Management Issues (Closed—Ex. 2 and 6)

*Thursday, March 31*

9:00 a.m.
Briefing by Nuclear Energy Institute (NEI) (Public Meeting)
(Contact: Richard Myers, 202-293-0770)
2:00 p.m.
Briefing by ABB/CE on Status of System 80+ Application for Design Certification (Public Meeting)
(Contact: 301-881-7040)

*Friday, April 1*

10:00 a.m.
Briefing on Low Level Radioactive Waste Performance Assessment Development Plan (Public Meeting)
(Contact: John Greeves, 301-504-3334)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Sequoyah Fuels Corp.—Petition for Review of LBP-93-25 (Tentative)
(Contact: Cecilia Carson, 301-504-1625)
b. Final Rule on Equal Access to Justice Act (10 CFR Part 12) (Tentative)
(Contact: Susan Fonner, 301-504-1634)

**Week of April 4—Tentative**

*Thursday, April 7*

10:00 a.m.
Briefing by Westinghouse on AP-600 Design Certification (Public Meeting)
(Contact: Brian McIntyre, 412-374-4334)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of April 11—Tentative**

There are no meetings scheduled for the Week of April 11.

**ADDITIONAL INFORMATION:**

By a vote of 4-0 on March 16, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of 'Georgia Power Company—Staff's Motion for Stay of LBP-94-06'" (Public Meeting) be held on March 18, and on less than one week's notice to the public.

By a vote of 4-0 on March 17, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of 'Petition for Adjudicatory Hearing by Environmentalists, Inc.'" (Public Meeting) be held on March 18, and on less than one week's notice to the public.

**Note:** Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The Schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504-1292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill (301) 504-1661.

Dated: March 18, 1994.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 94-6926 Filed 3-21-94; 10:49 am]

BILLING CODE 7590-01-M

# Corrections

Federal Register
Vol. 59, No. 56
Wednesday, March 23, 1994

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.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 611, 675 and 676

[Docket No. 931100-4043; I.D. 110193D]

### Foreign Fishing; Groundfish Fishery of the Bering Sea and Aleutian Islands; Limited Access Management of Federal Fisheries In and Off of Alaska

*Correction*

In rule document 94-3564 beginning on page 7656, in the issue of Wednesday, February 16, 1994 make the following correction:

On page 7657, in the 3d column, in the 19th line, "ABSs" should read "ABCs".

BILLING CODE 1505-01-D

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Chapter 1

[Federal Acquisition Circular 90-20]

### Federal Acquisition Regulation; Introduction of Miscellaneous Amendments

*Correction*

In rule document 93-4381 beginning on page 11368 in the issue of Thursday, March 10, 1994 make the following correction:

On page 11370, in the third column, in the last paragraph, in the last line "May 9, 1994" should read "March 10, 1994".

BILLING CODE 1505-01-D

federal register

Wednesday
March 23, 1994

Part II

# Corporation for National and Community Service

45 CFR Parts 2510, 2513, et al.
Corporation Grant Programs and Support and Investment Activities; Final Rule

**CORPORATION FOR NATIONAL AND COMMUNITY SERVICE**

**45 CFR Parts 2510, 2513, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2530, 2531, 2532, 2533, and 2540**

**Corporation Grant Programs and Support and Investment Activities**

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Final rule.

**SUMMARY:** The Corporation for National and Community Service (the Corporation) is issuing this final rule concerning the Corporation's grantmaking programs and various support and investment activities as authorized by the National and Community Service Act of 1990, as amended by the National and Community Service Trust Act of 1993 (the Act). The activities and grants described in this rule are designed to help address the Nations education, public safety, human, and environmental needs through national and community service. This rule describes the different types of national and community service programs the Corporation may support, the funding available for those programs, the processes by which grants will be awarded, the training and technical support services available for program development and applications, and the Corporation's plans to invest in service infrastructure.

**EFFECTIVE DATE:** March 23, 1994.

**FOR FURTHER INFORMATION CONTACT:** Terry Russell, (202) 606–4949 (Voice) or (202) 606–5256 TDD), between the hours of 9 a.m. and 6 p.m. Eastern Standard Time. For individuals with disabilities, information will be made available in alternative formats upon request.

**SUPPLEMENTARY INFORMATION:**

**Background Information**

*The Corporation's Mission*

The Corporation's mission is to engage Americans of all ages and backgrounds in community-based National service. This service will address the Nations education, public safety, human, and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation will foster civic responsibility, strengthen the ties that bind us together as a people, and provide educational opportunity for those who make a substantial commitment to service.

*The Purpose of This Rule*

The purpose of this rule is to establish policies and procedures for the activities that the Corporation will undertake to achieve the goals described above. This rule should serve as a guide to explain the eligibility requirements, application processes, selection criferia, program requirements, and other relevant information for individuals, programs, public and private nonprofits, institutions of higher education, States, Indian tribes, and other entities wishing to participate.

*Impact of Programs*

All programs under the National and Community Service Act have in common the goal of achieving three types of impact: "getting things done" through direct and demonstrable service, strengthening communities, and developing the leadership and other skills of participants. All programs, whether they involve elementary school children or senior citizens, are equally able to achieve the goal of strengthening communities " by involving people of different backgrounds together in a common effort, by promoting civic responsibility so that every member of a community feels responsibility for its stewardship, and by breaking down barriers of mistrust and misunderstanding. The other two impacts are weighted differently for different program types based on the age and experience of the participants.

At the one extreme, the service-learning programs for school-age youth may indeed help to solve the pressing problems of communities, but their primary impact will be, and should be, on the lives of the participants. They should improve their educational motivation and achievement, citizenship skills, teamwork, and problem solving abilities. At the other extreme, for a professional corps of adults who are highly educated and highly skilled, the primary impact must be on getting things done in communities. Given the higher costs of these programs and the advanced education level of the participants, it is imperative that the work they do be highly valued by communities and the Nation. Programs like youth corps, which lie somewhere in the middle in terms of age and education level of participants, should achieve a balance of impacts by getting things done and meeting the educational or training needs of participants. By keeping this calculus in mind, potential applicants can gauge the appropriate amount of program resources that should be dedicated to participant education, life skills training, and other types of participant support.

*Proposed Regulations*

On January 7, 1994, the Corporation for National and Community Service published in the **Federal Register** (59 FR 1194) a proposed rule implementing the National and Community Service Act of 1990, as amended. In response to the proposed rule, the Corporation received over 280 comments from, among others, States, Indian tribes, schools, institutions of higher education, community-based organizations, public and private nonprofit organizations, volunteer organizations, and individuals.

**Summary and Analysis of Public Comment**

Many comments suggested changes to Corporation policies that were discussed in the preamble to the Notice of Proposed Rulemaking but that were not addressed by the rule itself. Although the Corporation is not required to discuss these comments here, they have been considered carefully and some changes have been made. The most salient of these issues, along with updates to other non-regulatory Corporation policies, are discussed separately in the section on Preamble Issues.

The Regulations Issues section summarizes substantive comments received on the regulatory provisions of the Corporation's proposed rule. Each issue that was raised in the comments is identified and discussed, and, where appropriate, any changes to the regulations are noted with regulatory citations.

Finally, the Corporation received a significant number of comments that suggested changes to regulatory provisions that reflect statutory requirements. None of these is discussed here. Also not discussed are any technical, non-policy changes that were made either in response to comments or as a result of internal review.

**I. Preamble Issues: Comments on and Updates to Non-Regulatory Corporation Policies**

*(A) Comments on Non-Regulatory Corporation Policies*

Application Deadlines and Availability

A number of commenters requested that the Corporation move back the deadlines for its various applications. The Corporation has done so. The new deadlines for the announced competitions are as follows (please note that the applications must be received

by the Corporation by 6 p.m. Eastern time of the announced due dates):

| Program | Application due dates |
|---|---|
| Summer of Safety | March 14, March 21 |
| Learn & Serve K–12, School-based. | April 22 |
| Learn & Serve, Higher Education. | April 25 |
| AmeriCorps National Direct. | April 29 |
| Innovative and Demonstration. | May 16 |
| Learn and Serve K–12, Community-based. | May 27 |
| AmeriCorps State | June 22 |

Applications may be obtained by writing the Corporation at 1100 Vermont Avenue, NW., Washington, DC 20525; by sending a fascimile request to (202) 606–4871; or by calling (202) 606–4949. Applications are also available on Internet. To retrieve applications via Internet, please send a blank electronic message to: cncs@ace.esusda.gov. There should be no text in the body of the message. An automatic response will be sent back with information on how to retrieve the applications through electronic mail, gopher and anonymous file transfer protocol (ftp).

Since most local Americorps applicants (other than professional corps) will be applying through their respective States, they should contact their State Commissions to obtain applications.

National Priorities

The statute and regulations give the Corporation the authority to establish priorities governing the competitive distribution of funds—both directly and through the States. The Corporation received a number of comments suggesting changes to and clarifications of both the applicability and content of the national priorities. (Programs included in the State formula application are not governed by these priorities but rather by priorities established by the State consistent with part 2513 of this rule.) The national priorities, which have been slightly revised, are as follows:

*Education.* School Readiness: Furthering early childhood development; and

School Success: Improving the educational achievement of school-age youth and adults who lack basic academic skills.

*Public safety.* Crime Prevention: Reducing the incidence of violence; and

Crime Control: Improving criminal justice services, law enforcement, and victim services.

*Human needs.* Health. Providing independent living assistance and home- and community-based health care; and

Home: Rebuilding neighborhoods and helping people who are homeless or hungry.

*Environment.* Neighborhood Environment: Reducing community environmental hazards; and

Natural Environment: Conserving, restoring, and sustaining natural habitats.

Two changes were made to the priorities. Within the education priority, the former priority, "School success: improving the educational achievement of school-age children," was changed to "School success: improving the educational achievement of school-age youth and adults who lack basic academic skills." Within the human needs priority, "Home: Rebuilding neighborhoods and helping people who are homeless," was changed to "Home: Rebuilding neighborhoods and helping people who are homeless or hungry." This amendment was made to clarify that, as commenters suggested, programs designed to provide basic academic skills to adults and hunger programs are included.

There were many suggestions for further changes to the priorities, including the following: within Education, add priorities for English as a Second Language, school-to-work transition, and programs targeting out-of-school youth; within Public Safety, add programs that include as participants former gang members and other troubled youth, as well as fire-safety programs; within Environment, there were suggestions for specific language changes. Similarly, there were suggestions for additional priority categories: One commenter suggested adding programs that target individuals with disabilities, and another suggested making economic development a national priority.

After careful consideration, the Corporation did not make additional changes to the national priorities. Most suggested changes would have narrowed the priorities by delineating subcategories of programs that already fit under the priorities as drafted. For example, programs that include gang members as participants might apply under the education priority as programs that prepare youth for school success, under the public safety priority as programs that reduce violence, or, depending on the activities of the participants, under the human needs or environmental priorities. Indeed, quality programs often involve an holistic approach to meeting local needs and thus often address more than one national priority The priorities are designed to allow programs maximum flexibility to respond to unique local needs but, concomitantly, to focus the investment of limited Corporation funds to achieve demonstrable impact. To further narrow the priorities would undermine these objectives. Programs should be aware that the priorities are intended to provide parameters within which to focus their efforts; more specific activities within these parameters are allowable.

Several commenters expressed concern about whether every participant or every project in a given program had to address one or more of the priority areas in order for the program as a whole to qualify. Every project and every participant in a program do not have to be working in a priority area in order for the program to be considered to meet a national priority; rather, the program as a whole must substantially address one or more priority areas. The Corporation intentionally has not attempted to quantify the definition of "substantially address." Instead, the Corporation will make this judgment on a case-by-case basis to allow for flexibility.

AmeriCorps State Applications

The Corporation has changed the State AmeriCorps application process. The Corporation's previous plan considered the formula and competitive components of a State's application to be discrete. Programs had to be placed in one component or the other, and States did not have the flexibility to rearrange the components of their applications once submitted.

There were a number of reasons behind this policy. First, it is the Corporation's policy to distribute competitive funds only to States that receive their formula allocations; this suggests evaluating the formula component of the applications prior to the competitive component. Second, programs should know up front which component of the State application they are in to be able to estimate accurately their chances of receiving funding. Third, because State priorities may differ from national priorities, some programs may not be eligible for both formula and competitive funding. Fourth, it gives autonomy to the States, allowing them to decide where to place programs. Finally, from a logistical standpoint, the review process is kept relatively simple by keeping the two components of the State application separate; therefore, the Corporation would be able to finish the reviews quickly and meet its goal of distributing

funds to programs in the field on a timely basis.

The major drawback of this policy is that it unnecessarily would require States to make difficult decisions that, ultimately, may not lead to the best programs being funded. Specifically, a State would have to decide—for every program for which it wants to seek funding—whether that program should go into the formula or competitive component of its application. A State would have to decide whether to take a risk and put its best programs into the competitive pool, or to play it safe and place those programs in the formula portion of its application. If the State gambled, put its best programs in the competition, and those programs did not receive funding, then the best programs in that State would go unfunded. That is not a desirable outcome either for the States or for the Corporation.

For the above reasons, the Corporation has revised the application process so that States will have the opportunity to replace programs included in the formula portion of their application with programs that were unsuccessful in obtaining competitive funding. The application and simultaneous review processes will be as follows: (a) States will submit applications consisting of the State Plan, formula programs, and, at the State's discretion, competitive programs and a request for program development assistance;

(b) If the State Plan is approved, and if a State's formula programs meet a minimum quality threshold, that State's competitive programs will be entered into the State competition;[1]

(c) Through a peer and staff review process, the competitive programs will be selected;

(d) States will be notified of which programs were selected in the competition and given an opportunity to revise their formula applications to include programs that were not selected in the competition. (The Corporation will be neutral here—neither encouraging nor discouraging States to put rejected competitive programs into the revised formula list. This is the States' choice completely, although at the request of the States the Corporation may provide review forms, etc. which may aid States in assessing the quality of those programs); and

(e) The formula portions of the State applications will receive final approval from the Corporation.

It is the Corporation's view that this revision to the State application process will leave most decisions in the hands of the States, allow for the best programs to be funded, and still get programs up and running quickly.

Eligibility of U.S. Territories for State Competitive Funds

At the request of one commenter, the regulations (§ 2521.30) have been amended to clarify that U.S. Territories are eligible to apply for State Competitive funds and educational awards if they receive their formula allotments. Each eligible Territory may include up to three programs in its application for State competitive funds.

Timeline

One commenter objected to the timelines established for the completion of the State Plan and State applications. In particular, the commenter stated that the tight timelines would make it difficult to coordinate State grant applications with the State Plan. Several commenters noted that the timing of notification of funding will make it difficult to hire staff, which usually happens in the spring.

The Corporation agrees that the timeline is very tight and regrets any inconveniences it will cause. In future years, programs will have significantly longer to prepare applications. However, in fiscal year 1994, the current timeline is necessary in order for Corporation-funded programs to be up and running by the Fall.

Starting Dates and Attrition Policies

One commenter suggested that all participants should not be required to start at the same time and that vacancies be filled on a rolling basis. Another commenter suggested the option of a mid-year starting date to fill vacant positions.

The regulations allow for policies to change over time if experience demands a revision. The current policy allows programs to begin terms of service in June, September or January. All participants in a program need not start simultaneously—thus one class could serve September-September, another January-January, thereby allowing the option of a mid-year starting date to fill vacancies. In addition, if a program can demonstrate a compelling reason for alternative starting dates, including the need for rolling admissions, the Corporation may waive this requirement.

Allocation of Educational Awards Within Programs

One commenter expressed concern that not treating all participants the same in terms of educational awards might be a disadvantage in the selection process. The commenter suggested that it should not be a selection criterion.

Because of the limited amount of funding available for program assistance, the Corporation anticipates that in some cases programs (especially existing programs) may not apply for or receive adequate support for all participants enrolled in the program, and the potential thus may arise for some participants (who are serving in approved AmeriCorps positions) to receive AmeriCorps educational awards while other similar participants do not. The Corporation is therefore requiring every applicant to describe the rationale for its distribution of educational awards to program participants in those cases where distinctions among participants are necessary. In general, this distribution should treat equally all participants doing the same or essentially similar work. This reflects a matter of principle as well as a pragmatic concern for the equal treatment of participants within a single program.

The Corporation recognizes that equal treatment may not be feasible or desirable in some instances. For example, an intergenerational program or a program with a specialized component or division assigned special projects may make distinctions among participants that justify the provision of educational awards to some but not to others. An example of the latter of these is a corps where team leaders receive AmeriCorps education awards whereas regular corps participants do not. Similarly, a program may choose to offer alternative post-service benefits to participants in lieu of the AmeriCorps educational awards provided by the Corporation. AmeriCorps programs are strongly encouraged to offer alternative post-service benefits from non-Corporation funds to participants who will not receive AmeriCorps educational awards. The Corporation will evaluate on a case-by-case basis the rationales of programs that do not plan to provide all participants with educational awards. However, the Corporation will not approve rationales based solely on a determination of economic need of participants.

The existence of a reasonable method of allocating educational awards will still be a selection criterion; however, in

[1] Those States that do not submit programs for competitive funding, as well as those States that notify the Corporation in advance that they will not want to revise their formula application regardless of whether any or all programs they have submitted for competitive funding receive funding, will have the formula components of their applications processed before other States.

cases where programs have legitimate reasons for not offering educational awards to all participants, those programs will not be disadvantaged in any way in the selection process.

AmeriCorps Priorities for Existing Grantees and for Programs Targeting Participants with College Experience

Some commenters suggested that programs involving college-educated participants should not be given priority for funding in the national direct competition.

Although current grantees of the Commission on National and Community Service—which have a high percentage of participants without college experience—are not guaranteed funding, they receive a priority for funding. The special consideration for programs involving individuals with college experience was provided in order to achieve the overall goal of diversity across programs based on many factors. An alternative would be to drop both the priority for existing grantees and the special consideration for programs involving individuals with college experience. However, given the need to include a base of experienced programs and the advisability of completing the third year of programs that received three-year grants from the Commission, the applications retain the first alternative.

Potential applicants should be aware that special consideration is not the same as an absolute preference. Nor does it mean that every participant must be college-educated in order for a program to receive special consideration, or that no programs involving youth who have not attended college will be funded in the national direct competition. Rather, the purpose of the special consideration is to ensure that participants with and without college experience are both represented in National service.

Small State Priority in the AmeriCorps State Competition

Several commenters requested that the regulations be revised to increase from 20 to 50 both the recommended minimum number of participants in a program and the priority for small states in the State competition.

After careful consideration, the Corporation has not changed these policies. Because there are many high-quality programs with between 20 and 50 participants, and because the Corporation does not want to send the message that these programs should consider expanding to 50 participants, the recommended minimum size of a program has not been raised to 50.

Similarly, the Corporation chose not to raise the small State priority to 50 participants because it would have resulted in approximately half the States receiving the priority. States with widely disparate populations thus would be treated equally. This is not only unfair to the larger of these States but undermines Congress' intent of distributing these AmeriCorps funds in proportion to population.

Relocation Expenses

In the preamble to the January 7 notice of proposed rulemaking, the Corporation stated that it would pay for the relocation expenses of participants who are recruited by the Corporation or the State Commissions and need to move in order to participate. One commenter argued that this is a poor use of scarce resources.

The Corporation has revised this policy such that the Corporation will only pay reasonable relocation expenses in instances where participants would not be able to participate without this support.

*(B) New and Updated AmeriCorps Tables*

Maximum Number of Programs in the AmeriCorps Competitive State Applications

One commenter suggested that the Corporation revisit whether any restrictions should be placed on how many AmeriCorps programs may be submitted in a State competitive application. The Corporation has limited the number of programs a State may include in its application for competitive funding to three plus an additional program for each full percentage point of the total State population (rounded to the nearest full percentage point) that State contains.

The Corporation is not changing this policy for a number of reasons. First, from a purely pragmatic standpoint, some sort of limitation must be placed on the overall number of applications. If the Corporation is inundated with applications it will be difficult to ensure that each application is properly reviewed. Second, the Corporation wants to encourage States to submit only their very best programs. Finally, it is likely that with the restriction now in place only about one in five programs submitted will actually be funded. It would be unfair to programs to allow a significantly larger number of submissions.

The table providing the number of programs that may be included in the competitive component of each State application has been updated as follows to incorporate the latest population estimates (July 1, 1993) from the Bureau of the Census.

MAXIMUM NUMBER OF PROGRAMS THAT MAY BE INCLUDED IN STATES APPLICATIONS FOR COMPETITIVE FUNDING

| State | Maximum number of programs |
|---|---|
| Alabama | 5 |
| Alaska | 3 |
| Arkansas | 4 |
| Arizona | 5 |
| California | 15 |
| Colorado | 4 |
| Connecticut | 4 |
| Delaware | 3 |
| D.C. | 3 |
| Florida | 8 |
| Georgia | 6 |
| Hawaii | 3 |
| Idaho | 3 |
| Illinois | 7 |
| Indiana | 5 |
| Iowa | 4 |
| Kansas | 4 |
| Kentucky | 4 |
| Louisiana | 5 |
| Maine | 3 |
| Maryland | 5 |
| Massachusetts | 5 |
| Michigan | 7 |
| Minnesota | 5 |
| Mississippi | 4 |
| Missouri | 5 |
| Montana | 3 |
| Nebraska | 4 |
| Nevada | 3 |
| New Hampshire | 3 |
| New Jersey | 6 |
| New Mexico | 4 |
| New York | 10 |
| North Carolina | 6 |
| North Dakota | 3 |
| Ohio | 7 |
| Oklahoma | 4 |
| Oregon | 4 |
| Pennsylvania | 8 |
| Puerto Rico | 4 |
| Rhode Island | 3 |
| South Carolina | 4 |
| South Dakota | 3 |
| Tennessee | 5 |
| Texas | 10 |
| Utah | 4 |
| Vermont | 3 |
| Virginia | 5 |
| Washington | 5 |
| West Virginia | 4 |
| Wisconsin | 5 |
| Wyoming | 3 |
| Totals | 256 |

Formula Allocation of AmeriCorps Program Funds and Educational Awards to States

The following table has been updated based on the latest estimates (July 1, 1993) from the Bureau of the Census:

FORMULA ALLOCATION OF PROGRAM FUNDS AND AMERICORPS EDUCATIONAL AWARDS TO STATES

| State | Program funds | Educational awards |
|---|---|---|
| Alabama | $830,163 | 60 |
| Alaska | 118,765 | 9 |
| Arkansas | 480,610 | 35 |
| Arizona | 780,397 | 57 |
| California | 6,188,252 | 448 |
| Colorado | 707,036 | 51 |
| Connecticut | 649,736 | 47 |
| Delaware | 138,790 | 10 |
| D.C. | 114,601 | 8 |
| Florida | 2,712,156 | 197 |
| Georgia | 1,371,444 | 99 |
| Hawaii | 232,374 | 17 |
| Idaho | 217,900 | 16 |
| Illinois | 2,319,182 | 168 |
| Indiana | 1,132,725 | 82 |
| Iowa | 557,936 | 40 |
| Kansas | 501,825 | 36 |
| Kentucky | 751,251 | 54 |
| Louisiana | 851,576 | 62 |
| Maine | 245,658 | 18 |
| Maryland | 984,418 | 71 |
| Massachusetts | 1,192,008 | 86 |
| Michigan | 1,879,217 | 136 |
| Minnesota | 895,592 | 65 |
| Mississippi | 524,032 | 38 |
| Missouri | 1,037,753 | 75 |
| Montana | 166,350 | 12 |
| Nebraska | 318,622 | 23 |
| Nevada | 275,399 | 20 |
| New Hampshire | 223,055 | 16 |
| New Jersey | 1,562,181 | 113 |
| New Mexico | 320,407 | 23 |
| New York | 3,607,947 | 261 |
| North Carolina | 1,376,996 | 100 |
| North Dakota | 125,902 | 9 |
| Ohio | 2,199,029 | 159 |
| Oklahoma | 640,615 | 46 |
| Oregon | 601,159 | 44 |
| Pennsylvania | 2,388,775 | 173 |
| Puerto Rico | 698,320 | 51 |
| Rhode Island | 198,272 | 14 |
| South Carolina | 722,303 | 52 |
| South Dakota | 141,764 | 10 |
| Tennessee | 1,010,986 | 73 |
| Texas | 3,575,033 | 259 |
| Utah | 368,785 | 27 |
| Vermont | 114,204 | 8 |
| Virginia | 1,286,980 | 93 |
| Washington | 1,041,917 | 76 |
| West Virginia | 360,854 | 26 |
| Wisconsin | 998,892 | 72 |
| Wyoming | 93,188 | 7 |
| Totals | 51,833,333 | 3,756 |

### Formula Allocation of AmeriCorps Program Funds and Educational Awards to Territories

In fiscal year 1994, the Corporation has set aside $1,550,000 and up to 112 educational awards to be distributed to U.S. Territories on a formula basis. The amount of a Territory's program funds allocation is determined by multiplying the total amount of money available by the ratio of that Territory's population to the population of all the Territories. (Population figures are taken from the 1990 Census, the most recent official figures available.) The maximum number of educational awards for which a Territory may apply is determined by dividing that Territory's formula funds allocation by the expected average Federal share of program costs per participant ($13,800).

FORMULA ALLOCATION OF AMERICORPS PROGRAM FUNDS AND EDUCATIONAL AWARDS TO TERRITORIES

| Territory | Program funds | Educational awards |
|---|---|---|
| American Samoa | $213,104 | 15 |
| Commonwealth of the Northern Mariana Islands | 197,485 | 14 |
| Guam | 606,585 | 44 |
| Palau | 68,898 | 5 |
| Virgin Islands | 463,855 | 34 |

Competitive Distribution of AmeriCorps Program Funds and Educational Awards to Indian Tribes

The Corporation has set aside $1,550,000 and up to 112 educational awards for competitive distribution to Indian tribes.

**II. Regulations Issues**

*General Comments*

(1) *Multiple applications.* Several commenters asked for clarification of the multiple applications rule.

This rule states that the Corporation will reject any application for a project if an application requesting funding for that project is already pending before the Corporation. In other words, a program can only submit one application at a time for Corporation funds (either directly or indirectly) for a given project.

Confusion sometimes arises over the difference between a program and a project. For the Corporation's purposes, a program recruits and selects participants, trains them, and places them in projects; a project is a specific set of related activities carried out by a program. A program may conduct or undertake more than one project and receive Corporation funding from different pools for those projects. A program is allowed, for example, to propose one project in a national direct application and another project in a State formula application. However, an applicant may not propose the same project for funding in more than one application at the same time. Thus if a program submits an application for a project in the national direct competition, that project may not also be included in a State application. (Once an applicant is notified that a proposal has been rejected, however, the applicant is free, if time permits, to resubmit the proposal in a different Corporation grant competition.)

Change: §§ 2516.730, 2517.730, 2519.730 and 2522.320 have been revised.

(2) *Reinventing government.* One commenter urged the Corporation to include regulatory provisions that would encourage States to minimize administrative burdens on grantees by streamlining reimbursement and contracting procedures, as well as by providing cash advances to grantees when possible.

The Corporation will issue separate administrative regulations that will require States and other grantmaking entities receiving grants from the Corporation to provide cash advances and prompt expense reimbursements to subgrantees. Contracting procedures for supplies and services are governed primarily by State regulations and OMB Circulars 102 and 110.

*Part 2510—Overall Purposes and Definitions*

*Definition of administrative costs (§ 2510.20).* A number of commenters requested clarification of and suggested changes for the definition of administrative costs. One commenter stated that insurance costs should not count as administrative costs in certain instances; another argued that costs such as rent, utilities, travel, supplies, etc. should be allocated through an approved joint cost allocation plan; another stated that indirect costs that directly support programs should not be treated as administrative costs.

The Corporation agrees that the definition of administrative costs was not sufficiently clear and it has been rewritten in response to these comments.

Change: § 2510.20 has been revised.

*Part 2513—State Plan*

(1) *Coordination.* Some commenters recommended including a requirement that States include in their State Plans a description of how their activities will be coordinated with those of the State agency responsible for administering the Community Service Block Grant Act and with other State agencies.

The Corporation encourages each State to develop a truly comprehensive and coordinated national and community service effort. However, the Corporation declines to require such coordination.

(2) *Consideration of State Plan.* One commenter requested that the Corporation state in the regulations what weight the State Plan will have in the evaluation of State applications.

The Corporation agrees that this is an important piece of information for States as they put together applications. The applications will indicate the extent to which the State Plan will be considered. However, because the Corporation wishes to maintain flexibility on this issue, it has not been incorporated into the regulations.

(3) *Consolidation.* One commenter suggested consolidating the SEA and State Commission plans into one.

Again, the Corporation encourages coordination of efforts, and a consolidated plan perhaps would be a good means for a State to accomplish this. However, due to the separation between State Education Departments and other agencies in many States, this will not be established as a requirement.

*Parts 2515–2517—K–12 Learn and Serve Programs*

(1) *Training investment.* Several commenters recommended that the Corporation require 5–10% of a program's Learn and Serve grant to be spent on training.

The Corporation agrees that adequate training—for both staff and participants—is a critical component of any high-quality program. In general, States and Indian tribes that receive K–12 school-based grants must spend a total of between 10% and 15% of those funds on training and capacity building. Moreover, in order to receive a grant, a program will have to demonstrate the existence of an appropriate training program. Because the training and capacity-building needs of the various other entities eligible to apply for school and community-based Learn and Serve America grants vary widely, the Corporation is not setting regulatory guidelines on what percentage of those grants must be spent on training and capacity building. However, the Corporation reserves the right to set such guidelines in the applications.

(2) *Partnerships.* Several commenters suggested that the definition of "partnership" be revised to require that the written agreement specify the partnership's goals and activities, as

well as the responsibilities of each partner

The Corporation has made this change.

Change: § 2510.20 has been revised.

(3) *Coordination.* Some commenters suggested that the meaning of coordination should be clarified so that nonprofits and grant-making entities are required to communicate with State Commissions, but not to receive their approval to go ahead with the program.

Coordination is not a program requirement for K–12 programs. Rather, programs must describe in their applications the extent to which they have coordinated with State Commissions. The regulations have been revised to indicate that while coordination should include meeting and consulting with State Commissions, it does not imply that those State Commissions have the power to approve or disapprove a program.

Change: §§ 2516.410(a)(1) and 2517.400(a)(3) have been revised.

(4) *Preselection of community-based programs.* One commenter objected to the regulatory requirements for pre-selection of programs (§ 2517.400). Some commenters noted that the competitive process is likely to be circumvented if the Corporation requires preselection because of the tightness of the timeline.

The regulations have been revised to not require preselection. Under the final regulations, State Commissions and grantmaking entities applying for Learn and Serve America community-based service-learning grants are not required to preselect their proposed subgrantees. However, State Commissions and grantmaking entities are expected to describe in detail the types of models that would be funded through grants to local partnerships.

Change: § 2517.400 has been revised.

(5) *Components of School-based application.* Several commenters recommended that the regulations be revised to more specifically identify the application requirements and selection criteria. For example, one commenter suggested that the application described in § 2516.400(a) include descriptions of the following items: The relationship between the program goals and strategic plans of the State Plan and SEA Plan; the relationship of the SEA Plan and the strategic goals of the SEA's systemic education reform efforts; the relationship of the SEA Plan and the program development plan of the State Commission's K–12 Community-based program; and the relationship of the SEA plan and specific systemic reform and school improvement efforts in the State or among targeted LEAs. The same commenter suggested that under § 2516.410(c) applicants be required to ensure that a mechanism is provided by which school and community needs will guide the integration of service-learning into existing curriculum in order to meet those needs. Another commenter recommended a number of additions to § 2516.500.

Many of these recommendations are in fact incorporated into the applications; however, in order to maintain flexibility in the application and selection process, the Corporation has elected not to include them in the regulations.

(6) *Educational award eligibility.* One commenter recommended including a provision for the K–12 Learn and Serve programs analogous to the higher education provision in § 2519.310 which states that, in general, participants are not eligible to receive educational awards.

This recommendation has been adopted.

Change: a § 2516.320 has been added to the regulations.

(7) *Monitoring and evaluation.* Several commenters suggested additions to and requested clarification of the monitoring and evaluation §§ 2516.800–850.

In response, the Corporation has made three changes: First, because monitoring activities go beyond those included in the proposed sections on "monitoring and Evaluation," the word monitoring has been removed from Subparts E and H. The Corporation now refers to monitoring functions that fall within the purview of evaluation as internal evaluation. Second, the Corporation has added the requirement for programs, States and grantmaking entities to cooperate fully with all Corporation evaluation activities. Third, the Corporation has added the requirement for the Corporation to "study the extent to which national service models enable participants to afford post-secondary education with fewer student loans" when evaluating the overall success of AmeriCorps.

Change: §§ 2516.800–850 have been revised.

*Part 2519—Higher Education Learn and Serve Programs*

(1) *Application review.* One commenter suggested that the review process in § 2519.500 be more specific and include peer review, rankings and reviewer comments, and that there be a written protocol for the CEO to cover situations where a highly ranked application is not funded.

These are good ideas, and many of them may in fact be included in the review process. Specifically, in fiscal year 1994 programs will definitely be subject to peer review. However, since the Corporation may want to improve the review process from year to year, these provisions are not incorporated into the regulations.

(2) *Where can higher education programs operate?* One commenter expressed concern that the neighboring communities language in 2519.100 would not allow a program to operate across State lines.

The Corporation's intent was that higher education programs should address needs in the communities where the programs operate, regardless of where the institution of higher education is located. The regulations have been revised to make this clear.

Change: § 2519.100 has been revised.

*Parts 2520–2524—AmeriCorps*

(1) *Living Allowance Match.* Under the proposed regulations, programs receiving educational awards only grants were exempt from the living allowance requirement. One commenter suggested that they should not be, arguing that it would make it more difficult for low-income individuals to participate.

The Corporation has revised its regulations to not allow this exemption.

Change: § 2522.240 has been revised.

Another commenter requested that grantees be able to provide their 15% match for living allowances on an in-kind basis.

In general, the Corporation wants to ensure that every AmeriCorps participant receives a living allowance sufficient to meet reasonable expenses while participating. By definition, a living allowance match must be in cash. However, in certain instances where a program has received a waiver from providing the minimum living allowance, the Corporation will consider on a case-by-case basis waiving or reducing the matching requirement. For example, a program that houses its participants may not count that housing as an in-kind match, but it may be eligible to apply to have the 15% matching requirement waived or reduced.

Change: A section (5)(iii), allowing for waivers of the 15% matching requirement, has been added to § 2522.240(b).

(2) *Preselection of programs.* Commenters objected to the requirement that applicants for AmeriCorps preselect and specifically identify in their applications the subgrantees they will fund. Some commenters argued that because of the tightness of the timeline,

the competitive process is likely to be circumvented if preselection is required.

Although the Corporation appreciates the difficulties preselection raises in light of the timeline, for both legal and policy reasons this requirement has not been changed. The statute requires a State applicant to describe the "jobs or positions into which participants will be placed" (section 130(c)(1)). It is the Corporation's view that such a description would be inadequate without a corresponding description of the programs in which those jobs or positions would be located. Moreover, section 130(b)(2) of the statute requires "description of the process and criteria by which the programs were selected." From a policy standpoint, preselection is required in order to ensure that the Corporation funds only high-quality programs.

(3) *Diversity.* Several commenters recommended modifications to the participant diversity provisions contained in § 2522.100. One commenter stated that programs that are unable to achieve racial and gender diversity should not receive Federal funds. Conversely, other commenters expressed concern that the racial diversity requirement may exclude eligibility minority agencies that would have predominantly minority participants. A number of commenters suggested that the Corporation require diversity of program staff and include that as an evaluation criterion. One commenter suggested that the Corporation encourage programs to engage in joint activities with organizations involving participants of different backgrounds to enhance community-building.

The Corporation declines to make the achievement of diversity a requirement or to establish regulatory exceptions to the mandate that every program seek diversity. The Corporation, in establishing the requirement that every program actively seek to be diverse in a number of important areas, attempted to strike a balance between competing concerns. On the one hand, diverse programs will help strengthen communities. On the other hand, there are some very good programs that, for legitimate substantive reasons, will not to be able to achieve diversity in one or more ways. The requirement, as written, will lead to diverse programs except in cases where diversity does not make sense or is not attainable (e.g., a professional corps program requiring specific skills or education should not be required to include as participants individuals who do not have such skills or education).

The Corporation agrees with the suggestion that programs also should seek actively to establish a diverse staff. In many cases where a program's staff is very small, it may not always be possible to have a staff that is diverse in all ways. Within these constraints, however, programs should seek to establish a staff that is as diverse as possible.

Finally, the Corporation agrees that—especially for programs that lack diversity in one or more ways—it is a good idea for programs to engage in joint activities with organizations involving participants of different backgrounds to help build communities; programs are encouraged to do so where possible.

Change: § 2522.100(f) has been modified to include staff diversity.

(4) *50% rule.* One commenter recommended that the Corporation drop the waiver provision from the requirement that at least 50% of funds going to each State go to high-need areas. (§ 2521.30(b)(3)(iii))

In principle, the Corporation believes strongly that each State should in fact do everything possible to comply with the 50% requirement. Thus in order to attain a waiver from this provision, a State will have to demonstrate in an extremely compelling manner not only that there are not enough viable high-quality programs operating in areas of need within the State to meet the 50% requirement, but that it has made a good-faith effort to locate such programs. Finally, no waivers will be granted to individual States if it would necessitate not complying with the 50% rule in the aggregate.

The Corporation is statutorily required to ensure that a minimum of 50% of the total funds going to States go to high-need areas. And although the Corporation is committed to meeting this requirement in the aggregate, it may not always be possible to meet the requirement on a State-by-State basis. For example, the Corporation's review process may result in the selection in a given State of a high-quality program that does not operate in an area of need. If there were not other high-quality programs within that State that did operate in high-need areas, without the waiver provision the Corporation would be unable to fund the high-quality program. For this reason, the waiver provision has been retained.

(5) *Participant eligibility.* (2522.200(b)) One commenter stated that the regulations state that a participant must have a high-school diploma to participate, whereas in fact a diploma is only required to receive the educational award.

This section has not been changed. The regulations state that in order to participate an individual must either have a high school diploma or its equivalent, commit to obtaining one, or be deemed unable to obtain one.

(6) *National Leadership Pool and Recruitment.* (2522.210(b)(1)(c)) The Corporation received a number of comments on the national leadership pool and recruitment requirements. One commenter suggested that the regulations allow anyone recruited to the national leadership pool to be placed back into his or her original program. The same commenter argued that programs should not be required to accept national leadership pool participants; instead, the Corporation should operate a pilot leadership program. Other commenters suggested that the § 2522.100 requirement that AmeriCorps programs agree to select a certain percentage of participants from the national and state recruiting pools be eliminated.

In order to maintain regulatory flexibility, these requirements have not been amended. To the extent that these comments are incorporated into Corporation policy it will not be done in regulations but rather in application materials and other guidelines. However, two items should be noted: (a) Although programs must agree to accept a certain percentage of nationally recruited participants, the Corporation may not require every program to do so, and will likely consider exceptions on a case-by-case basis; and (b) programs will not be required to accept leadership pool participants.

(7) *Child Care.* (2522.250(a)) One commenter argued that child care benefits should go to prospective participants who have undependable child care as well as to participants who don't have child care at all.

This regulation has not been changed; as written, it closely tracks the statute. Programs will provide child care assistance to participants who need it in order to participate; they will determine on a case-by-case basis whether individuals are eligible. A prospective participant with extremely undependable child care could certainly argue that he or she would not be able to participate without child care benefits.

(8) *Health Care.* (2522.250(b)) One commenter stated that the regulations should clarify that AmeriCorps participants should not be asked to pay premiums or deductibles, that the health care plan should include preventive and pregnancy care, as well as eye and dental care and workers compensation, and that there should be

a 1–2 month delay in eligibility, since attrition is highest during this period.

The Corporation will issue written guidelines setting forth the required specifications of the AmeriCorps health care package. These comments will be taken into consideration in the development of policies at that time. In addition, the health care section of the regulations has been rewritten to provide greater clarity.

Change: § 2522.250 has been revised.

(9) *State Priorities.* (2522.410(b)(1)(i)) One commenter argued that States should be encouraged to adopt priorities that fit within the national priorities. The commenter felt that this would facilitate a comprehensive, focused national service effort.

The Corporation agrees that requiring States to adopt national priorities might create a more focused national effort, but this change was not made because the Corporation strongly believes that it was Congress' intent to maintain a large degree of State autonomy with formula funds. States are in the best position to judge which needs are most pressing within a State and thus what the State priorities should be.

(10) *Program types.* One commenter recommended for inclusion in the regulations additional provisions relating to the needs of inner cities. Specifically, the commenter recommended adding an example to § 2522.110(b)(1) of a community service program in a high unemployment, high need urban area. The commenter also suggested that the provision describing a program for economically disadvantaged individuals (§ 2522.110(b)(3)) be expanded to add a requirement that it meet the employment needs of low income people and the business development needs of inner city neighborhoods.

These changes have not been made. The program types included in the regulations are all taken directly from the statute. More importantly, as discussed in the January 7 preamble, a program does not necessarily have to be listed as a program type in § 2522.110 in order to receive a grant. The Corporation has designated any program that meets the minimum program requirements listed in § 2522.100 as eligible to apply for a grant.

(11) *Higher education cap.* Several commenters argued that the regulations should restrict to 10% the percentage of a State's educational award formula allotment that institutions of higher education may receive.

The Corporation declines to regulate on this issue. Which programs are proposed for funding in the State formula allotment, and how any available educational awards are distributed among them, is up to the States.

(12) *Ineligible service activities.* (§ 2520.30) A number of commenters suggested that the Corporation revise the treatment of provisions prohibiting lobbying by participants in the course of their service. A number of commenters argued that the list of prohibited activities was too large and went beyond the statute. Some commenters stated that the proposed regulations would have an overly restrictive impact on programs and participants.

The Corporation believes the service activity restrictions will not have a negative impact on programs or participants and that the list will keep programs focused on service that has direct and demonstrable results. However, the Corporation does not intend to limit the right of individuals to engage in any of the prohibited activities voluntarily and on their own time. Accordingly, the regulations have been amended.

Change: § 2520.30 has been revised.

(13) *Selection criteria.* One commenter suggested rewriting the AmeriCorps selection criteria so that replicability and sustainability are more closely linked with innovation, rather than listing innovation, replicability and sustainability as separate criteria. Another commenter suggested adding a selection criterion which would consider the extent to which programs promote diversity, community-building and citizenship.

The regulatory selection criteria have been drafted broadly to allow for flexibility from year to year and therefore are not being changed. The fiscal year 1994 selection criteria contained in the applications will stress the extent to which programs are likely to achieve the three desired impacts: "getting things done," improving the lives of participants, and strengthening the ties that bind communities together.

(14) *Federal agency eligibility.* One commenter requested clarification in § 2523.20 on whether "cabinet-level department" would include an executive agency.

Executive agencies are eligible. The regulations have been revised, replacing "cabinet-level department" with "Executive Branch Agency or Department."

Change: § 2523.20 has been amended.

(15) *Approved partnerships.* One commenter asked for clarification of the term "approved partnership or consortium" as used in § 2523.60. Specifically, the commenter asked for an explanation of how a partnership or consortium is approved.

Partnerships will be approved by the Corporation as part of the application process.

Change: § 2523.60 has been amended.

(16) *Program requirements addition.* (§ 2522.100) One commenter suggested that the Corporation add a requirement that AmeriCorps programs provide career counseling to participants.

The Corporation did not add this as a program requirement because programs are already required under § 2522.100(k)(1) to provide support services to participants who are making the transition to careers.

(17) *National nonprofit eligibility.* One commenter requested clarification of the eligibility of national nonprofit organizations to apply for funding through subgrants, as well as directly from the Corporation.

Because national nonprofits are by definition nonprofit organizations, they are eligible to apply as subgrantees to States, Federal agencies, and other grantmaking organizations. In addition, in fiscal year 1994 they are eligible to apply for national direct funding.

(18) *Operating grant definition.* One commenter noted that the description of operating grants in § 2521.20 of the regulations refers only to new or expanded programs. The commenter suggested adding on-going support for existing high-quality programs.

The Corporation agrees that the statute authorizes on-going support to operate programs.

Change: § 2521.20 has been revised.

(19) *National direct coordination.* Several commenters were concerned that the requirement that programs coordinate with the State commissions places too much power in the State Commissions. One commenter suggested that the regulations be revised to require national program applicants to meet and consult with State Commissions and to encourage, but not require, coordination of their efforts.

The Corporation did not intend the coordination requirement to require State Commission approval. The regulations have been revised to clarify the extent of coordination that is required.

Change: § 2522.100 has been revised.

(20) *Dissemination of information.* (§ 2522.210) The regulations list a number of entities through which the Corporation will disseminate information regarding available AmeriCorps positions. Several commenters suggested adding community-based organizations to this list.

This change has been made.

Change: § 2522.210 has been revised.

(21) *Training investment.* One commenter suggested that the Corporation require the grantees to spend between 5 and 10% of any grant on staff and participant training activities.

The Corporation agrees that adequate training—for both staff and participants—is a critical component of any high-quality program. In order to receive a grant, a program will have to demonstrate the existence of an appropriate training program. But because the training and capacity-building needs of the various other entities eligible to apply for AmeriCorps grants vary widely, the Corporation is not setting regulatory guidelines on what percentage of those grants must be spent on training and capacity building. However, the Corporation reserves the right to set such guidelines in the applications.

(22) *Disaster Grants.* § 2524.50. One commenter suggested that we require disaster relief grants to go through the State Commissions. The commenter argued that this would better ensure the coordination of activities.

The Corporation wishes to maintain flexibility on this issue and thus is not changing the regulations. For a given disaster, disaster grants may in fact flow through a State Commission. However, there also may be instances during a disaster when the Corporation would wish to distribute disaster funds directly to programs.

(23) *Replication grants.* One commenter wondered why the term "replication" does not occur in the regulations although it occurred in the preamble.

Replication grants are allowable and they have been added to the regulations.

Change: § 2521.20 has been amended.

(24) *Matching requirements.* One commenter requested clarification as to whether the general 25% match was inclusive or exclusive of the 15% living allowance and health care match.

The corporation agrees that the matching guidelines require further clarification, and the regulations have been amended to provide clarification. For the purposes of calculating matching requirements, there are two broad budget categories: participant support costs and other costs.

Participant support costs are comprised of living allowances, health care benefits, and child care costs, each of which has a different matching requirement as specified below:

Health Care: Corporation funds may be used to pay for no more than 85% of total health care costs.

Child Care: Corporation funds may be used to pay for 100% of child care costs.

Living Allowances: Corporation and other Federal funds may be used to pay for no more than 85% of living allowance costs.

"Other Costs" are comprised of all costs attributable to the program exclusive of the participant support costs detailed above. Corporation funds may be used to pay for no more than 75% of the total of these other costs. In order to avoid confusion, readers should note that the requirement that Corporation funds not exceed 75% of the total other costs of a program is *not* synonymous with a 25% matching requirement on a grant. The 75% restriction applies to the total other costs of a program (including non-Corporation funds). Thus, if a program's total other costs were $100,000, then the Corporation would provide a grant of no more than $75,000 for those costs, and the program would have to provide for the remaining $25,000.

Changes: § 2521.30 has been revised.

(25) *Ineligibility.* One commenter suggested that the Corporation further clarify that a person who committed a crime prior to a term of service is not automatically ineligible for service.

Individuals with criminal records are not, in fact, automatically ineligible to participate in programs. Programs are responsible for determining who shall participate. In selecting participants, programs providing service in particularly sensitive areas, such as working with young children, should consider whether the participation of individuals with certain criminal backgrounds would have a significant negative impact on the physical or psychological health of either other participants or individuals served.

(26) *Federal Agency matching requirements.* One commenter requested clarification of how Federal agencies are treated in terms of the matching requirements. The regulations have been revised to clarify that Federal agencies do not have to meet matching requirements if they operate programs directly, but that if they subgrant, the subgrantees do have to meet the matching requirements.

Change: § 2523.90 has been revised.

(27) *Education and Training.* One commenter asked how much of a term of service could be spent on education and training.

The proposed rule did not address this issue. Therefore, the terms of service section of the regulations has been revised to indicate that the Corporation may set a minimum or maximum number of hours in a given term of service that may be spent on training, education, or similar approved activities. Thus, the Corporation reserves the right to establish such guidelines in the application materials.

*Parts 2530–2533—Investment for Quality and Innovation*

*Clearinghouse eligibility.* One commenter suggested that the regulations go too far in § 2532.20(n) by requiring that to be eligible to apply as a clearinghouse, an organization must have extensive experience in training, technical assistance, service and/or volunteer development, management, and evaluation. The commenter argued that the law only lists these as activities a clearinghouse could do, not as requirements for eligibility.

The regulations have been amended to conform to the statute.

Change: § 2532.20(n) has been revised.

*Part 2540—Administrative Provisions*

(1) *Nondisplacement (§ 2540.100(f)(4)(i)).* Once commenter suggested that we include examples of what constitutes displacement as described in this section. Several commenters urged that the proposed restriction not be interpreted too strictly. One commenter pointed out that it seems to contradict § 2522.110(3), which states that professional corps programs that recruit and place qualified participants in positions as teachers and nurses qualify as AmeriCorps programs. The commenter suggested that the regulations be revised to clarify that those programs qualify because the participants don't replace qualified and certified people.

The Corporation declines to put examples or further clarifications of this issue in the regulations. However, it will disseminate information clarifying these issues to all grantees.

(2) *Supplantation rule.* One commenter raised several concerns regarding the supplantation requirement in the AmeriCorps regulations. The commenter pointed out that the preamble specifically included private sector funds in the requirement and that the proposed regulations were unclear. The commenter suggested not extending the rule to the private sector. Not allowing the supplantation of private funds could create a disincentive for programs to raise private funds because, if they lose those funds in a subsequent year, they may not be able to maintain the same level of non-federal funds and would thus be ineligible for AmeriCorps assistance. The commenter was also concerned that a program could have difficulty meeting the requirement for maintaining aggregate non-federal funding if the size of the program is reduced. The commenter recommended

that the regulations be revised to add a sentence stating that the supplantation rule is satisfied if funding from private sources continues to exceed the matching requirements. The commenter also recommended that the required non-federal expenditures be measured per capita instead of on a lump-sum basis.

The statutory supplantation provision states that the level of State and local public funding for a given program cannot drop below the level of the previous year. The regulations stated this incorrectly and have been revised to indicate that the restriction applies only to public State and local funds. The Corporation does not have the regulatory authority to measure the level of State and local support on a per participant basis.

Change: § 2540.100 has been revised.

*Part 2550—State Commission Regulations*

One commenter suggested that the State Commission regulations (published in the November 17, 1993 **Federal Register** as an interim final rule) be amended to add individuals with expertise in the field of mental retardation/cognitive disabilities to the list of possible members of the State Commissions.

This addition will be incorporated into the final State Commission regulations when they are published.

**Miscellaneous Requirements**

Interested parties should be advised that because the assistance provided under the authority of this rule constitutes Federal financial assistance for the purposes of title VI of the Civil Rights Act of 1964 (which bars discrimination based on race, color, or national origin), title IX of the Education Amendments of 1972 (which bars discrimination on the basis of gender), the Rehabilitation Act of 1973 (which bars discrimination on the basis of disability), and the Age Discrimination Act of 1975 (which bars discrimination on the basis of age), grantees will be required to comply with the aforementioned provisions of Federal law.

Grant recipients will be expected to expend Corporation grants in a judicious and reasonable manner, consistent with pertinent provisions of Federal law and regulations. Grantees must keep records according to Corporation guidelines, including records that fully disclose the amount and disposition of the proceeds of a Corporation grant. The Inspector General of the Corporation (or other authorized official) shall have access, for the purpose of audit and examination, to the books and records of grantees that may be related or pertinent to the Corporation grant.

Grantees should further be advised that Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and Administrative Requirements for Grants and Cooperative Agreements to other than State and Local Governments, as well as regulations for the Privacy Act, Freedom of Information Act, Sunshine Act, Government-wide Debarment and Suspension, and Government-wide Requirements for Drug-Free Workplace will also be published.

As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

As required by the Paperwork Reduction Act of 1980, the Corporation will submit the information collection requirements contained in this rule to the Office of Management and Budget for its review (44 U.S.C. 3504(h)). The information collection requirements are needed in order to provide assistance to parties affected by these regulations, in accordance with statutory mandates.

(Catalog of Federal Domestic Assistance Numbers: 94.003 for State Commissions, Alternative Administrative Entities, and Transitional Entities; 94.004 for K–12 Service-Learning Programs; 94.005 for Higher Education Service-Learning Programs; 94.006 for AmeriCorps Programs; 94.007 for Investment for Quality and Innovation Programs.)

**List of Subjects**

*45 CFR Part 2510*

Grant programs-social programs, Volunteers.

*45 CFR Part 2513*

Grant programs-social programs, Reporting and recordkeeping requirements, Volunteers.

*45 CFR Part 2515*

Grant programs-social programs, Nonprofit organizations, Volunteers.

*45 CFR Part 2516*

Elementary and secondary education, Grant programs-social programs, Indians, Nonprofit organizations, Reporting and recordkeeping requirements, Volunteers.

*45 CFR Part 2517*

Community development, Grant programs-social programs, Nonprofit organizations, Reporting and recordkeeping requirements, Volunteers.

*45 CFR Part 2518*

Grant programs-social programs, Nonprofit organizations, Reporting and recordkeeping requirements, Volunteers.

*45 CFR Part 2519*

Colleges and universities, Grant programs-social programs, Nonprofit organizations, Reporting and recordkeeping requirements, Volunteers.

*45 CFR Part 2520*

AmeriCorps, Grant programs-social programs, Volunteers.

*45 CFR Part 2521*

AmeriCorps, Grant programs-social programs, Volunteers.

*45 CFR Part 2522*

AmeriCorps, Grant programs-social programs, Reporting and recordkeeping requirements, Volunteers.

*45 CFR Part 2523*

AmeriCorps, Grant programs-social programs, Volunteers.

*45 CFR Part 2524*

AmeriCorps, Grant programs-social programs, Technical assistance, Volunteers.

*45 CFR Part 2530*

Grant programs-social programs, Volunteers.

*45 CFR Part 2531*

Grant programs-social programs, Volunteers.

*45 CFR Part 2532*

Grant programs-social programs, Volunteers, Technical assistance.

*45 CFR Part 2533*

Decorations, medals, awards, Scholarships and fellowships, Volunteers.

*45 CFR Part 2540*

Administrative practice and procedure, Grant programs-social programs, Reporting and recordkeeping requirements, Volunteers.

Dated: March 16, 1994.

**Catherine Milton,**

*Vice President and Director of National and Community Service Programs.*

Accordingly, the Corporation amends title 45, chapter XXV of the Code of Federal Regulations by adding parts 2510, 2513, 2515 through 2524, 2530 through 2533, and 2540 to read as follows:

## PART 2510—OVERALL PURPOSES AND DEFINITIONS

Sec.
2510.10 What are the purposes of the programs and activities of the Corporation for National and Community Service?
2510.20 Definitions.

Authority: 42 U.S.C. 12501 *et seq.*

### § 2510.10 What are the purposes of the programs and activities of the Corporation for National and Community Service?

The National and Community Service Trust Act of 1993 established the Corporation for National and Community Service (the Corporation). The Corporation's mission is to engage Americans of all ages and backgrounds in community-based service. This service will address the Nations educational, public safety, human, and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation will foster civic responsibility, strengthen the ties that bind us together as a people, and provide educational opportunity for those who make a substantial commitment to service. The Corporation will undertake activities and provide assistance to States and other eligible entities to support national and community service programs and to achieve other purposes consistent with its mission.

### § 2510.20 Definitions.

The following definitions apply to terms used in 45 CFR parts 2510 through 2550:

*Act.* The term *Act* means the National and Community Service Act of 1990, as amended (42 U.S.C. 12501 *et seq.*).

*Administrative costs.* The term *administrative costs* means expenses associated with the overall administration of a Corporation funded program. These costs relate to the support of a programs general operations and not to expenses identified with a specific program or project.

(1) Administrative costs include, but are not limited to, the following: (i) Indirect costs (i.e., costs identified with two or more cost objectives but not identified with a particular cost objective) as described in Office of Management and Budget Circulars A–21 (Cost Principles for Educational Institutions), A–87 (Cost Principles for State and local Governments), and A–122 (Cost Principles for Nonprofit Organizations) that provide guidance on indirect costs to Federal agencies. Copies of Office of Management and Budget Circulars are available from the Executive Office of the President Publications, 725 17th Street, NW., room 2200, New Executive Office Building, Washington, DC 20503.

(ii) Costs for financial, accounting, auditing, internal evaluations (except as in paragraph (2)(iii) of this definition), and contracting functions.

(iii) Costs for insurance that protects the entity that operates the program.

(iv) The portion of the salaries and benefits of the director and any other program administrative staff equal to the portion of time that is not spent in support of specific project objectives. Specific project objectives means recruiting, training, placing, or supervising participants.

(2) Administrative costs do not include allowable costs directly related to program or project operations. These program costs include the following: (i) Costs for participants, including living allowances, insurance payments, and expense for training and travel.

(ii) Costs for staff who recruit, train, place, or supervise participants, including costs for staff salaries, benefits, training, and travel, if the purpose is for a specific program or project objective.

(iii) Costs for independent evaluations and internal evaluations—the latter to the extent that the evaluations cover only the funded program or project and are specifically related to creative methods of quality improvement. (Overall organizational management improvement costs are administrative costs.) (See § 2516.810 and § 2522.510 for definition of independent and internal evaluations.)

(3) Particular costs, such as those associated with staff who perform both administrative and program functions, may be prorated between administrative and program costs if included in the budget and approved by the Corporation grants officer.

*Adult Volunteer.* (1) The term *adult volunteer* means an individual, such as an older adult, an individual with disability, a parent, or an employee of a business of public or private nonprofit organization, who—

(i) Works without financial remuneration in an educational institution to assist students of out-of-school youth; and

(2) Is beyond the age of compulsory school attendance in the State in which the educational institution is located.

*AmeriCorps.* The term *AmeriCorps* means the combination of all AmeriCorps programs and participants.

*AmeriCorps educational award.* The term *AmeriCorps educational award* means a national service educational award described in section 147 of the Act.

*AmeriCorps participant.* The term *AmeriCorps participant* means any individual who is serving in—

(1) An AmeriCorps program;

(2) An approved AmeriCorps position; or

(3) Both.

*AmeriCorps program.* The term *AmeriCorps program* means—

(1) Any program that receives approved AmeriCorps positions;

(2) Any program that receives Corporation funds under section 121 of the Act; or

(3) Both.

*Approved AmeriCorps position.* The term *approved AmeriCorps position* means an AmeriCorps position for which the Corporation has approved the provision of an AmeriCorps educational award as one of the benefits to be provided for successful service in the position.

*Carry out.* The term *carry out*, when used in connection with an AmeriCorps program described in section 122 of the Act, means the planning, establishment, operation, expansion, or replication of the program.

*Chief Executive Officer.* The term *Chief Executive Officer*, except when used to refer to the chief executive officer of a State, means the Chief Executive Officer of the Corporation appointed under section 193 of the Act.

*Community-based agency.* The term *community-based agency* means a private nonprofit organization (including a church or other religious entity) that—

(1) Is representative of a community or a significant segment of a community; and

(2) Is engaged in meeting educational, public safety, human, or environmental community needs.

*Corporation.* The term *Corporation* means the Corporation for National and Community Service established under section 191 of the Act.

*Economically disadvantaged.* The term *economically disadvantaged*, with respect to an individual, has the same meaning as such term as defined in the Job Training Partnership Act (29 U.S.C. 1503(8)).

*Elementary school.* The term *elementary school* has the same meaning given the term in section 1471(8) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(8)).

*Empowerment zone.* The term *empowerment zone* means an area designated as an empowerment zone by the Secretary of the Department of Housing and Urban Development or the Secretary of the Department of Agriculture.

*Grantmaking entity.* (1) For school-based programs, the term *grantmaking entity* means a public or private nonprofit organization experienced in service-learning that—

(i) Submits an application to make grants for school-based service-learning programs in two or more States; and

(ii) Was in existence at least one year before the date on which the organization submitted the application.

(2) For community-based programs, the term *grantmaking entity* means a qualified organization that—

(i) Submits an application to make grants to qualified organizations to implement, operate, expand, or replicate community-based service programs that provide for educational, public safety, human, or environmental service by school-age youth in two or more States; and

(ii) Was in existence at least one year before the date on which the organization submitted the application.

*Higher Education partnerships.* The term *higher education partnership* means one or more public or private nonprofit organizations, or public agencies, including States, and one or more institutions of higher education that have entered into a written agreement specifying the responsibilities of each partner.

*Indian.* The term *Indian* means a person who is a member of an Indian tribe, or is a "Native", as defined in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)).

*Indian lands.* The term *Indian lands* means any real property owned by an Indian tribe, any real property held in trust by the United States for an Indian or Indian tribe, and any real property held by an Indian or Indian tribe that is subject to restrictions on alienation imposed by the United States.

*Indian tribe.* The term *Indian tribe* means—

(1) An Indian tribe, band, nation, or other organized group or community that is recognized as eligible for the special programs and services provided by the United States under Federal law to Indians because of their status as Indians, including—

(i) Any Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)), whether organized traditionally or pursuant to the Act of June 18, 1934 (commonly known as the "Indian Reorganization Act", 25 U.S.C. 461 *et seq.*); and

(ii) Any Regional Corporation or Village Corporation, as defined in subsection (g) or (j), respectively, of section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602 (g) or (j)); and

(2) Any tribal organization controlled, sanctioned, or chartered by an entity described in paragraph (1) of this definition.

*Individual with a disability.* Except as provided in section 175(a) of the Act, the term *individual with a disability* has the meaning given the term in section 7(8)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)(B)), which includes individuals with cognitive and other mental impairments, as well as individuals with physical impairments, who meet the criteria in that definition.

*Infrastructure-building activities.* The term *infrastructure-building activities* refers to activities that increase the capacity of organizations, programs and individuals to provide high quality service to communities.

*Institution of higher education.* The term *institution of higher education* has the same meaning given the term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

*Local educational agency (LEA).* The term *local educational agency* has the same meaning given the term in section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12)).

*Local partnership.* The term *local partnership* means a partnership, as defined in § 2510.20 of this chapter, that meets the eligibility requirements to apply for subgrants under § 2516.110 or § 2517.110 of this chapter.

*National nonprofit.* The term *national nonprofit* means any nonprofit organization whose mission, membership, activities, or constituencies are national in scope.

*National service laws.* The term *national service laws* means the Act and the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 *et seq.*).

*Objective.* The term *objective* means a desired accomplishment of a program.

*Out-of-school youth.* The term *out-of-school youth* means an individual who—

(1) Has not attained the age of 27;

(2) Has not completed college or its equivalent; and

(3) Is not enrolled in an elementary or secondary school or institution of higher education.

*Participant.* (1) The term *participant* means an individual enrolled in a program that receives assistance under the Act.

(2) A participant may not be considered to be an employee of the program in which the participant is enrolled.

*Partnership.* The term *partnership* means two or more entities that have entered into a written agreement specifying the partnership's goals and activities as well as the responsibilities, goals, and activities of each partner.

*Partnership program.* The term *partnership program* means a program through which an adult volunteer, a public or private nonprofit organization, an institution of higher education, or a business assists a local educational agency.

*Program.* The term *program*, unless the context otherwise requires, and except when used as part of the term academic program, means a program described in section 111(a) (other than a program referred to in paragraph (3)(B) of that section), 117A(a), 119(b)(1), or 122(a) of the Act, or in paragraph (1) or (2) of section 152(b) of the Act, or an activity that could be funded under sections 198, 198C, or 198D of the Act.

*Program sponsor.* The term *program sponsor* means an entity responsible for recruiting, selecting, and training participants, providing them benefits and support services, engaging them in regular group activities, and placing them in projects.

*Project.* The term *project* means an activity, or a set of activities, carried out through a program that receives assistance under the Act, that results in a specific identifiable service or improvement that otherwise would not be done with existing funds, and that does not duplicate the routine services or functions of the employer to whom participants are assigned.

*Project sponsor.* The term *project sponsor* means an organization, or other entity, that has been selected to provide a placement for a participant.

*Qualified individual with a disability.* The term *qualified individual with a disability* has the meaning given the term in section 101(8) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(8)).

*Qualified organization.* The term *qualified organization* means a public or private nonprofit organization, other than a grantmaking entity, that—

(1) Has experience in working with school-age youth; and

(2) Was in existence at least one year before the date on which the organization submitted an application for a service-learning program.

*School-age youth.* The term *school-age youth* means—

(1) Individuals between the ages of 5 and 17, inclusive; and

(2) Children with disabilities, as defined in section 602(a)(1) of the Individuals with Disabilities Education Act (20 U.S.C. 1401(a)(1)), who receive services under part B of that Act.

*Secondary school.* The term *secondary school* has the same meaning given the term in section 1471(21) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(21)).

*Service-learning.* The term *service-learning* means a method under which students or participants learn and develop through active participation in thoughtfully organized service that—

(1) Is conducted in and meets the needs of a community;

(2) Is coordinated with an elementary school, secondary school, institution of higher education, or community service program, and with the community;

(3) Helps foster civic responsibility;

(4) Is integrated into and enhances the academic curriculum of the students or the educational components of the community service program in which the participants are enrolled; and

(5) Includes structured time for the students and participants to reflect on the service experience.

*Service-learning coordinator.* The term *service-learning coordinator* means an individual trained in service-learning who identifies community partners for LEAs; assists in designing and implementing local partnerships service-learning programs; provides technical assistance and information to, and facilitates the training of, teachers; and provides other services for an LEA.

*State.* The term *State* means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. The term also includes Palau, until the Compact of Free Association is ratified.

*State Commission.* The term *State Commission* means a State Commission on National and Community Service maintained by a State pursuant to section 178 of the Act. Except when used in section 178, the term includes an alternative administrative entity for a State approved by the Corporation under that section to act in lieu of a State Commission.

*State educational agency (SEA).* The term *State educational agency* has the same meaning given that term in section 1471(23) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(23)).

*Student.* The term *student* means an individual who is enrolled in an elementary or secondary school or institution of higher education on a full-time or part-time basis.

*Subdivision of a State.* The term *subdivision of a State* means an governmental unit within a State other than a unit with Statewide responsibilities.

*U.S. Territory.* The term *U.S. Territory* means the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Palau, until the Compact of Free Association with Palau is ratified.

## PART 2513—STATE PLAN: PURPOSE, APPLICATION REQUIREMENTS AND SELECTION CRITERIA

Sec.

2513.10 Who must submit a State Plan?
2513.20 What are the purposes of a State Plan?
2513.30 What information must a State Plan contain?
2513.40 How will the State Plans be evaluated?

**Authority:** 42 U.S.C. 12501 *et seq.*

### § 2513.10 Who must submit a State Plan?

The fifty States, the District of Columbia, and Puerto Rico, through a Corporation-approved State Commission, Alternative Administrative Entity, or Transitional Entity must submit a comprehensive national and community service plan ("State Plan") in order to apply to the Corporation for support under parts 2515 through 2524 of this chapter.

### § 2513.20 What are the purposes of a State Plan?

The purposes of the State Plan are: (a) To set forth the States plan for promoting national and community service and strengthening its service infrastructure, including how Corporation-funded programs fit into the plan;

(b) To establish specific priorities and goals that advance the State's plan for strengthening its service program infrastructure and to specify strategies for achieving the stated goals;

(c) To inform the Corporation of the relevant historical background of the State's infrastructure for supporting national and community service and other volunteer opportunities, as well as the current status of such infrastructure;

(d) To assist the Corporation in making decisions on applications to receive formula and competitive funding under § 2521.30 of this chapter and to assist the Corporation in assessing a State's application for renewal funding for State administrative funds as provided in part 2550 of this chapter; and

(e) To serve as a working document that forms the basis of on-going dialogue between the State and the Corporation and which is subject to modifications as circumstances require.

### § 2513.30 What information must a State Plan contain?

The State Plan must include the following information: (a) An overview of a State's experience in coordinating and supporting the network of service programs within the State that address educational, public safety, human, and environmental needs, including, where appropriate, a description of specific service programs. This overview should encompass programs that have operated independently of and/or without financial support from the State;

(b) A description of the State's priorities and vision for strengthening the service program infrastructure, including how programs proposed for Corporation funding fit into this vision. The plan should also describe how State priorities relate to any national priorities established by the Corporation;

(c) A description of the goals established to advance the State's plan, including the strategies for achieving such goals. With respect to technical assistance activities (if any) and programs proposed to be funded by the Corporation, the plan should describe how such activities and programs will be coordinated with other service programs within the State. The plan should also describe the manner and extent to which the proposed programs will build on existing programs, including Corporation programs such as both the K–12 and Higher Education components of the Learn and Serve America program, and programs funded under the Domestic Volunteer Service Act and other programs;

(d) A description of the extent to which the State entity has coordinated its efforts with the State educational agency (SEA) in the SEA's application for school-based service learning funds;

(e) A description of how the State reached out to a broad cross-section of individuals and organizations to obtain their participation in the development of the State plan, including a discussion of the types of organizations and individuals who were actually involved in the process and the manner and extent of their involvement; and

(f) Such other information as the Corporation may reasonably require.

### § 2513.40 How will the State Plans be evaluated?

State plans will be evaluated on the basis of the following criteria:

(a) The quality of the plan as evidenced by: (1) The development and quality of realistic goals and objectives for moving service ahead in the State;

(2) The extent to which proposed strategies can reasonably be expected to accomplish stated goals;

(3) The extent of input in the development of the State plan from a broad cross-section of individuals and organizations including community-based agencies; organizations with a demonstrated record of providing educational, public safety, human, or environmental services; residents of the State, including youth and other prospective participants, State Education Agencies; traditional service organizations; and labor unions;

(b) The sustainability of the national service efforts outlined in the plan, as evidenced by the extent to which they are supported by: (1) The State, through financial, in-kind, and bi-partisan political support, including the existence of supportive legislation; and

(2) Other support, including the financial, in-kind, and other support of the private sector, foundations, and other entities and individuals; and

(c) Such other criteria as the Corporation deems necessary.

## PART 2515—SERVICE-LEARNING PROGRAM PURPOSES

Sec.

2515.10 What are the service-learning programs of the Corporation for National and Community Service?

**Authority:** 42 U.S.C. 12501 *et seq.*

### § 2515.10 What are the service-learning programs of the Corporation for National and Community Service?

(a) There are three service-learning programs: (1) School-based programs, described in part 2516 of this chapter.

(2) Community-based programs, described in part 2517 of this chapter.

(3) Higher education programs, described in part 2519 of this chapter.

(b) Each program gives participants the opportunity to learn and develop their own capabilities through service-learning, while addressing needs in the community.

## PART 2516—SCHOOL-BASED SERVICE-LEARNING PROGRAMS

### Subpart A—Eligibility to Apply

Sec.

2516.100 Who may apply for a direct grant from the Corporation?
2516.110 Who may apply for a subgrant from a Corporation grantee?

### Subpart B—Use of Grant Funds

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### Subpart C—Eligibility to Participate

2516.300 Who may participate in a school-based service-learning program?
2516.310 May private school students participate?
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### Subpart D—Application Contents

2516.400 What must a State or Indian tribe include in an application for a grant?
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### Subpart E—Application Review

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2516.520 How does a State, Indian tribe, or grantmaking entity review the merits of an application?

### Subpart F—Distribution of Funds

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### Subpart G—Funding Requirements

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2516.720 What is the length of each type of grant?
2516.730 May an applicant submit more than one application to the Corporation for the same project at the same time?

### Subpart H—Evaluation Requirements

2516.800 What are the purposes of an evaluation?
2516.810 What types of evaluations are grantees and subgrantees required to perform?
2516.820 What types of internal evaluation activities are required of programs?
2516.830 What types of activities are required of Corporation grantees to evaluate the effectiveness of their subgrantees?
2516.840 By what standards will the Corporation evaluate individual Learn and Serve America programs?
2516.850 What will the Corporation do to evaluate the overall success of the service-learning program?
2516.860 Will information on individual participants be kept confidential?

**Authority:** 42 U.S.C. 12501 *et seq.*

## Subpart A—Eligibility to Apply

### § 2516.100 Who may apply for a direct grant from the Corporation?

(a) The following entities may apply for a direct grant from the Corporation:

(1) A State, through a State educational agency (SEA) as defined in § 2510.20 of this chapter. For the purpose of part, "State" means one of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and, except for the purpose of § 2516.600 (b), U.S. Territories.

(2) An Indian tribe.

(3) A grantmaking entity as defined in § 2515.20 of this chapter.

(4) For activities in a nonparticipating State, a local educational agency (LEA) as defined in § 2510.20 of this chapter or a local partnership as described in § 2516.110.

(b) The types of grants for which each entity is eligible are described in § 2516.200.

### § 2516.110 Who may apply for a subgrant from a Corporation grantee?

Entities that may apply for a subgrant from a State, Indian tribe, or grantmaking entity are:

(a) An LEA, for a grant from a State for planning school-based service-learning programs.

(b) A local partnership, for a grant from a State or a grantmaking entity to implement, operate, or expand a school-based service learning program.

(1) The local partnership must include an LEA and one or more community partners. The local partnership may include a private for-profit business or private elementary or secondary school.

(2) The community partners must include a public or private nonprofit organization that has demonstrated expertise in the provision of services to meet educational, public safety, human, or environmental needs; was in existence at least one year before the date on which the organization submitted an application under this part; and will make projects available for participants, who must be students.

(c) A local partnership, for a grant from a State or a grantmaking entity to implement, operate, or expand an adult volunteer program. The local partnership must include an LEA and one or more public or private nonprofit organizations, other educational agencies, or private for-profit businesses that coordinate and operate projects for participants who must be students.

(d) A qualified organization, as defined in § 2515.20 of this chapter, for a grant from a State or Indian tribe for planning or building the capacity of the State or Indian tribe.

## Subpart B—Use of Grant Funds

### § 2516.200 How may grant funds be used?

Funds under a school based service learning grant may be used for the purposes described in this section.

(a) *Planning and capacity-building for States and Indian tribes.* (1) A State or Indian tribe may use funds to pay for planning and building its capacity to

implement school-based service-learning programs. These entities may use funds either directly or through subgrants or contracts with qualified organizations.

(2) Authorized activities include the following: (i) Providing training for teachers, supervisors, personnel from community-based agencies (particularly with regard to the utilization of participants) and trainers, conducted by qualified individuals or organizations experienced in service-learning.

(ii) Developing service-learning curricula to be integrated into academic programs, including the age-appropriate learning components for students to analyze and apply their service experiences.

(iii) Forming local partnerships described in § 2516.110 to develop school-based service-learning programs in accordance with this part.

(iv) Devising appropriate methods for research and evaluation of the educational value of service-learning and the effect of service-learning activities on communities.

(v) Establishing effective outreach and dissemination of information to ensure the broadest possible involvement of community-based agencies with demonstrated effectiveness in working with school-age youth in their communities.

(b) *Implementing, operating, and expanding school-based programs.* (1) A State, Indian Tribe, or grantmaking entity may use funds to make subgrants to local partnerships described in § 2516.110 (b) to implement, operate, or expand school-based service-learning programs.

(2) If a State does not submit an application that meets the requirements for an allotment grant under § 2516.400, the Corporation may use the allotment to fund applications from those local partnerships for programs in that State.

(3) Authorized activities include paying the costs of the recruitment, training, supervision, placement, salaries and benefits of service learning coordinators.

(4) A grantmaking entity may also use funds to provide technical assistance and training to appropriate persons relating to its subgrants.

(c) *Planning programs.* (1) A State may use funds to make subgrants to LEAs for planning school-based service-learning programs.

(2) If a State does not submit an application that meets the requirements for an allotment grant under § 2516.400, the Corporation may use the allotment to fund applications from LEAs for planning programs in that State.

(3) Authorized activities include paying the costs of—

(i) The salaries and benefits of service-learning coordinators as defined in § 2510.20 of this chapter; and

(ii) The recruitment, training, supervision, and placement of service-learning coordinators who may be participants in an AmeriCorps program described in parts 2520 through 2524 of this chapter or who receive AmeriCorps educational awards.

(d) *Adult volunteer programs.* (1) A State, Indian tribe, or grantmaking entity may use funds to make subgrants to local partnerships described in § 2516.110 (c) to implement, operate, or expand school-based programs involving adult volunteers to utilize service-learning to improve the education of students.

(2) If a State does not submit an application that meets the requirements for an allotment grant under § 2516.400, the Corporation may use the allotment to fund applications from those local partnerships for adult volunteer programs in that State.

(e) *Planning by Indian tribes and U.S. Territories.* If the Corporation makes a grant to an Indian tribe or a U.S. Territory to plan school-based service-learning programs, the grantee may use the funds for that purpose.

## Subpart C—Eligibility to Participate

### § 2516.300 Who may participate in a school-based service-learning program?

Students who are enrolled in elementary or secondary schools on a full-time or part-time basis may participate in school-based programs.

### § 2516.310 May private school students participate?

(a) Yes. To the extent consistent with the number of students in the State or Indian tribe or in the school district of the LEA involved who are enrolled in private nonprofit elementary or secondary schools, the State, Indian tribe, or LEA must (after consultation with appropriate private school representatives) make provision—

(1) For the inclusion of services and arrangements for the benefit of those students so as to allow for the equitable participation of the students in the programs under this part; and

(2) For the training of the teachers of those students so as to allow for the equitable participation of those teachers in the programs under this part.

(b) (1) If a State, Indian tribe, or LEA is prohibited by law from providing for the participation of students or teachers from private nonprofit schools as required by paragraph (a) of this section, or if the Corporation determines that a State, Indian tribe, or LEA substantially fails or is unwilling to provide for their participation on an equitable basis, the Corporation will waive those requirements and arrange for the provision of services to the students and teachers.

(2) Waivers will be subject to the Corporation procedures that are consistent with the consultation, withholding, notice, and judicial review requirements of section 1017(b) (3) and (4) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2727 (b)).

### § 2516.320 Is a participant eligible to receive an AmeriCorps educational award?

No. However, service-learning coordinators who are approved AmeriCorps positions are eligible for AmeriCorps educational awards.

## Subpart D—Application Contents

### § 2516.400 What must a State or Indian tribe include in an application for a grant?

In order to apply for a grant from the Corporation under this part, a State (SEA) or Indian tribe must submit the following: (a) A three-year strategic plan for promoting service-learning through programs under this part, or a revision of a previously approved three-year strategic plan. The application of a SEA must include a description of how the SEA will coordinate its service-learning plan with the State Plan under part 2513 of this chapter and with other federally-assisted activities.

(b) A proposal containing the specific program, budget, and other information specified by the Corporation in the grant application package.

(c) Assurances that the applicant will—

(1) Keep such records and provide such information to the Corporation with respect to the programs as may be required for fiscal audits and program evaluation; and

(2) Comply with the nonduplication, nondisplacement, and grievance procedure requirements of part 2540 of this chapter.

### § 2516.410 What must a grantmaking entity, local partnership, or LEA include in an application for a grant?

In order to apply to the Corporation for a grant, a grantmaking entity, local partnership, or LEA must submit the following: (a) A detailed description of the proposed program goals and activities. The application of a grantmaking entity must include—

(1) A description of how the applicant will coordinate its activities with the State Plan under part 2513 of this

chapter, including a description of plans to meet and consult with the State Commission, if possible, and to provide a copy of the program application to the State Commission and with other federally-assisted activities; and

(2) A description of how the program will be carried out in more than one State.

(b) The specific program, budget, and other information specified by the Corporation in the grant application package.

(c) Assurances that the applicant will—

(1) Keep such records and provide such information to the Corporation with respect to the program as may be required for fiscal audits and program evaluation;

(2) Prior to the placement of a participant, consult with the appropriate local labor organization, if any, representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by the program, to prevent the displacement and protect the rights of those employees;

(3) Develop an age-appropriate learning component for participants in the program that includes a chance for participants to analyze and apply their service experiences; and

(4) Comply with the nonduplication, nondisplacement, and grievance procedure requirements of part 2540 of this chapter.

(d) For a local partnership, an assurance that the LEA will serve as the fiscal agent.

**§ 2516.420 What must an LEA, local partnership, or qualified organization include in an application for a subgrant?**

In order to apply for a subgrant from an SEA, Indian tribe, or grantmaking entity under this part, an applicant must include the information required by the Corporation grantee.

## Subpart E—Application Review

**§ 2516.500 How does the Corporation review the merits of an application?**

(a) In reviewing the merits of an application submitted to the Corporation under this part, the Corporation evaluates the quality, innovation, replicability, and sustainability of the proposal on the basis of the following criteria: (1) Quality, as indicated by the extent to which—

(i) The program will provide productive meaningful, educational experiences that incorporate service-learning methods;

(ii) The program will meet community needs and involve individuals from diverse backgrounds (including economically disadvantaged youth) who will serve together to explore the root causes of community problems;

(iii) The principal leaders of the program will be well qualified for their responsibilities;

(iv) The program has sound plans and processes for training, technical assistance, supervision, quality control, evaluation, administration, and other key activities; and

(v) The program will advance knowledge about how to do effective and innovative community service and service-learning and enhance the broader elementary and secondary education field.

(2) Replicability, as indicated by the extent to which the program will assist others in learning from experience and replicating the approach of the program.

(3) Sustainability, as indicated by the extent to which—

(i) An SEA, Indian tribe or grantmaking entity applicant demonstrates the ability and willingness to coordinate its activities with the State Plan under part 2513 of this chapter and with other federally assisted activities;

(ii) The program will foster collaborative efforts among local educational agencies, local government agencies, community based agencies, businesses, and State agencies;

(iii) The program will enjoy strong, broad-based community support; and

(iv) There is evidence that financial resources will be available to continue the program after the expiration of the grant.

(b) The Corporation also gives priority to proposals that—

(1) Involve participants in the design and operation of the program;

(2) Reflect the greatest need for assistance, such as programs targeting low-income areas;

(3) Involve students from public and private schools serving together;

(4) Involve students of different ages, races, genders, ethnicities, abilities and disabilities, or economic backgrounds, serving together;

(5) Are integrated into the academic program of the participants;

(6) Best represent the potential of service-learning as a vehicle for education reform and school-to-work transition;

(7) Develop civic responsibility and leadership skills and qualities in participants;

(8) Demonstrate the ability to achieve the goals of this part on the basis of the proposal's quality, innovation, replicability, and sustainability; or

(9) Address any other priority established by the Corporation for a particular period.

(c) In reviewing applications submitted by Indian tribes and U.S. Territories, the Corporation—

(1) May decide to approve only planning of school-based service-learning programs; and

(2) Will set the amounts of grants in accordance with the respective needs of applicants.

**§ 2516.510 What happens if the Corporation rejects a State's application for an allotment grant?**

If the Corporation rejects a State's application for an allotment grant under § 2516.600(b)(2), the Corporation will—

(a) Promptly notify the State of the reasons for the rejection;

(b) Provide the State with a reasonable opportunity to revise and resubmit the application;

(c) Provide technical assistance, if necessary; and

(d) Promptly reconsider the resubmitted application and make a decision.

**§ 2516.520 How does a State, Indian tribe, or grantmaking entity review the merits of an application?**

In reviewing the merits of an application for a subgrant under this part, a Corporation grantee must use the criteria and priorities in § 2516.500.

## Subpart F—Distribution of Funds

**§ 2516.600 How are funds for school-based service-learning programs distributed?**

(a) Of the amounts appropriated to carry out this part for any fiscal year, the Corporation will reserve not more than three percent for grants to Indian tribes and U.S. Territories to be allotted in accordance with their respective needs.

(b) The Corporation will use the remainder of the funds appropriated as follows: (1) Competitive Grants. From 25 percent of the remainder, the Corporation may make grants on a competitive basis to States, Indian tribes, or grantmaking entities.

(2) Allotments to States.

(i) From 37.5 percent of the remainder, the Corporation will allot to each State an amount that bears the same ratio to 37.5 percent of the remainder as the number of school-age youth in the State bears to the total number of school-age youth of all States.

(ii) From 37.5 percent of the remainder, the Corporation will allot to each State an amount that bears the same ratio to 37.5 percent of the remainder as the allocation to the State for the previous fiscal year under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2711 *et seq.*) bears to the allocations to all States.

(iii) Notwithstanding other provisions of paragraph (b)(2) of this section, no State will receive an allotment that is less than the allotment the State received for fiscal year 1993 from the Commission on National and Community Service. If the amount of funds made available in a fiscal year is insufficient to make those allotments, the Corporation will make additional funds available from the 25 percent described in paragraph (b)(1) of this section for that fiscal year to make those allotments.

(3) For the purpose of paragraph (b) of this section, "State" means one of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) If a State or Indian tribe does not submit an application that meets the requirements for approval under this part, the Corporation (after making any grants to local partnerships or LEAs for activities in nonparticipating States) may use its allotment for States and Indian tribes with approved applications, as the Corporation determines appropriate.

(d) Notwithstanding other provisions of this section, if less than $20,000,000 is made available in any fiscal year to carry out this part, the Corporation will make all grants to States and Indian tribes on a competitive basis.

## Subpart G—Funding Requirements

### § 2516.700 Are matching funds required?

(a) Yes. The Corporation share of the cost of carrying out a program funded under this part may not exceed—

(1) Ninety percent of the total cost for the first year for which the program receives assistance;

(2) Eighty percent of the total cost for the second year;

(3) Seventy percent of the total cost for the third year; and

(4) Fifty percent of the total cost for the fourth year and any subsequent year.

(b) In providing for the remaining share of the cost of carrying out a program, each recipient of assistance must provide for that share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services, and may provide for that share through State sources, local sources, or Federal sources (other than funds made available under the national service laws).

(c) However, the Corporation may waive the requirements of paragraph (b) of this section in whole or in part with respect to any program in any fiscal year if the Corporation determines that the waiver would be equitable due to a lack of available financial resources at the local level.

### § 2516.710 Are there limits on the use of funds?

Yes. The following limits apply to funds made available under this part: (a)(1) The recipient of a direct grant from the Corporation may spend no more than five percent of the grant funds on administrative costs for any fiscal year.

(2) If a Corporation grantee makes a subgrant to an entity to carry out a service-learning program, the Corporation grantee may determine how the allowable administrative costs will be distributed between itself and the subgrantee.

(b) (1) An SEA or Indian tribe must spend between ten and 15 percent of the grant to build capacity through training, technical assistance, curriculum development, and coordination activities.

(2) However, the Corporation may waive this requirement in order to permit an SEA or a tribe to use between ten percent and 20 percent of the grant funds to build capacity. To be eligible to receive the waiver, the SEA or tribe must submit an application to the Corporation.

(c) Funds made available under this part may not be used to pay any stipend, allowance, or other financial support to any participant in a service-learning program under this part except reimbursement for transportation, meals, and other reasonable out-of-pocket expenses directly related to participation in a program assisted under this part.

### § 2516.720 What is the length of each type of grant?

(a) One year is the maximum length of—

(1) A planning grant under § 2516.200 (a), (c) or (e); and

(2) A grant to a local partnership for activities in a nonparticipating State under § 2516.200 (b)(2) and (d)(2).

(b) All other grants are for a period of up to three years, subject to satisfactory performance and annual appropriations.

### § 2516.730 May an applicant submit more than one application to the Corporation for the same project at the same time?

No. The Corporation will reject an application for a project if an application for funding or educational awards for the same project is already pending before the Corporation.

## Subpart H—Evaluation Requirements

### § 2516.800 What are the purposes of an evaluation?

Every evaluation effort should serve to improve program quality, examine benefits of service, or fulfill legislative requirements.

### § 2516.810 What types of evaluations are grantees and subgrantees required to perform?

All grantees and subgrantees are required to perform internal evaluations which are ongoing efforts to assess performance and improve quality. Grantees and subgrantees may, but are not required to, arrange for independent evaluations which are assessments of program effectiveness by individuals who are not directly involved in the administration of the program. The cost of independent evaluations is allowable.

### § 2516.820 What types of internal evaluation activities are required of programs?

Programs are required to: (a) Continuously assess management effectiveness, the quality of services provided, and the satisfaction of both participants and service recipients. Internal evaluations should seek frequent feedback and provide for quick correction of weakness. The Corporation encourages programs to use internal evaluation methods, such as community advisory councils, participant advisory councils, peer reviews, quality control inspections, and service recipient and participant surveys.

(b) Track progress toward pre-established objectives. Objectives must be established by programs and approved by the Corporation. Programs must submit to the Corporation (or the Corporation grantee as applicable) periodic performance reports.

(c) Collect and submit to the Corporation (through the Corporation grantee as applicable) the following data: (1) The total number of participants in each program and basic demographic characteristics of the participants including sex, age, economic background, education level, ethnic group, disability classification, and geographic region.

(2) Other information as required by the Corporation.

(d) Cooperate fully with all Corporation evaluation activities.

### § 2516.830 What types of activities are required of Corporation grantees to evaluate the effectiveness of their subgrantees?

A Corporation grantee that makes subgrants must do the following: (a)

Ensure that subgrantees comply with the requirements of § 2516.840.

(b) Track program performance in terms of progress toward pre-established objectives; ensure that corrective action is taken when necessary; and submit to the Corporation periodic performance reports.

(c) Collect from programs and submit to the Corporation the descriptive information required in § 2516.820(c)(1).

(d) Cooperate fully with all Corporation evaluation activities.

**§ 2516.840 By what standards will the Corporation evaluate individual Learn and Serve America programs?**

The Corporation will evaluate programs based on the following: (a) The extent to which the program meets the objectives established and agreed to by the grantee and the Corporation before the grant award.

(b) The extent to which the program is cost-effective.

(c) Other criteria as determined and published by the Corporation.

**§ 2516.850 What will the Corporation do to evaluate the overall success of the service-learning program?**

(a) The Corporation will conduct independent evaluations. These evaluations will consider the opinions of participants and members of the communities where services are delivered. If appropriate, these evaluations will compare participants with individuals who have not participated in service-learning programs. These evaluations will—

(1) Study the extent to which service-learning programs as a whole affect the involved communities;

(2) Determine the extent to which service-learning programs as a whole increase academic learning of participants, enhance civic education, and foster continued community involvement; and

(3) Determine the effectiveness of different program models.

(b) The Corporation will also determine by June 30, 1995, whether outcomes of service-learning programs are defined and measured appropriately, and the implications of the results from such a study for authorized funding levels.

**§ 2516.860 Will information on individual participants be kept confidential?**

(a) Yes. The Corporation will maintain the confidentiality of information regarding individual participants that is acquired for the purpose of the evaluations described in § 2516.840. The Corporation will disclose individual participant information only with the prior written consent of the participant. However, the Corporation may disclose aggregate participant information.

(b) Grantees and subgrantees under this part must comply with the provisions of paragraph (a) of this section.

## PART 2517—COMMUNITY-BASED SERVICE-LEARNING PROGRAMS

**Subpart A—Eligibility to Apply**

Sec.
2517.100 Who may apply for a direct grant from the Corporation?
2517.110 Who may apply for a subgrant from a Corporation grantee?

**Subpart B—Use of Grant Funds**

2517.200 How may grant funds be used?

**Subpart C—Eligibility to Participate**

2517.300 Who may participate in a community-based service-learning program?

**Subpart D—Application Contents**

2517.400 What must a State Commission or grantmaking entity include in an application for a grant?
2517.410 What must a qualified organization include in an application for a grant or a subgrant?

**Subpart E—Application Review**

2517.500 How is an application reviewed?

**Subpart F—Distribution of Funds**

2517.600 How are funds for community-based service-learning programs distributed?

**Subpart G—Funding Requirements**

2517.700 Are matching funds required?
2517.710 Are there limits on the use of funds?
2517.720 What is the length of a grant?
2517.730 May an applicant submit more than one application to the Corporation for the same project at the same time?

**Subpart H—Evaluation Requirements**

2517.800 What are the evaluation requirements for community-based programs?

**Authority:** 42 U.S.C. 12501 *et seq.*

### Subpart A—Eligibility to Apply

**§ 2517.100 Who may apply for a direct grant from the Corporation?**

(a) The following entities may apply for a direct grant from the Corporation: (1) A State Commission established under part 2550 of this chapter.

(2) A grantmaking entity as defined in § 2510.20 of this chapter.

(3) A qualified organization as defined in § 2515.20 of this chapter.

(b) The types of grants for which each entity is eligible are described in § 2517.200.

**§ 2517.110 Who may apply for a subgrant from a Corporation grantee?**

Entities that may apply for a subgrant from a State Commission or grantmaking entity are qualified organizations that have entered into a local partnership with one or more—

(a) Local educational agencies (LEAs);

(b) Other qualified organizations; or

(c) Both.

### Subpart B—Use of Grant Funds

**§ 2517.200 How may grant funds be used?**

Funds under a community-based Learn and Serve grant may be used for the purposes described in this section.

(a) A State Commission or grantmaking entity may use funds—

(1) To make subgrants to qualified organizations described in § 2517.110 to implement, operate, expand, or replicate a community-based service program that provides direct and demonstrable educational, public safety, human, or environmental service by participants, who must be school-age youth; and

(2) To provide training and technical assistance to qualified organizations.

(b) (1) A qualified organization may use funds under a direct grant or a subgrant to implement, operate, expand, or replicate a community-based service program.

(2) If a qualified organization receives a direct grant, its program must be carried out at multiple sites or be particularly innovative.

### Subpart C—Eligibility to Participate

**§ 2517.300 Who may participate in a community-based service-learning program?**

School-age youth as defined in § 2510.20 of this chapter may participate in a community-based program.

### Subpart D—Application Contents

**§ 2517.400 What must a State Commission or grantmaking entity include in an application for a grant?**

(a) In order to apply for a grant from the Corporation under this part, a State Commission or a grantmaking entity must submit the following: (1) A three-year plan for promoting service-learning through programs under this part. The plan must describe the types of community-based program models proposed to be carried out during the first year.

(2) A proposal containing the specific program, budget, and other information specified by the Corporation in the grant application package.

(3) A description of how the applicant will coordinate its activities with the State Plan under part 2513 of this

chapter and with other federally-assisted activities, including a description of plans to meet and consult with the State Commission, if possible, and to provide a copy of the program application to the State Commission.

(4) Assurances that the applicant will—

(i) Keep such records and provide such information to the Corporation with respect to the programs as may be required for fiscal audits and program evaluation;

(ii) Comply with the nonduplication, nondisplacement, and grievance procedure requirements of part 2540 of this chapter; and

(iii) Ensure that, prior to placing a participant in a program, the entity carrying out the program will consult with the appropriate local labor organization, if any, representing employees in the area in which the program will be carried out that are engaged in the same or similar work as the work proposed to be carried out by the program, to prevent the displacement of those employees.

(b) In addition, a grantmaking entity must submit information demonstrating that the entity will make grants for a program—

(1) To carry out activities in two or more States, under circumstances in which those activities can be carried out more efficiently through one program than through two or more programs; and

(2) To carry out the same activities, such as training activities or activities related to exchanging information on service experiences, through each of the projects assisted through the program.

### § 2517.410 What must a qualified organization include in an application for a grant or a subgrant?

(a) In order to apply to the Corporation for a direct grant, a qualified organization must submit the following: (1) A plan describing the goals and activities of the proposed program;

(2) A proposal containing the specific program, budget, and other information specified by the Corporation in the grant application package; and

(3) Assurances that the applicant will—

(i) Keep such records and provide such information to the Corporation with respect to the program as may be required for fiscal audits and program evaluation;

(ii) Comply with the nonduplication, nondisplacement, and grievance procedure requirements of part 2540 of this chapter; and

(iii) Prior to placing a participant in the program, consult with the appropriate local labor organization, if any, representing employees in the area in which the program will be carried out who are engaged in the same or similar work as the work proposed to be carried out by the program, to prevent the displacement of those employees.

(b) In order to apply to a State Commission or a grantmaking entity for a subgrant, a qualified organization must submit the following: (1) A plan describing the goals and activities of the proposed program; and

(2) Such specific program, budget, and other information as the Commission or entity reasonably requires.

## Subpart E—Application Review

### § 2517.500 How is an application reviewed?

In reviewing an application for a grant or a subgrant, the Corporation, a State Commission, or a grantmaking entity will apply the following criteria: (a) The quality of the program proposed.

(b) The innovation of, and feasibility of replicating, the program.

(c) The sustainability of the program, based on—

(1) Strong and broad-based community support;

(2) Multiple funding sources or private funding; and

(3) Coordination with the State Plan under part 2513 of this chapter and other federally-assisted activities.

(d) The quality of the leadership of the program, past performance of the program, and the extent to which the program builds on existing programs.

(e) The applicant's efforts—

(1) To recruit participants from among residents of the communities in which projects would be conducted;

(2) To ensure that the projects are open to participants of different ages, races, genders, ethnicities, abilities and disabilities, and economic backgrounds; and

(3) To involve participants and community residents in the design, leadership, and operation of the program.

(f) The extent to which projects would be located in areas that are—

(1) Empowerment zones, redevelopment areas, or other areas with high concentrations of low-income people; or

(2) Environmentally distressed.

## Subpart F—Distribution of Funds

### § 2517.600 How are funds for community-based service-learning programs distributed?

All funds are distributed by the Corporation through competitive grants.

## Subpart G—Funding Requirements

### § 2517.700 Are matching funds required?

(a) Yes. The Corporation share of the cost of carrying out a program funded under this part may not exceed—

(1) Ninety percent of the total cost for the first year for which the program receives assistance;

(2) Eighty percent of the total cost for the second year;

(3) Seventy percent of the total cost for the third year; and

(4) Fifty percent of the total cost for the fourth year and any subsequent year.

(b) In providing for the remaining share of the cost of carrying out a program, each recipient of assistance must provide for that share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services, and may provide for that share through State sources, local sources, or Federal sources (other than funds made available under the national service laws).

(c) However, the Corporation may waive the requirements of paragraph (b) of this section in whole or in part with respect to any program in any fiscal year if the Corporation determines that the waiver would be equitable due to lack of available financial resources at the local level.

### § 2517.710 Are there limits on the use of funds?

Yes. The following limits apply to funds made available under this part:

(a)(1) The recipient of a direct grant from the Corporation may spend no more than five percent of the grant funds on administrative costs for any fiscal year.

(2) If a Corporation grantee makes a subgrant to an entity to carry out a service-learning program, the Corporation grantee may determine how the allowable administrative costs will be distributed between itself and the subgrantee.

(b) Funds made available under this part may not be used to pay any stipend, allowance, or other financial support to any participant in a service-learning program under this part except reimbursement for transportation, meals, and other reasonable out-of-pocket expenses directly related to participation in a program assisted under this part.

### § 2517.720 What is the length of a grant?

A grant under this part is for a period of up to three years, subject to satisfactory performance and annual appropriations.

**§ 2517.730 May an applicant submit more than one application to the Corporation for the same project at the same time?**

No. The Corporation will reject an application for a project if an application for funding or educational awards for the same project is already pending before the Corporation.

**Subpart H—Evaluation Requirements**

**§ 2517.800 What are the evaluation requirements for community-based programs?**

The evaluation requirements for recipients of grants and subgrants under part 2516 of this chapter, relating to school-based service-learning programs, apply to recipients under this part.

## PART 2518—SERVICE-LEARNING CLEARINGHOUSE

Sec.
2518.100 What is the purpose of a Service-Learning Clearinghouse?
2518.110 What are the functions of a Service-Learning Clearinghouse?

**Authority:** 42 U.S.C. 12501 *et seq.*

**§ 2518.100 What is the purpose of a Service-Learning Clearinghouse?**

The Corporation will provide financial assistance, from funds appropriated to carry out the activities listed under parts 2530 through 2533 of this chapter, to public or private nonprofit organizations that have extensive experience with service-learning, including use of adult volunteers to foster service-learning, to establish a clearinghouse, which will carry out activities, either directly or by arrangement with another such organization, with respect to information about service-learning.

**§ 2518.110 What are the functions of a Service-Learning Clearinghouse?**

An organization that receives assistance from funds appropriated to carry out the activities listed under parts 2530 through 2533 of this chapter may—

(a) Assist entities carrying out State or local service-learning programs with needs assessments and planning;

(b) Conduct research and evaluations concerning service-learning;

(c)(1) Provide leadership development and training to State and local service-learning program administrators, supervisors, project sponsors, and participants; and

(2) Provide training to persons who can provide the leadership development and training described in paragraph (c)(1) of this section;

(d) Facilitate communication among entities carrying out service-learning programs and participants in such programs;

(e) Provide information, curriculum materials, and technical assistance relating to planning and operation of service-learning programs, to States and local entities eligible to receive financial assistance under this title;

(f) Provide information regarding methods to make service-learning programs accessible to individuals with disabilities;

(g)(1) Gather and disseminate information on successful service-learning programs, components of such successful programs, innovative youth skills curricula related to service-learning, and service-learning projects; and

(2) Coordinate the activities of the Clearinghouse with appropriate entities to avoid duplication of effort;

(h) Make recommendations to State and local entities on quality controls to improve the quality of service-learning programs;

(i) Assist organizations in recruiting, screening, and placing service-learning coordinators; and

(j) Carry out such other activities as the Chief Executive Officer determines to be appropriate.

## PART 2519—HIGHER EDUCATION INNOVATIVE PROGRAMS FOR COMMUNITY SERVICE

**Subpart A—Purpose and Eligibility to Apply**

Sec.
2519.100 What is the purpose of the Higher Education programs?
2519.110 Who may apply for a grant?

**Subpart B—Use of Grant Funds**

2519.200 How may grant funds be used?

**Subpart C—Participant Eligibility and Benefits**

2519.300 Who may participate in a Higher Education program?
2519.310 Is a participant eligible to receive an AmeriCorps educational award?
2519.320 May a program provide a stipend to a participant?

**Subpart D—Application Contents**

2519.400 What must an applicant include in an application for a grant?

**Subpart E—Application Review**

2519.500 How does the Corporation review the merits of an application?

**Subpart F—Distribution of Funds**

2519.600 How are funds for Higher Education programs distributed?

**Subpart G—Funding Requirements**

2519.700 Are matching funds required?
2519.710 Are there limits on the use of funds?
2519.720 What is the length of a grant?
2519.730 May an applicant submit more than one application to the Corporation for the same project at the same time?

**Subpart H—Evaluation Requirements**

2519.800 What are the evaluation requirements for Higher Education programs?

**Authority:** 42 U.S.C. 12501 *et seq.*

**Subpart A—Purpose and Eligibility to Apply**

**§ 2519.100 What is the purpose of the Higher Education programs?**

The purpose of the higher education innovative programs for community service is to expand participation in community service by supporting high-quality, sustainable community service programs carried out through institutions of higher education, acting as civic institutions helping to meet the educational, public safety, human, and environmental needs of the communities in which the programs operate.

**§ 2519.110 Who may apply for a grant?**

The following entities may apply for a grant from the Corporation: (a) An institution of higher education.

(b) A consortium of institutions of higher education.

(c) A higher education partnership, as defined in § 2510.20 of this chapter.

**Subpart B—Use of Grant Funds**

**§ 2519.200 How may grant funds be used?**

Funds under a higher education program grant may be used for the following activities: (a) Enabling an institution of higher education, a higher education partnership or a consortium to create or expand an organized community service program that—

(1) Engenders a sense of social responsibility and commitment to the community in which the institution is located; and

(2) Provides projects for the participants described in § 2519.300.

(b) Supporting student-initiated and student-designed community service projects.

(c) Strengthening the leadership and instructional capacity of teachers at the elementary, secondary, and postsecondary levels with respect to service-learning by—

(1) Including service-learning as a key component of the preservice teacher education of the institution; and

(2) Encouraging the faculty of the institution to use service-learning methods throughout the curriculum.

(d) Facilitating the integration of community service carried out under the grant into academic curricula, including integration of clinical programs into the curriculum for

students in professional schools, so that students may obtain credit for their community service projects.

(e) Supplementing the funds available to carry out work-study programs under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 *et seq.*) to support service-learning and community service.

(f) Strengthening the service infrastructure within institutions of higher education in the United States that supports service-learning and community service.

(g) Providing for the training of teachers, prospective teachers, related education personnel, and community leaders in the skills necessary to develop, supervise, and organize service-learning.

### Subpart C—Participant Eligibility and Benefits

#### § 2519.300 Who may participate in a Higher Education program?

Students, faculty, administration and staff of an institution, as well as residents of the community may participate. For the purpose of this part, the term "student" means an individual who is enrolled in an institution of higher education on a full-time or part-time basis.

#### § 2519.310 Is a participant eligible to receive an AmeriCorps educational award?

In general, no. However, certain positions in programs funded under this part may qualify as approved AmeriCorps positions. The Corporation will establish eligibility requirements for these positions as a part of the application package.

#### § 2519.320 May a program provide a stipend to a participant?

(a) A program may provide a stipend for service activities for a participant who is a student if the provision of stipends in reasonable in the context of a program's design and objectives.

(1) A program may not provide a stipend to a student who is receiving academic credit for service activities unless the service activities require a substantial time commitment beyond that expected for the credit earned.

(2) A participant who is earning money for service activities under the work-study program described in § 2519.200(e) may not receive an additional stipend from funds under this part.

(b) Consistent with the AmeriCorps program requirements in § 2522.100 of this chapter, a program with participants serving in approved full-time AmeriCorps positions must ensure the provision of a living allowance and, if necessary, health care and child care to those participants. A program may, but is not required to, provide a prorated living allowance to individuals participating in approved AmeriCorps positions on a part-time basis, consistent with the AmeriCorps program requirements in § 2522.240 of this chapter.

### Subpart D—Application Contents

#### § 2519.400 What must an applicant include in an application for a grant?

In order to apply to the Corporation for a grant, an applicant must submit the following: (a) A plan describing the goals and activities of the proposed program.

(b) The specific program, budget, and other information and assurances specified by the Corporation in the grant application package.

(c) Assurances that the applicant will—

(1) Keep such records and provide such information to the Corporation with respect to the program as may be required for fiscal audits and program evaluation;

(2) Comply with the nonduplication, nondisplacement, and grievance procedure requirements of part 2540 of this chapter;

(3) Prior to the placement of a participant in the program, consult with the appropriate local labor organization, if any, representing employees in the area who are engaged in the same or similar work as the work proposed to be carried out by the program, to prevent the displacement and protect the rights of those employees; and

(4) Comply with any other assurances that the Corporation deems necessary.

### Subpart E—Application Review

#### § 2519.500 How does the Corporation review an application?

(a) The Corporation will review an application submitted under this part on the basis of the quality, innovation, replicability, and sustainability of the proposed program and such other criteria as the Corporation establishes in an application package.

(b) In addition, in reviewing an application submitted under this part, the Corporation will give a proposed program increased priority for each characteristic described in paragraphs (b) (1) through (7) of this section. Priority programs—

(1) Demonstrate the commitment of the institution of higher education, other than by demonstrating the commitment of its students, to supporting the community service projects carried out under the program;

(2) Specify how the institution will promote faculty, administration, and staff participation in the community service projects;

(3) Specify the manner in which the institution will provide service to the community through organized programs, including, where appropriate, clinical programs for students in professional schools;

(4) Describe any higher education partnership that will participate in the community service projects, such as a higher education partnership comprised of the institution, a student organization, a community-based agency, a local government agency, or a nonprofit entity that serves or involves school-age youth or older adults;

(5) Demonstrate community involvement in the development of the proposal;

(6) Specify that the institution will use funds under this part to strengthen the infrastructure in institutions of higher education; or

(7) With respect to projects involving delivery of service, specify projects that involve leadership development of school-age youth.

(c) In addition, the Corporation may designate additional priorities in an application package that will be used in selecting programs.

### Subpart F—Distribution of Funds

#### § 2519.600 How are funds for Higher Education programs distributed?

All funds under this part are distributed by the Corporation through grants or by contract.

### Subpart G—Funding Requirements

#### § 2519.700 Are matching funds required?

(a) Yes. The Corporation share of the cost of carrying out a program funded under this part may not exceed 50 percent.

(b) In providing for the remaining share of the cost of carrying out a program, each recipient of assistance must provide for that share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services, and may provide for that share through State sources, local sources, of Federal sources (other than funds made available under the national service laws).

(c) However, the Corporation may waive the requirements of paragraph (b) of this section in whole or in part with respect to any program in any fiscal year if the Corporation determines that the waiver would be equitable due to lack of available financial resources at the local level.

**§ 2519.710 Are there limits on the use of funds?**

Yes. The recipient of a grant under this part may spend no more than five percent of the grant funds on administrative costs.

**§ 2519.720 What is the length of a grant?**

A grant under this part is for a period of up to three years, subject to satisfactory performance and annual appropriations.

**§ 2519.730 May an applicant submit more than one application to the Corporation for the same project at the same time?**

No. The Corporation will reject an application for a project if an application for funding or educational awards for the same project is already pending before the Corporation.

### Subpart H—Evaluation Requirements

**§ 2519.800 What are the evaluation requirements for Higher Education programs?**

The monitoring and evaluation requirements for recipients of grants and subgrants under part 2516 of this chapter, relating to school-based service-learning programs, apply to recipients under this part.

## PART 2520—GENERAL PROVISIONS: AMERICORPS PROGRAMS

Sec.

2520.10 What is the purpose of the AmeriCorps program described in parts 2520 through 2524 of this chapter?
2520.20 What types of service activities are allowable for programs supported under parts 2520 through 2524 of this chapter?
2520.30 Are there any activities that are prohibited?

**Authority:** 42 U.S.C. 12501 *et seq.*

**§ 2520.10 What is the purpose of the AmeriCorps program described in parts 2520 through 2524 of this chapter?**

The purpose of the AmeriCorps grant program is to provide financial assistance to support AmeriCorps programs that address educational, public safety, human, or environmental needs through national and community service to provide AmeriCorps education awards to participants in such progams.

**§ 2520.20 What types of service activities are allowable for programs supported under parts 2520 through 2524 of this chapter?**

(a) The service must either provide a direct benefit to the community where it is performed, or involve the supervision of participants or volunteers whose service provides a direct benefit to the community where it is performed. Moreover, the approved AmeriCorps activities must result in a specific identifiable service or improvement that otherwise would not be provided with existing funds or volunteers and that does not duplicate the routine functions of workers or displace paid employees. Programs must develop service opportuntities that are appropriate to the skill levels of participants and that provide a demonstrable, identifiable benefit that is valued by the community.

(b) In certain circumstances, some activities may not provide a direct benefit to the communities in which service is performed. Such activities may include, but are not limited to, clerical work and research. However, a participant may engage in such activities if the performance of the activity is incidental to the participant's provision of service that does provide a direct benefit to the community in which the service is performed.

**§ 2520.30 Are there any activities that are prohibited?**

Yes. Some activities are prohibited altogether. Although all prohibited activities may be performed voluntarily by participants on their own time, they may not be performed by participants in the course of their duties, at the request of program staff, or in a manner that would associate the activities with the AmeriCorps program or the Corporation. These activities include:

(a) Any effort to influence legislation, as prohibited under section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c));

(b) Organizing protests, petitions, boycotts, or strikes;

(c) Assisting, promoting or deterring union organizing;

(d) Impairing existing contracts for services or collective bargaining agreements;

(e) Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;

(f) Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;

(g) Providing a direct benefit to—

(1) A business organized for profit;

(2) A labor union;

(3) A partisan political organization;

(4) A nonprofit organization that fails to comply with the restrictions contained in section 501(c) of the Internal Revenue Code of 1986 except that nothing in this section shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative; and

(5) An organization engaged in the religious activities described in paragraph (e) of this section, unless Corporation assistance is not used to support those religious activities; and

(h) Such other activities as the Corporation may prohibit.

## PART 2521—ELIGIBLE AMERICORPS PROGRAM APPLICANTS AND TYPES OF GRANTS AVAILABLE FOR AWARD

Sec.

2521.10 Who may apply to receive an AmeriCorps grant?
2521.20 What types of AmeriCorps program grants are available for award?
2521.30 How will AmeriCorps program grants be awarded?

**Authority:** 42 U.S.C. 12501 *et seq.*

**§ 2521.10 Who may apply to receive an AmeriCorps grant?**

(a) States (including Territories), subdivisions of States, Indian tribes, public or private nonprofit organizations (including labor organizations), and institutions of higher education are eligible to apply for AmeriCorps grants. However, the fifty States, the District of Columbia and Puerto Rico must first receive Corporation authorization for the use of a State Commission or alternative administrative or transitional entity pursuant to part 2550 of this chapter in order to be eligible for an AmeriCorps grant.

(b) The Corporation may also enter into contracts or cooperative agreements for AmeriCorps assistance with Federal agencies that are Executive Branch agencies or departments. Bureaus, divisions, and local and regional offices of such departments and agencies may only receive assistance pursuant to a contract or agreement with the central department or agency. The requirements relating to Federal agencies are described in part 2523 of this chapter.

**§ 2521.20 What types of AmeriCorps program grants are available for award?**

The Corporation may make the following types of grants to eligible applicants. The requirements of this section will also apply to any State or other applicant receiving assistance under this part that proposes to conduct a grant program using the assistance to support other national or community service programs.

(a) *Planning grants.*—(1) *Purpose.* The purpose of a planning grant is to assist an applicant in completing the planning necessary to implement a sound concept that has already been developed.

(2) *Eligibility.* (i) States may apply directly to the Corporation for planning grants.

(ii) Subdivisions of States, Indian Tribes, public or private nonprofit organizations (including labor organizations), and institutions of higher education may apply either to a State or directly to the Corporation for planning grants.

(3) *Duration.* A planning grant will be negotiated for a term not to exceed one year.

(b) *Operational grants.*—(1) *Purpose.* The purpose of an operational grant is to fund an organization that is ready to establish, operate, or expand an AmeriCorps program. An operational grant may include AmeriCorps educational awards. An operational grant may also include a short planning period of up to six months, if necessary, to implement a program.

(2) *Eligibility.* (i) States may apply directly to the Corporation for operational grants.

(ii) Subdivisions of States, Indian Tribes, public or private nonprofit organizations (including labor organizations), and institutions of higher education may apply either to a State or directly to the Corporation for operational grants. The Corporation may limit the categories of applicants eligible to apply directly to the Corporation for assistance under this section consistent with its National priorities.

(3) *Duration.* An operational grant will be negotiated for a term not to exceed three years. Within a three-year term, renewal funding will be contingent upon periodic assessment of program quality, progress to date, and availability of Congressional appropriations.

(c) *AmeriCorps Educational Awards Only.*—(1) *Purpose.* The purpose of these awards is to provide AmeriCorps educational awards to programs that are not receiving or applying to the Corporation for program assistance but that meet the criteria for approved AmeriCorps positions, and desire to provide an AmeriCorps educational award to participants serving in approved positions.

(2) *Eligibility.* States, subdivisions of States, Indian Tribes, Federal agencies, public or private nonprofit organizations (including labor organizations), and institutions of higher education may apply directly to the Corporation for AmeriCorps educational awards only.

(d) *Replication Grants.* The Corporation may provide assistance for the replication of an existing national service program to another geographical location.

(e) *Training, technical assistance and other special grants.*— (1) *Purpose.* The purpose of these grants is to ensure broad access to AmeriCorps programs for all Americans, including those with disabilities; support disaster relief efforts; assist efforts to secure private support for programs through challenge grants; and ensure program quality by supporting technical assistance and training programs.

(2) *Eligibility.* Eligibility varies and is detailed under 45 CFR part 2524, "Technical Assistance and Other Special Grants."

(3) *Duration.* Grants will be negotiated for a renewable term of up to three years.

**§ 2521.30 How will AmeriCorps program grants be awarded?**

In any fiscal year, the Corporation will award AmeriCorps program grants as follows:

(a) *Grants to State Applicants.* (1) For the purposes of this section, the term "State" means the fifty States, Puerto Rico, and the District of Columbia.

(2) One-third of the funds available under this part and a corresponding allotment of AmeriCorps educational awards, as specified by the Corporation, will be distributed according to a population-based formula to the 50 States, Puerto Rico and the District of Columbia if they have applications approved by the Corporation.

(3) At least one-third of funds available under this part and an appropriate number of AmeriCorps awards, as determined by the Corporation, will be awarded to States on a competitive basis. In order to receive these funds, a State must receive funds under paragraphs (a)(2) or (b)(1) of this section in the same fiscal year.

(4) In making subgrants with funds awarded by formula or competition under paragraphs (a) (2) or (3) of this section, a State must: (i) Provide a description of the process used to select programs for funding including a certification that the State or other entity used a competitive process and criteria that were consistent with the selection criteria in § 2522.410 of this chapter. In making such competitive selections, the State must ensure the equitable allocation within the State of assistance and approved AmeriCorps positions provided under this subtitle to the State taking into consideration such factors as the location of the programs applying to the State, population density, and economic distress;

(ii) Provide a written assurance that not less than 60 percent of the assistance provided to the State will be used to make grants in support of AmeriCorps programs other than AmeriCorps programs carried out by the State or a State agency. The Corporation may permit a State to deviate from this percentage if the State demonstrates that it did not receive a sufficient number of acceptable applications; and

(iii) Ensure that a minimum of 50 percent of funds going to States will be used for programs that operate in the areas of need or on Federal or other public lands, and that place a priority on recruiting participants who are residents in high need areas, or on Federal or other public lands. The Corporation may waive this requirement for an individual State if at least 50 percent of the total amount of assistance to all States will be used for such programs.

(b) *Grants to Applicants other than States.* (1) One percent of available funds will be distributed to the U.S. Territories [1] that have applications approved by the Corporation according to a population-based formula.[2]

(2) One percent of available funds will be reserved for distribution to Indian tribes on a competitive basis.

(3) The Corporation will use any funds available under this part remaining after the award of the grants described in paragraphs (a) and (b) (1) and (2) of this section to make direct competitive grants to subdivisions of States, Indian tribes, public or private nonprofit organizations (including labor organizations), institutions of higher education, and Federal agencies. No more than one-third of the these remaining funds may be awarded to Federal agencies.

(c) *Allocation of AmeriCorps educational awards only.* The Corporation will determine on an annual basis the appropriate number of educational awards to make available for eligible applicants who have not applied for program assistance.

*(d) Effect of States' or Territories' failure to apply.* If a State or U.S. Territory does not apply for or fails to give adequate notice of its intent to apply for a formula-based grant as announced by the Corporation and published in applications and the Notice of Funds Availability, the Corporation will use the amount of that State's allotment to make grants to

[1] The United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Palau (until such time as the Compact of Free Association with Palau is ratified).

[2] The amount allotted as a grant to each such territory or possession is equal to the ratio of each such Territory's population to the population of all such territories multipled by the amount of the one percent set-aside.

eligible entities to carry out AmeriCorps programs in that State or Territory. Any funds remaining from that State's allotment after making such grants will be reallocated to the States, Territories, and Indian tribes with approved AmeriCorps applications at the Corporation's discretion.

(e) *Effect of rejection of State application.* If a State's application for a formula-based grant is ultimately rejected by the Corporation pursuant to § 2522.320 of this chapter, the State's allotment will be available for redistribution by the Corporation to the States, Territories, and Indian Tribes with approved AmeriCorps applications as the Corporation deems appropriate.

(f) The Corporation will make grants for training, technical assistance and other special programs described in part 2524 of this chapter at the Corporation's discretion.

(g) *Matching funds.*—(1) *Requirements.* (i) The matching requirements for participant benefits are specified in § 2522.240(b)(5) of this chapter.

(ii) The Corporation share of other AmeriCorps program costs may not exceed 75 percent, whether the assistance is provided directly or as a subgrant from the original recipient of the assistance.

(iii) These matching requirements apply only to programs receiving assistance under parts 2521 through 2524 of this chapter.

(2) *Calculation.* In providing for the remaining share of other AmeriCorps program costs, the program—

(i) Must provide for its share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services; and

(ii) May provide for its share through State sources, local sources, or other Federal sources (other than funds made available by the Corporation).

(3) *Limitation on cost of health care.* A program may not count more than 85 percent of a cash payment for the cost of providing a health care policy toward its 15 percent remaining share under paragraph (g)(2)(i) of this section.

(4) *Waiver.* The Corporation reserves the right to waive, in whole or in part, the requirements of paragraph (g)(1) of this section if the Corporation determines that a waiver would be equitable due to a lack of available financial resources at the local level.

(h) *Administrative costs.* (1) The recipient of a direct grant or transfer of funds from the Corporation may spend no more than five percent of the grant or transferred funds on administrative costs.

(2) Rules on use. States or other grantmaking entities that make subgrants to programs may retain no more than one-half of the five percent maximum administrative costs allowed for each Corporation grant.

## PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

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**Authority:** 42 U.S.C. 12501 *et seq.*

### Subpart A—Minimum Requirements and Program Types

#### § 2522.100 What are the minimum requirements that every AmeriCorps program, regardless of type, must meet?

Although a wide range of programs may be eligible to apply for and receive support from the Corporation, all AmeriCorps programs must meet certain minimum program requirements. These requirements apply regardless of whether a program is supported directly by the Corporation or through a subgrant. All AmeriCorps programs must: (a) Address educational, public safety, human, or environmental needs, and provide a direct and demonstrable benefit that is valued by the community in which the service is performed;

(b) Perform projects that are designed, implemented, and evaluated with extensive and broad-based local input, including consultation with representatives from the community served, participants (or potential participants) in the program, community-based agencies with a demonstrated record of experience in providing services, and local labor organizations representing employees of project sponsors (if such entities exist in the area to be served by the program);

(c) Obtain, in the case of a program that also proposes to serve as the project sponsor, the written concurrence of any local labor organization representing employees of the project sponsor who are engaged in the same or substantially similar work as that proposed to be carried out by the AmeriCorps participant;

(d) Establish and provide outcome objectives, including a strategy for achieving these objectives, upon which self-assessment and Corporation-assessment of progress can rest. Such assessment will be used to help determine the extent to which the program has had a positive impact: (1) On communities and persons served by the projects performed by the program;

(2) On participants who take part in the projects; and

(3) In such other areas as the program or Corporation may specify;

(e) Strengthen communities and encourage mutual respect and cooperation among citizens of different races, ethnicities, socioeconomic

backgrounds, educational levels, both men and women and individuals with disabilities;

(f) Agree to seek actively to include participants and staff from the communities in which projects are conducted, and agree to seek program staff and participants of different races and ethnicities, socioeconomic backgrounds, educational levels, and genders as well as individuals with disabilities unless a program design requires emphasizing the recruitment of staff and participants who share a specific characteristic or background. In no case may a program violate the nondiscrimination, nonduplication and nondisplacement rules governing participant selection described in part 2540 of this chapter. In addition, programs are encouraged to establish, if consistent with the purposes of the program, an intergenerational component that combines students, out-of-school youths, and older adults as participants;

(g)(1) Determine the projects in which participants will serve and establish minimum qualifications that individuals must meet to be eligible to participate in the program; these qualifications may vary based on the specific tasks to be performed by participants. Regardless of the educational level or background of participants sought, programs are encouraged to select individuals who posses leadership potential and a commitment to the goals of the AmeriCorps program. In any case, programs must select participants in a non-partisan, non-political, non-discriminatory manner, ensuring fair access to participation. In addition, programs are required to ensure that they do not displace any existing paid employees as provided in part 2540 of this chapter. To this end, programs may not select any prospective participant who is or was previously employed by a prospective project sponsors within six months of the time of enrollment in the program;

(2) In addition, all programs are required to comply with any pre-service orientation or training period requirements established by the Corporation to assist in the selection of motivated participants. Finally, all programs must agree to select a percentage (to be determined by the Corporation) of the participants for the program from among prospective participants recruited by the Corporation or State Commissions under part 2532 of this chapter. The Corporation may also specify a minimum percentage of participants to be selected from the national leadership pool established under § 2522.210(c). The Corporation may vary either percentage for different types of AmeriCorps programs;

(h) Provide reasonable accommodation, including auxiliary aids and services (as defined in section 3(1) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(1)) based on the individualized need of a participant who is a qualified individual with a disability (as defined in section 101(8) of such Act (42 U.S.C. 12111(8)). For the purpose of complying with this provision, AmeriCorps programs may apply for additional financial assistance from the Corporation pursuant to § 2524.40 of this chapter;

(i) Use service experiences to help participants achieve the skills and education needed for productive, active citizenship, including the provision, if appropriate, of structured opportunities for participants to reflect on their service experiences. In addition, all programs must encourage every participant who is eligible to vote to register prior to completing a term of service;

(j) Provide participants in the program with the training, skills, and knowledge necessary to perform the tasks required in their respective projects, including, if appropriate, specific training in a particular field and background information on the community, including why the service projects are needed;

(k) Provide support services—

(1) To participants who are completing a term of service and making the transition to other educational and career opportunities; and

(2) To those participants who are school dropouts in order to assist them in earning the equivalent of a high school diploma;

(l) Ensure that participants serving in approved AmeriCorps positions receive the living allowance and other benefits described in §§ 2522.240 through 2522.250 of this chapter;

(m) Describe the manner in which the AmeriCorps educational awards will be apportioned among individuals serving in the program. If a program proposes to provide such benefits to less than 100 percent of the participants in the program, the program must provide a compelling rationale for determining which participants will receive the benefits and which participants will not. AmeriCorps programs are strongly encouraged to offer alternative post-service benefits to participants who will not receive AmeriCorps educational awards, however AmeriCorps grant funds may not be used to provide such benefits;

(n) Agree to identify the program, through the use of logos, common application materials, and other means (to be specified by the Corporation), as part of a larger national effort and to participate in other activities such as common opening ceremonies (including the administration of a national oath or affirmation), service days, and conferences designed to promote a national identity for all AmeriCorps programs and participants, including those participants not receiving AmeriCorps educational awards. This provision does not preclude an AmeriCorps program from continuing to use its own name as the primary identification, or from using its name, logo, or other identifying materials on uniforms or other items;

(o) Agree to begin terms of service at such times as the Corporation may reasonably require and to comply with any restrictions the Corporation may establish as to when the program may take to fill an approved AmeriCorps position left vacant due to attrition;

(p) Comply with all evaluation procedures specified by the Corporation, as explained in §§ 2522.500 through 2522.560;

(q) In the case of a program receiving funding directly from the Corporation, meet and consult with the State Commission for the State in which the program operates, if possible, and submit a copy of the program application to the State Commission; and

(r) Address any other requirements as specified by the Corporation.

### § 2522.110 What types of programs are eligible to compete for AmeriCorps grants?

Types of programs eligible to compete for AmeriCorps grants include the following: (a) *Specialized skills programs.* (1) A service program that is targeted to address specific educational, public safety, human, or environmental needs and that—

(i) Recruits individuals with special skills or provides specialized pre-service training to enable participants to be placed individually or in teams in positions in which the participants can meet such needs; and

(ii) If consistent with the purposes of the program, brings participants together for additional training and other activities designed to foster civic responsibility, increase the skills of participants, and improve the quality of the service provided.

(2) A preprofessional training program in which students enrolled in an institution of higher education—

(i) Receive training in specified fields, which may include classes containing service-learning;

(ii) Perform service related to such training outside the classroom during the school term and during summer or other vacation periods; and

(iii) Agree to provide service upon graduation to meet educational, public safety, human, or environmental needs related to such training.

(3) A professional corps program that recruits and places qualified participants in positions—

(i) As teachers, nurses and other health care providers, police officers, early childhood development staff, engineers, or other professionals providing service to meet educational, public safety, human, or environmental needs in communities with an inadequate number of such professionals;

(ii) That may include a salary in excess of the maximum living allowance authorized in § 2522.240(b)(2); and

(iii) That are sponsored by public or private nonprofit employers who agree to pay 100 percent of the salaries and benefits (other than any AmeriCorps educational award from the National Service Trust) of the participants.

(b) *Specialized service programs.* (1) A community service program designed to meet the needs of rural communities, using teams or individual placements to address the development needs of rural communities and to combat rural poverty, including health care, education, and job training.

(2) A program that seeks to eliminate hunger in communities and rural areas through service in projects—

(i) Involving food banks, food pantries, and nonprofit organizations that provide food during emergencies;

(ii) Involving the gleaning of prepared and unprepared food that would otherwise be discarded as unusable so that the usable portion of such food may be donated to food banks, food pantries, and other nonprofit organizations;

(iii) Seeking to address the long-term causes of hunger through education and the delivery of appropriate services; or

(iv) Providing training in basic health, nutrition, and life skills necessary to alleviate hunger in communities and rural areas.

(3) A program in which economically disadvantaged individuals who are between the ages of 16 and 24 years of age, inclusive, are provided with opportunities to perform service that, while enabling such individuals to obtain the education and employment skills necessary to achieve economic self-sufficiency, will help their communities meet—

(i) The housing needs of low-income families and the homeless; and

(ii) The need for community facilities in low-income areas.

(c) *Community-development programs.* (1) A community corps program that meets educational, public safety, human, or environmental needs and promotes greater community unity through the use of organized teams of participants of varied social and economic backgrounds, skill levels, physical and developmental capabilities, ages, ethnic backgrounds, or genders.

(2) A program that is administered by a combination of nonprofit organizations located in a low-income area, provides a broad range of services to residents of such an area, is governed by a board composed in significant part of low-income individuals, and is intended to provide opportunities for individuals or teams of individuals to engage in community projects in such an area that meet unaddressed community and individual needs, including projects that would—

(i) Meet the needs of low-income children and youth aged 18 and younger, such as providing after-school 'safe-places', including schools, with opportunities for learning and recreation; or

(ii) Be directed to other important unaddressed needs in such an area.

(d) *Programs that expand service program capacity.* (1) A program that provides specialized training to individuals in service-learning and places the individuals after such training in positions, including positions as service-learning coordinators, to facilitate service-learning in programs eligible for funding under Serve-America.

(2) An AmeriCorps entrepreneur program that identifies, recruits, and trains gifted young adults of all backgrounds and assists them in designing solutions to community problems.

(e) *Campus-based programs.* A campus-based program that is designed to provide substantial service in a community during the school term and during summer or other vacation periods through the use of—

(1) Students who are attending an institution of higher education, including students participating in a work-study program assisted under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 et seq.);

(2) Teams composed of such students; or

(3) Teams composed of a combination of such students and community residents.

(f) *Intergenerational programs.* An intergenerational program that combines students, out-of-school youths, and older adults as participants to provide needed community services, including an intergenerational component for other AmeriCorps programs described in this subsection.

(g) *Youth development programs.* A full-time, year-round youth corps program or full-time summer youth corps program, such as a conservation corps or youth service corps (including youth corps programs under subtitle I, the Public Lands Corps established under the Public Lands Corps Act of 1993, the Urban Youth Corps established under section 106 of the National and Community Service Trust Act of 1993, and other conservation corps or youth service corps that perform service on Federal or other public lands or on Indian lands or Hawaiian home lands), that:

(1) Undertakes meaningful service projects with visible public benefits, including natural resource, urban renovation, or human services projects;

(2) Includes as participants youths and young adults between the ages of 16 and 25, inclusive, including out-of-school youths and other disadvantaged youths (such as youths with limited basic skills, youths in foster care who are becoming too old for foster care, youths of limited English proficiency, homeless youths, and youths who are individuals with disabilities) who are between those ages; and

(3) Provides those participants who are youths and young adults with—

(i) Crew-based, highly structured, and adult-supervised work experience, life skills, education, career guidance and counseling, employment training, and support services; and

(ii) The opportunity to develop citizenship values and skills through service to their community and the United States.

(h) *Individualized placement programs.* An individualized placement program that includes regular group activities, such as leadership training and special service projects.

(i) *Other programs.* Such other AmeriCorps programs addressing educational, public safety, human, or environmental needs as the Corporation may designate in the application.

## Subpart B—Participant Eligibility, Requirements, and Benefits

### § 2522.200 What are the eligibility requirements for AmeriCorps participants?

(a) An AmeriCorps participant must be 17 years of age or older at the commencement of service (unless the

participant is in a program described in § 2522.110(g), in which case the participant must be between the ages of 16 and 25, inclusive, or in a program described in § 2522.110(b)(3), in which case the participant must be between the ages of 16 and 24).

(b) In general, an AmeriCorps participant must either have a high school diploma or its equivalent (including an alternative diploma or certificate for those individuals with disabilities for whom such an alternative diploma or certificate is appropriate) or agree to obtain a high school diploma or its equivalent prior to using the educational award. However, if the program in which the individual seeks to become a participant conducts an independent evaluation demonstrating that an individual is incapable of obtaining a high school diploma or its equivalent, the Corporation may waive this requirement.

(c) Unless an individual is enrolled in an institution of higher education on an ability to benefit basis and is considered eligible for funds under section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091), that individual may not have dropped out of elementary or secondary school in order to enroll as an AmeriCorps participant.

(d) An AmeriCorps participant must be a citizen or national of the United States or lawful permanent resident alien of the United States.

**§ 2522.210 How are AmeriCorps participants recruited and selected?**

(a) *Local recruitment and selection.* In general, AmeriCorps participants will be selected locally by an approved AmeriCorps program, and the selection criteria will vary widely among the different programs. Nevertheless, AmeriCorps programs must select their participants in a fair and non-discriminatory manner which complies with part 2540 of this chapter. In selecting participants, programs must also comply with the recruitment and selection requirements specified in this section.

(b)(1) *National and State recruitment and selection.* The Corporation and each State Commission will establish a system to recruit individuals who desire to perform national service and to assist the placement of these individuals in approved AmeriCorps positions, which may include positions available under titles I and II of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.). The national and state recruitment and placement system will be designed and operated according to Corporation guidelines.

(2) *Dissemination of information.* The Corporation and State Commissions will disseminate information regarding available approved AmeriCorps positions through cooperation with secondary schools, institutions of higher education, employment service offices, community-based organizations, State vocational rehabilitation agencies within the meaning of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) and other State agencies that primarily serve qualified individuals with disabilities, and other appropriate entities, particularly those organizations that provide outreach to disadvantaged youths and youths who are qualified individuals with disabilities.

(c) *National leadership pool*—(1) *Selection and training.* From among individuals recruited under paragraph (b) of this section or nominated by service programs, the Corporation may select individuals with significant leadership potential, as determined by the Corporation, to receive special training to enhance their leadership ability. The leadership training will be provided by the Corporation directly or through a grant, contract, or cooperative agreement as the Corporation determines.

(2) *Emphasis on certain individuals.* In selecting individuals to receive leadership training under this provision, the Corporation will make special efforts to select individuals who have served—

(i) In the Peace Corps;

(ii) As VISTA volunteers;

(iii) As participants in AmeriCorps programs receiving assistance under parts 2520 through 2524 of this chapter;

(iv) As participants in National Service Demonstration programs that received assistance from the Commission on National and Community Service; or

(v) As members of the Armed Forces of the United States and who were honorably discharged from such service.

(3) *Assignment.* At the request of a program that receives assistance, the Corporation may assign an individual who receives leadership training under paragraph (c)(1) of this section to work with the program in a leadership position and carry out assignments not otherwise performed by regular participants. An individual assigned to a program will be considered to be a participant of the program.

**§ 2522.220 What are the required terms of service for AmeriCorps participants, and may they serve for more than one term?**

(a) *Term of service.* In order to be eligible for the educational award described in § 2522.240(a), participants serving in approved AmeriCorps positions must complete a term of service as defined in this section.

(1) *Full-time service.* 1,700 hours of service during a period of not less than nine months and not more than one year.

(2) *Part-time service.* 900 hours of service during a period of not more than two years, or, if the individual is enrolled in an institution of higher education while performing all or a portion of the service, not more than three years.

(3) *Reduced part-time term of service.* The Corporation may reduce the number of hours required to be served in order to receive an educational award for certain part-time participants serving in approved AmeriCorps positions. In such cases, the educational award will be reduced in direct proportion to the reduction in required hours of service. These reductions may be made for summer programs, for categories of participants in certain approved AmeriCorps programs and on a case-by-case, individual basis as determined by the Corporation.

(4) *Summer programs.* A summer program, in which less than 1700 hours of service are performed, are part-time programs.

(b) *Restriction on multiple terms.* An AmeriCorps participant may only receive the benefits described in §§ 2522.240 through 2522.250 for the first two successfully-completed terms of service, regardless of whether those terms were served on a full-, part-, or reduced part-time basis.

(c) *Eligibility for second term.* A participant will only be eligible to serve a second or additional term of service if that individual has received satisfactory performance review(s) for any previous term(s) of service in accordance with the requirements of paragraph (d) of this section. Mere eligibility for a second or further term of service in no way guarantees a participant selection or placement.

(d) *Participant performance review.* For the purposes of determining a participant's eligibility for a second or additional term of service and/or for an AmeriCorps educational award, each AmeriCorps program will evaluate the performance of a participant mid-term and upon completion of a participant's term of service. The end-of-term performance evaluation will assess the following: (1) Whether the participant has completed the required number of hours described in paragraph (a) of this section;

(2) Whether the participant has satisfactorily completed assignments, tasks or projects; and '

(3) Whether the participant has met any other performance criteria which had been clearly communicated both orally and in writing at the beginning of the term of service.

(e) *Limitation.* The Corporation may set a minimum or maximum percentage of hours of a full-time, part-time, or reduced term of service described in paragraphs (a)(1),(a)(2), and (a)(3) of this section that a participant may engage in training, education, or other similar approved activities

(f) *Grievance procedure.* Any AmeriCorps participant wishing to contest a program's ruling of unsatisfactory performance may file a grievance according to the procedures set forth in part 2540 of this chapter. If that grievance procedure or subsequent binding arbitration procedure finds that the participant did in fact satisfactorily complete a term of service, then that individual will be eligible to receive an educational award and/or be eligible to serve a second term of service.

**§ 2522.230 Under what circumstances may AmeriCorps participants be released from completing a term of service, and what are the consequences?**

In general, AmeriCorps programs have the authority to release participants serving in approved AmeriCorps positions from completing a term of service for two reasons: for compelling personal circumstances as demonstrated by the participant or for cause.

(a) *Release for compelling personal circumstances.* In general, AmeriCorps programs have the authority to define the circumstances by which a participant may be released for compelling personal circumstances. Programs wishing to release participants serving in approved AmeriCorps positions may elect either—

(1) To grant the release and provide a portion of the educational award equal to the portion of the term served; or

(2) To permit the participant to temporarily suspend performance of the term of service for a period of up to two years (and such additional period as the Corporation may allow for extenuating circumstances) and, upon completion of such period, to allow the participant to return to the program with which he or she was serving or to a similar AmeriCorps program with the assistance of the Corporation, in order to complete the remainder of the term of service and obtain the entire AmeriCorps educational award.

(b) *Release for cause.* AmeriCorps programs have the authority to define the circumstances by which a participant may be released for cause, except as specified in paragraph (b)(1) of this section. AmeriCorps programs must establish a written policy to be signed both by the participant and the program directors that clearly states the circumstances under which participants may be released for cause. Examples of conduct which programs may decide constitutes grounds for release for cause include chronic truancy, consistent failure to follow directions, and failure to adhere to program rules and guidelines. Under no circumstances may a participants disability constitute grounds for release for cause.

(1) *Circumstances requiring release for cause.* AmeriCorps programs are required to release for cause any participant who is convicted of a felony during a term of service. Any participant who is officially charged with a violent felony (e.g., rape or homicide), or sale or distribution of a controlled substance, or any participant convicted of the possession of a controlled substance, will have his or her service suspended without a living allowance and without receiving credit for hours missed. Any individual whose service was suspended because of being charged with a violent felony or sale or distribution of a controlled substance may resume service if he or she is found not guilty or if such charge is dismissed. Any individual whose service was suspended because of being convicted of a first offense of the possession of a controlled substance may resume service by demonstrating that he or she has enrolled in an approved drug rehabilitation program. A person convicted of a second or third possession of a controlled substance may resume service by demonstrating successful completion of a rehabilitation program. Any person that drops out of an AmeriCorps program without obtaining a release for compelling personal circumstances is considered to have been released for cause.

(2) *Impact of release for cause.* A participant released for cause may not receive any portion of the AmeriCorps educational award. In addition, any individual released for cause who wishes to reapply to the program from which he or she was released or to any other AmeriCorps program is required to disclose the release to that program. Failure to disclose to an AmeriCorps program any history of having been released for cause from another AmeriCorps program will render an individual ineligible to receive the AmeriCorps educational award, notwithstanding whether or not that individual successfully completes the term of service.

(3) *Grievance procedure.* Any AmeriCorps participant wishing to contest a program decision to release that participant for cause may file a grievance according to the procedures set forth in part 2540 of this chapter. Pending the resolution of such grievance procedure, a program may suspend the service of that participant. If the initial grievance procedure or subsequent binding arbitration proceedings find that there was not cause for release, the AmeriCorps program must reinstate the participant; moreover, the program must credit the participant with any service hours missed and pay the participant the full amount of any living allowance the participant did not receive as a result of such suspension. The Corporation retains the discretion to determine whether Corporation funds may be used to pay the living allowance withheld during a participant's suspension.

**§ 2522.240 What financial benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?**

(a) *AmeriCorps educational awards.* An individual serving in an approved AmeriCorps position will receive an educational award from the National Service Trust upon successful completion of each of up to two terms of service as defined in § 2522.220.

(b) *Living allowances—(1) Amount.* Subject to the provisions of this part, any individual who participates on a full-time basis in an AmeriCorps program carried out using assistance provided pursuant to § 2521.30 of this chapter, including an AmeriCorps program that receives educational awards only pursuant to § 2521.30(c) of this chapter, will receive a living allowance in an amount equal to or greater than the average annual subsistence allowance provided to VISTA volunteers under § 105 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4955). This requirement will not apply to any program that was in existence prior to September 21, 1993 (the date of the enactment of the National and Community Service Trust Act of 1993).

(2) *Maximum living allowance.* With the exception of a professional corps described in § 2522.110(a)(3), the AmeriCorps living allowances may not exceed 200 percent of the average annual subsistence allowance provided to VISTA volunteers under section 105 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4955). A professional corps AmeriCorps program may provide a stipend in excess of the maximum, subject to the following conditions: (i) Corporation assistance may not be used to pay for any portion of the allowance; and

(ii) The program must be operated directly by the applicant, selected on a competitive basis by submitting an application directly to the Corporation, and may not be included in a State's application for the AmeriCorps program funds distributed by formula, or competition described in §§ 2521.30 (a)(2) and (a)(3) of this chapter.

(3) *Living allowances for part-time participants.* Programs may, but are not required to, provide living allowances to individuals participating on a part-time basis (or a reduced term of part-time service authorized under § 2522.220(a)(3). Such living allowances should be prorated to the living allowance authorized in paragraph (b)(1) of this section and will comply with such restrictions therein.

(4) *Waiver or reduction of living allowance.* The Corporation may, at its discretion, waive or reduce the living allowance requirements if a program can demonstrate to the satisfaction of the Corporation that such requirements are inconsistent with the objectives of the program, and that participants will be able to meet the necessary and reasonable costs of living (including food, housing, and transportation) in the area in which the program is located.

(5) *Limitation on Federal share.* The Federal share, including Corporation and other Federal funds, of the total amount provided to an AmeriCorps participant for a living allowance is limited as follows: (i) In no case may the Federal share exceed 85% of the minimum required living allowance enumerated in paragraph (b)(1) of this section.

(ii) For professional corps described in paragraph (b)(2)(i) of this section, Corporation and other Federal funds may be used to pay for no portion of the living allowance.

(iii) If the minimum living allowance requirements has been waived or reduced pursuant to paragraph (b)(4) of this section and the amount of the living allowance provided to a participant has been reduced correspondingly—

(A) In general, the Federal share may not exceed 85% of the reduced living allowance; however,

(B) If a participant is serving in a program that provides room or board, the Corporation will consider on a case-by-case basis allowing the portion of that living allowance that may be paid using Corporation and other Federal funds to be between 85% and 100%.

### § 2522.250 What other benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?

(a) *Child Care.* Grantees must provide child care through an eligible provider or a child care allowance in an amount determined by the Corporation to those full-time participants who need child care in order to participate.

(1) *Need.* A participant is considered to need child care in order to participate in the program if he or she: (i) Is the parent or legal guardian of, or is acting in loco parentis for, a child under 13 who resides with the participant;

(ii) Has a family income that does not exceed 75 percent of the State's median income for a family of the same size;

(iii) At the time of acceptance into the program, is not currently receiving child care assistance from another source, including a parent or guardian, which would continue to be provided while the participant serves in the program; and

(iv) Certifies that he or she needs child care in order to participate in the program.

(2) *Provider eligibility.* Eligible child care providers are those who are eligible child care providers as defined in the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n(5)).

(3) *Child care allowance.* The amount of the child care allowance will be determined by the Corporation based on payment rates for the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858c(4)(A)).

(4) *Corporation share.* The Corporation will pay 100 percent of the child care allowance, or, if the program provides child care through an eligible provider, the actual cost of the care or the amount of the allowance, whichever is less.

(b) *Health care.* (1) Grantees must provide to all eligible participants who meet the requirements of paragraph (b)(2) of this section health care coverage that—

(i) Provides the minimum benefits determined by the Corporation;

(ii) Provides the alternative minimum benefits determined by the Corporation; or

(iii) Does not provide all of either the minimum or the alternative minimum benefits but that has a fair market value equal to or greater than the fair market value of a policy that provides the minimum benefits.

(2) *Participant eligibility.* A full-time participant is eligible for health care benefits if he or she is not otherwise covered by a health benefits package providing minimum benefits established by the Corporation at the time he or she is accepted into a program. If, as a result of participation, or if, during the term of service, a participant demonstrates loss of coverage through no deliberate act of his or her own, such as parental or spousal job loss or disqualification from Medicaid, the participant will be eligible for health care benefits.

(3) *Corporation share.* (i) Except as provided in paragraph (b)(3)(ii) of this section, the Corporation will pay up to 85% of the cost of health care coverage that includes the minimum or alternative minimum benefits and is not excessive in cost.

(ii) The Corporation will pay no share of the cost of a policy that does not provide the minimum or alternative minimum benefits described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

## Subpart C—Application Requirements

### § 2522.300 What are the application requirements for AmeriCorps program grants?

All eligible applicants seeking AmeriCorps program grants must—

(a) Provide a description of the specific program(s) being proposed, including the type of program and of how it meets the minimum program requirements described in § 2522.100; and

(b) Comply with any additional requirements as specified by the Corporation in the application package.

### § 2522.310 What are the application requirements for AmeriCorps educational awards only?

(a) Eligible applicants may apply for AmeriCorps educational awards only for one of the following eligible service positions: (1) A position for a participant in an AmeriCorps program that:

(i) Is carried out by an entity eligible to receive support under part 2521 of this chapter;

(ii) Would be eligible to receive assistance under this part, based on criteria established by the Corporation, but has not applied for such assistance;

(2) A position facilitating service-learning in a program described in parts 2515 through 2519 of this chapter;

(3) A position involving service as a crew leader in a youth corps program or a similar position supporting an AmeriCorps program; and

(4) Such other AmeriCorps positions as the Corporation considers to be appropriate.

(b) Because programs applying only for AmeriCorps educational awards must, by definition, meet the same basic requirements as other approved AmeriCorps programs, applicants must comply with the same application requirements specified in § 2522.300.

**§ 2522.320 May an applicant submit more than one application to the Corporation for the same project at the same time?**

No. The Corporation will reject an application for a project if an application for funding or educational awards for the same project is already pending before the Corporation.

## Subpart D—Selection of AmeriCorps Programs

**§ 2522.400 How will the basic selection criteria be applied?**

From among the eligible programs that meet the minimum program requirements and that have submitted applications to the Corporation, the Corporation must select the best ones to receive funding. Although there is a wide range of factors that must be taken into account during the selection process, there are certain fundamental selection criteria that apply to all programs in each grant competition, regardless of whether they receive funding or educational awards directly or through subgrants. States and other subgranting applicants are required to use these criteria during the competitive selection of subgrantees. The Corporation may adjust the relative weight given to each criterion. (Additional and more specific criteria will be published in the applications).

**§ 2522.410 What are the basic selection criteria for AmeriCorps programs?**

The Corporation will consider how well the program will be able to achieve the three impacts mentioned in paragraph (a) of this section as demonstrated by the program design, the capacity of the organization to carry it out and other factors relating to need. The Corporation will also consider the extent to which the program promotes the Corporation's goals; and the extent to which the program contributes to the overall diversity of programs desired by the Corporation. These criteria are discussed in this section. Additional detail relating to these criteria may be published in any notice of availability of funding.

(a) *Program impacts.* The Corporation will consider the extent to which the program: (1) Achieves direct and demonstrable results;

(2) Strengthens communities; and

(3) Promotes citizenship and increases educational opportunities for participants.

(b) *Program Criteria.*—(1) *Program design.* The Corporation will consider four factors relating to the program design: (i) The quality of the program proposed to be carried out directly by the applicant or supported by a grant from the applicant;

(ii) The innovative aspects of the AmeriCorps program;

(iii) The feasibility of replicating the program; and

(iv) The sustainability of the program, based on evidence such as the existence of strong and broad-based community support for the program and of multiple funding sources or private funding.

(2) *Organizational capacity.* The Corporation will also consider an organization's capacity to carry out the program based on—

(i) The quality of the leadership of the AmeriCorps program;

(ii) The past performance of the organization or program; and

(iii) The extent to which the program builds on existing programs.

(c) *Need criteria.* In selecting programs, the Corporation will take into consideration the extent to which projects address State-identified issue priorities (if the program will be funded out of formula funds) or national priorities (if the program will be funded out of competitive funds), and whether projects would be conducted in areas of need.

(1) *Issue priorities.* In order to concentrate national efforts on meeting certain educational, public safety, human, or environmental needs, and to achieve the other purposes of this Act, the Corporation will establish, and after review of the strategic plan approved by the Board, periodically alter priorities regarding the AmeriCorps programs that will receive assistance (funding or approved AmeriCorps positions) and the purposes for which such assistance may be used. These priorities will be applied to assistance provided on a competitive basis as described in § 2521.30 of this chapter, and to any assistance provided through a subgrant of such funds.

(i) States must establish, and through the national service plan process described in part 2513 of this chapter, periodically alter priorities regarding the programs that will receive assistance (funding or approved AmeriCorps positions) provided on a formula basis as described in § 2521.30(a)(2) of this chapter. The State priorities will be subject to Corporation review as part of the application process under part 2521 of this chapter.

(ii) The Corporation will provide advance notice to potential applicants of any AmeriCorps priorities to be in effect for a fiscal year. The notice will describe any alternation made in the priorities since the previous notice. If a program receives multi-year funding based on conformance to national or state priorities and such priorities are altered after the first year of funding, the program will not be adversely affected due to the change in priorities until the term of the grant is ended.

(2) *Areas of need.* Areas of need are: (i) Communities designated by the Federal government or States as empowerment zones or redevelopment areas, targeted for special economic incentives, or otherwise identifiable as having high concentrations of low-income people;

(ii) Areas that are environmentally distressed;

(iii) Areas adversely affected by Federal actions related to the management of Federal lands that result in significant regional job losses and economic dislocation;

(iv) Areas adversely affected by reductions in defense spending or the closure or realignment of military installations; and

(v) Areas that have an unemployment rate greater than the national average unemployment rate for the most recent 12 months for which satisfactory data are available.

(d) *Contribution to overall diversity of programs funded by the Corporation.* The Corporation will select programs that will help to achieve participant, program type, and geographic diversity across programs.

(e) *Additional considerations.* The Corporation may publish in any notice of availability of funding additional factors that it may take into consideration in selecting programs, including any additional priorities applicable to any or all funds.

**§ 2522.420 Can a State's application for formula funds be rejected?**

Yes. Formula funds are not an entitlement.

(a) *Notification.* If the Corporation rejects an application submitted by a State Commission under part 2550 of this chapter for funds described in § 2521.30 of this chapter, the Corporation will promptly notify the State Commission of the reasons for the rejection of the application.

(b) *Revision.* The Corporation will provide a State Commission notified under paragraph (a) of this section with a reasonable opportunity to revise and resubmit the application. At the request of the State Commission, the Corporation will provide technical assistance to the State Commission as part of the resubmission process. The Corporation will promptly reconsider an application resubmitted under this paragraph.

(c) *Redistribution.* The amount of any State's allotment under § 2521.30(a) of this chapter for a fiscal year that the Corporation determines will not be provided for that fiscal year will be

available for redistribution by the Corporation to the States, Territories and Indian Tribes with approved AmeriCorps applications as the Corporation deems appropriate.

## Subpart E—Evaluation Requirements

### § 2522.500 What are the purposes of an evaluation?

Every evaluation effort should serve to improve program quality, examine benefits of service, or fulfill legislative requirements.

### § 2522.510 What types of evaluations are States, grant-making entities, and programs required to perform?

All grantees and subgrantees are required to perform internal evaluations which are ongoing efforts to assess performance and improve quality. Grantees and subgrantees may, but are not required to, arrange for independent evaluation which are assessments of program effectiveness by individuals who are not directly involved in the administration of the program. The cost of independent evaluations is allowable.

### § 2522.520 What types of internal evaluation activities are required of programs?

Programs are required to: (a) Continuously assess management effectiveness, the quality of services provided, and the satisfaction of both participants and persons served. Internal evaluation activities should seek frequent feedback and provide for quick correction of weaknesses. The Corporation encourages programs to use internal evaluation methods such as community advisory councils, participant advisory councils, peer reviews, quality control inspections, and customer and participant surveys;

(b) Track progress toward objectives. Objectives will be established by programs and approved by the Corporation. Programs must submit to the Corporation (or State or grantmaking entity as applicable) periodic performance reports and, as part of an annual report, an annual performance report;

(c) Collect and submit to the Corporation (through the State or grantmaking entity as applicable) the following data: (1) Information on participants including the total number of participants in the program, and the number of participants by race, ethnicity, age, gender, economic background, education level, ethnic group, disability classification, geographic region, and marital status;

(2) Information on services conducted in areas classified as empowerment zones (or redevelopment areas), in areas that are targeted for special economic incentives or otherwise identifiable as having high concentrations of low-income people, in areas that are environmentally distressed, in areas that are adversely affected by Federal actions related to the management of Federal lands, in areas that are adversely affected by reductions in defense spending, or in areas that have an unemployment rate greater than the national average unemployment rate;

(3) Other information as required by the Corporation; and

(d) Cooperate fully with all Corporation evaluation activities.

### § 2522.530 What types of activities are required of States or grantmaking entities to evaluate the effectiveness of their subgrantees?

In cases where a State or grantmaking entity is the direct grantee they will be required to: (a) Ensure that subgrantees comply with the requirements of this subpart;

(b) Track program performance in terms of progress towards pre-established objectives and ensure that corrective action is taken when necessary. Submit periodic performance reports and, as part of an annual report, an annual performance report to the Corporation for each subgrantee;

(c) Collect from programs and submit to the Corporation the descriptive information required in this subpart; and

(d) Cooperate fully with all Corporation evaluation activities.

### § 2522.540 How will the Corporation evaluate individual AmeriCorps programs?

The Corporation will evaluate programs based on the following: (a) The extent to which the program meets the objectives established and agreed to by the grantee and the Corporation before the grant award;

(b) The extent to which the program is cost-effective; and

(c) The effectiveness of the program in meeting the following legislative objectives: (1) Providing direct and demonstrable services and projects that benefit the community by addressing educational, public safety, human, or environmental needs;

(2) Recruiting and enrolling diverse participants consistent with the requirements of part 2540 of this chapter, based on economic background, race, ethnicity, age, gender, marital status, education levels, and disability;

(3) Promoting the educational achievement of each participant based on earning a high school diploma or its equivalent and future enrollment in and completion of increasingly higher levels of education;

(4) Encouraging each participant to engage in public and community service after completion of the program based on career choices and participation in other service programs;

(5) Promoting an ethic of active and productive citizenship among participants;

(6) Supplying additional volunteer assistance to community agencies without providing more volunteers than can be effectively utilized;

(7) Providing services and activities that could not otherwise be performed by employed workers and that will not supplant the hiring of, or result in the displacement of, employed workers; and

(8) Other criteria determined and published by the Corporation.

### § 2522.550 What will the Corporation do to evaluate the overall success of the AmeriCorps programs?

(a) The Corporation will conduct independent evaluations of programs, including in-depth studies of selected programs. These evaluations will consider the opinions of participants and members of the community where services are delivered. Where appropriate these studies will compare participants with individuals who have not participated in service programs. These evaluations will: (1) Study the extent to which the national service impacts involved communities;

(2) Study the extent to which national service increases positive attitudes among participants regarding the responsibilities of citizens and their role in solving community problems;

(3) Study the extent to which national service enables participants to afford post-secondary education with fewer student loans;

(4) Determine the costs and effectiveness of different program models in meeting program objectives including full- and part-time programs, programs involving different types of national service, programs using different recruitment methods, programs offering alternative non-federally funded vouchers or post-service benefits, and programs utilizing individual placements and teams;

(5) Determine the impact of programs in each State on the ability of VISTA and National Senior Volunteer Corps, each regular and reserve component of the Armed Forces, and the Peace Corps to recruit individuals residing in that State; and

(6) Determine the levels of living allowances paid in all AmeriCorps programs and American Conservation and Youth Corps, individually, by State,

and by region and determine the effects that such living allowances have had on the ability of individuals to participate in such programs.

(b) The Corporation will also determine by June 30, 1995: (1) Whether the State and national priorities designed to meet educational, public safety, human, or environmental needs are being addressed;

(2) Whether the outcomes of both stipended and nonstipended service programs are defined and measured appropriately;

(3) Whether stipended service programs, and service programs providing educational benefits in return for service, should focus on economically disadvantaged individuals or at risk youth, or whether such programs should include a mix of individuals, including individuals from middle and upper income families;

(4) The role and importance of stipends and educational benefits in achieving desired outcomes in the service programs;

(5) The income distribution of AmeriCorps participants, to determine the level of participation of economically disadvantaged individuals. The total income of participants will be determined as of the date the participant was first selected to participate in a program and will include family total income unless the evaluating entity determines that the participant was independent at the time of selection. Definitions for "independent" and "total income" are those used in section 480(a) of the Higher Education Act of 1965;

(6) The amount of assistance provided under the AmeriCorps programs that has been expended for projects conducted in areas classified as empowerment zones (or redevelopment areas), in areas that are targeted for special economic incentives or are otherwise identifiable as having high concentrations of low-income people, in areas that are environmentally distressed or adversely affected by Federal actions related to the management of Federal lands, in areas that are adversely affected by reductions in defense spending, or in areas that have an unemployment rate greater than the national average unemployment rate for the most recent 12 months for which satisfactory data are available; and

(7) The implications of the results of these studies as appropriate for authorized funding levels.

**§ 2522.580 Will information on individual participants be kept confidential?**

(a) Yes. The Corporation will maintain the confidentiality of information regarding individual participants that is acquired for the purpose of the evaluations described in § 2522.540. The Corporation will disclose individual participant information only with the prior written consent of the participant. However, the Corporation may disclose aggregate participant information.

(b) Grantees and subgrantees that receive assistance under this chapter must comply with the provisions of paragraph (a) of this section.

## PART 2523—AGREEMENTS WITH OTHER FEDERAL AGENCIES FOR THE PROVISION OF AMERICORPS PROGRAM ASSISTANCE

Sec.

2523.10 Are Federal agencies eligible to apply for AmeriCorps program funds?
2523.20 Which Federal agencies may apply for such funds?
2523.30 Must Federal agencies meet the requirements imposed on grantees under parts 2521 and 2522 of this chapter?
2523.40 For what purposes should Federal agencies use AmeriCorps program funds?
2523.50 What types of grants are Federal agencies eligible to receive?
2523.60 May Federal agencies enter into partnerships or participate in consortia?
2523.70 Will the Corporation give special consideration to Federal agency applications that address certain needs?
2523.80 Are there restrictions on the use of Corporation funds?
2523.90 Is there a matching requirement for Federal agencies?
2523.100 Are participants in programs operated by Federal agencies Federal employees?
2523.110 Can Federal agencies submit multiple applications?
2523.120 Must Federal agencies consult with State Commissions?

**Authority:** 42 U.S.C. 12501 *et seq.*

**§ 2523.10 Are Federal agencies eligible to apply for AmeriCorps program funds?**

Yes. Federal agencies may apply for and receive AmeriCorps funds under parts 2521 and 2522 of this chapter, and they are eligible to receive up to one-third of the funds available for competitive distribution under § 2521.30(b)(3) of this chapter. The Corporation may enter into a grant, contract or cooperative agreement with another Federal agency to support an AmeriCorps program carried out by the agency. The Corporation may transfer funds available to it to other Federal agencies.

**§ 2523.20 Which Federal agencies may apply for such funds?**

The Corporation will consider applications only from Executive Branch agencies or departments. Bureaus, divisions, and local and regional offices of such departments and agencies can only apply through the central department or agency; however, it is possible for the department or agency to submit an application proposing more than one program.

**§ 2523.30 Must Federal agencies meet the requirements imposed on grantees under parts 2521 and 2522 of this chapter?**

Yes, except as provided in § 2523.90, Federal agency programs must meet the same requirements and serve the same purposes as all other applicants seeking support under part 2522 of this chapter.

**§ 2523.40 For what purposes should Federal agencies use AmeriCorps program funds?**

AmeriCorps funds should enable Federal agencies to establish programs that leverage agencies' existing resources and grant-making powers toward the goal of integrating service more fully into agencies' programs and activities. Agencies should plan to ultimately support new service initiatives out of their own budgets and appropriations.

**§ 2523.50 What types of funds are Federal agencies eligible to receive?**

Federal agencies may apply for planning and operating funds subject to the terms established by the Corporation in § 2521.20 of this chapter, except that operating grants will be awarded with the expectation that the Federal agencies will support the proposed programs from their own budgets once the Corporation grant(s) expire.

**§ 2523.60 May Federal agencies enter into partnerships or participate in consortia?**

Yes. Such partnerships or consortia may consist of other Federal agencies, Indian Tribes, subdivisions of States, community based organizations, institutions of higher education, or other non-profit organizations. Partnerships and consortia must be approved by the Corporation.

**§ 2523.70 Will the Corporation give special consideration to Federal agency applications that address certain needs?**

Yes. The Corporation will give special consideration to those applications that address the national priorities established by the Corporation. The Corporation may also give special consideration to those applications that demonstrate the agency's intent to leverage its own funds through a Corporation-approved partnership or consortium, by raising other funds from Federal or non-Federal sources, by giving grantees incentives to build service opportunities into their programs, by committing appropriate in-kind resources, or by other means.

**§ 2523.80 Are there restrictions on the use of Corporation funds?**

Yes. The supplantation and nondisplacement provisions specified in part 2540 of this chapter apply to the Federal AmeriCorps programs supported with such assistance.

**§ 2523.90 Is there a matching requirement for Federal agencies?**

No. A Federal agency is not required to match funds in programs that receive support under this chapter. However, Federal agency subgrantees are required to match funds in accordance with the requirements of § 2521.30(g) and § 2522.240(b)(5) of this chapter.

**§ 2523.100 Are participants in programs operated by Federal agencies Federal employees?**

No. Participants in these programs have the same employee status as participants in other approved AmeriCorps programs, and are not considered Federal employees, except for the purposes of the Family and Medical Leave Act as specified in § 2540.220(b) of this chapter.

**§ 2523.110 Can Federal agencies submit multiple applications?**

No. The Corporation will only consider one application from a Federal agency for each AmeriCorps competition. The application may propose more than one program, however, and the Corporation may choose to fund any or all of those programs.

**§ 2523.120 Must Federal agencies consult with State Commissions?**

Yes. Federal agencies must provide a description of the manner in which the proposed AmeriCorps program(s) is coordinated with the application of the State in which the projects will be conducted. Agencies must also describe proposed efforts to coordinate AmeriCorps activities with State Commissions and other funded AmeriCorps programs within the State in order to build upon existing programs and not duplicate efforts.

## PART 2524—AMERICORPS TECHNICAL ASSISTANCE AND OTHER SPECIAL GRANTS

Sec.

2524.10 For what purposes will technical assistance and training funds be made available?
2524.20 What are the guidelines for program development assistance and training grants?
2524.30 What are the guidelines for challenge grants?
2524.40 What are the guidelines for grants to involve persons with disabilities?
2524.50 What are the guidelines for assistance with disaster relief?

**Authority:** 42 U.S.C. 12501 *et seq.*

**§ 2524.10 For what purposes will technical assistance and training funds be made available?**

(a) To the extent appropriate and necessary, the Corporation may make technical assistance available to States, Indian tribes, labor organizations, organizations operated by young adults, organizations serving economically disadvantaged individuals, and other entities eligible to apply for assistance under parts 2521 and 2522 of this chapter that desire—

(1) To develop AmeriCorps programs; or

(2) To apply for assistance under parts 2521 and 2522 of this chapter or under a grant program conducted using such assistance.

(b) In addition, the Corporation may provide program development assistance and conduct, directly or by grant or contract, appropriate training programs regarding AmeriCorps in order to—

(1) Improve the ability of AmeriCorps programs assisted under parts 2521 and 2522 of this chapter to meet educational, public safety, human, or environmental needs in communities—

(i) Where services are needed most; and

(ii) Where programs do not exist, or are too limited to meet community needs, as of the date on which the Corporation makes the grant or enters into the contract;

(2) Promote leadership development in such programs;

(3) Improve the instructional and programmatic quality of such programs to build an ethic of civic responsibility;

(4) Develop the management and budgetary skills of program operators;

(5) Provide for or improve the training provided to the participants in such programs;

(6) Encourage AmeriCorps programs to adhere to risk management procedures, including the training of participants in appropriate risk management practices; and

(7) Assist in such other manner as the Corporation may specify.

**§ 2524.20 What are the guidelines for program development assistance and training grants?**

(a) *Eligibility.* States, Federal agencies, Indian tribes, public or private nonprofit agencies, institutions of higher education, for-profit businesses, and individuals may apply for assistance under this section.

(b) *Duration.* A grant made under this section will be for a term of up to one year and is renewable.

(c) *Application requirements.* Eligible applicants must comply with the requirements specified in the Corporation's application package.

**§ 2524.30 What are the guidelines for challenge grants?**

(a) *Purpose.* The purpose of these grants is to challenge high quality AmeriCorps programs to diversify their funding base by matching private dollars they have raised with Corporation support. The Corporation will provide not more than $1 for each $1 raised in cash by the program from private sources in excess of amounts otherwise required to be provided by the program to satisfy the matching funds requirements specified under § 2521.30(g) of this chapter.

(b) *Eligibility.* Only Corporation grantees that meet all of the following eligibility criteria may apply for challenge grants: (1) They are funded under parts 2520 through 2523 of this chapter.

(2) They are high quality programs with demonstrated experience in establishing and implementing projects that provide benefits to participants and communities.

(3) They have operated with Corporation funds for at least six months.

(4) They have secured the minimum matching funds required by §§ 2521.30(g), 2522.240(b)(5), 2522.250(a)(4), and 2522.250(b)(2) of this chapter.

(c) *Allowable program activities.* Challenge grants are intended to provide special opportunities for national and community service programs to enroll additional participants or undertake other activities specified by the Corporation.

(d) *Application procedures.* Eligible applicants must comply with the requirements specified in the Corporation's application materials.

(e) *Limitation on use of the funds.* Each year the Corporation will establish a maximum award that a program may receive as a challenge grant.

(f) *Allocation of funds.* The Corporation will determine annually how much funding will be allocated to challenge grants from funds appropriated for AmeriCorps programs.

**§ 2524.40 What are the guidelines for grants to involve persons with disabilities?**

(a) *Purpose.* There are two general purposes for these grants: (1) To assist AmeriCorps grantees in placing applicants who require reasonable

accommodation (as defined in section 101(9) of the Americans With Disabilities Act of 1990, 42 U.S.C. 12111(9)) or auxiliary aids and services (as defined in section 3(1) of such Act, 42 U.S.C. 12102(1)) in an AmeriCorps program; and

(2) To conduct outreach activities to individuals with disabilities to recruit them for participation in AmeriCorps programs.

(b) *Eligibility*—(1) *Placement, accommodation, and auxiliary services.* Eligibility for assistance under this part is limited to AmeriCorps programs that: (i) Receive competitive funding from the Corporation under § 2521.30(a)(3) or 2521.30(b)(3) of this chapter; and

(ii) Demonstrate that the program has received a substantial number of applications for placement from persons who are individuals with a disability and who require a reasonable accommodation (as defined in section 101(9) of the Americans with Disabilities Act of 1990), or auxiliary aids and services (as defined in section 3(1) of such Act) in order to perform national service; and

(iii) Demonstrate that additional funding would assist the program in placing a substantial number of such individuals with a disability as participants in projects carried out through the program.

(2) *Outreach.* Corporation grantees and any public or private nonprofit organization may apply for funds to conduct outreach to individuals with disabilities to recruit them for participation in AmeriCorps programs. Outreach funds can also be used by any organization to assist AmeriCorps programs in adapting their programs to encourage greater participation by individuals with disabilities.

(c) *Application procedures.* Eligible applicants must comply with the requirements specified in the Corporation's application materials.

### § 2524.50 What are the guidelines for assistance with disaster relief?

(a) *Purpose.* Disaster relief funds are intended to provide emergency assistance not otherwise available to enable national and community service programs to respond quickly and effectively to a Presidentially-declared disaster.

(b) *Eligibility.* Any AmeriCorps program (including youth corps, the National Civilian Community Corps, VISTA, and other programs authorized under the Domestic Volunteer Services Act) or grant making entity (such as a State or Federal agency) that is supported by the Corporation may apply for disaster relief grants.

(c) *Application process.* Eligible applicants must comply with the requirements specified in the Corporation's application materials.

(d) *Waivers.* In appropriate cases, due to the limited nature of disaster activities, the Corporation may waive specific program requirements such as matching requirements and the provision of AmeriCorps educational awards for participants supported with disaster relief funds.

## PART 2530—PURPOSES AND AVAILABILITY OF GRANTS FOR INVESTMENT FOR QUALITY AND INNOVATION ACTIVITIES

Sec.

§ 2530.10 What are the purposes of the Investment for Quality and Innovation activities?
2530.20 Funding priorities.

**Authority:** 42 U.S.C. 12501 *et seq.*

### 2530.10 What are the purposes of the Investment for Quality and Innovation activities?

Investment for Quality and Innovation activities are designed to develop service infrastructure and improve the overall quality of national and community service efforts. Specifically, the Corporation will support innovative and model programs that otherwise may not be eligible for funding; and support other activities, such as training and technical assistance, summer programs, leadership training, research, promotion and recruitment, and special fellowships and awards. The Corporation may conduct these activities either directly or through grants to or contracts with qualified organizations.

### § 2530.20 Funding priorities.

The Corporation may choose to set priorities (and to periodically revise such priorities) that limit the types of innovative and model programs and support activities it will undertake or fund in a given fiscal year. In setting these priorities, the Corporation will seek to concentrate funds on those activities that will be most effective and efficient in fulfilling the purposes of this part.

## PART 2531—INNOVATIVE AND SPECIAL DEMONSTRATION PROGRAMS

Sec.

2531.10 Military Installation Conversion Demonstration programs.
2531.20 Special Demonstration Project for the Yukon-Kuskokwim Delta of Alaska.
2531.30 Other innovative and model programs.

**Authority:** 42 U.S.C. 12501 *et seq.*

### § 2531.10 Military Installation Conversion Demonstration programs.

(a) *Purposes.* The purposes of this section are to: (1) Provide direct and demonstrable service opportunities for economically disadvantaged youth;

(2) Fully utilize military installations affected by closures or realignments;

(3) Encourage communities affected by such closures or realignments to convert the installations to community use; and

(4) Foster a sense of community pride in the youth in the community.

(b) *Definitions.* As used in this section: (1) *Affected military installation.* The term *affected military installation* means a military installation described in section 325(e)(1) of the Job Training Partnership Act (29 U.S.C. 1662d(e)(1)).

(2) *Community.* The term *community* includes a county.

(3) *Convert to community use.* The term *convert to community use*, used with respect to an affected military installation, includes—

(i) Conversion of the installation or a part of the installation to—

(A) A park;

(B) A community center;

(C) A recreational facility; or

(D) A facility for a Head Start program under the Head Start Act (42 U.S.C. 9831 et seq.); and

(ii) Carrying out, at the installation, a construction or economic development project that is of substantial benefit, as determined by the Chief Executive Officer, to—

(A) The community in which the installation is located; or

(B) A community located within 50 miles of the installation or such further distance as the Chief Executive Officer may deem appropriate on a case-by-case basis.

(4) *Demonstration program.* The term *demonstration program* means a program described in paragraph (c) of this section.

(c) *Demonstration programs.* (1) *Grants*—The Corporation may make grants to communities and community-based agencies to pay for the Federal share of establishing and carrying out military installation conversion demonstration programs, to assist in converting to community use affected military installations located—

(i) Within the community; or

(ii) Within 50 miles of the community.

(2) *Duration.* In carrying out such a demonstration program, the community or community-based agency may carry out—

(i) A program of not less than 6 months in duration; or

(ii) A full-time summer program.

(d) *Use of Funds*—(1) *Stipend.* A community or community-based agency that receives a grant under paragraph (c) of this section to establish and carry out a project through a demonstration program may use the funds made available through such grant to pay for a portion of a stipend for the participants in the project.

(2) *Limitation on amount of stipend.* The amount of the stipend provided to a participant under paragraph (d)(1) of this section that may be paid using assistance provided under this section and using any other Federal funds may not exceed the lesser of—

(i) 85 percent of the total average annual subsistence allowance provided to VISTA volunteers under section 105 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4955); and

(ii) 85 percent of the stipend established by the demonstration program involved.

(e) *Participants*—(1) *Eligibility.* A person will be eligible to be selected as a participant in a project carried out through a demonstration program if the person is—

(i) Economically disadvantaged and between the ages of 16 and 24, inclusive;

(ii) In the case of a full-time summer program, economically disadvantaged and between the ages of 14 and 24; or

(iii) An eligible youth as described in section 423 of the Job Training Partnership Act (29 U.S.C. 1693).

(2) *Participation.* Persons desiring to participate in such a project must enter into an agreement with the sponsor of the project to participate—

(i) On a full-time or a part-time basis; and

(ii) For the duration referred to in paragraph (f)(2)(iii) of this section.

(f) *Application*—(1) *In general.* To be eligible to receive a grant under paragraph (c) of this section, a community or community-based agency must submit an application to the Chief Executive Officer at such time, in such manner, and containing such information as the Chief Executive Officer may require.

(2) *Contents.* At a minimum, such application must contain—

(i) A description of the demonstration program proposed to be conducted by the applicant;

(ii) A proposal for carrying out the program that describes the manner in which the applicant will—

(A) Provide preservice and inservice training, for supervisors and participants, that will be conducted by qualified individuals or qualified organizations;

(B) Conduct an appropriate evaluation of the program; and

(C) Provide for appropriate community involvement in the program;

(iii) Information indicating the duration of the program; and

(iv) An assurance that the applicant will comply with the nonduplication, nondisplacement and grievance procedure provisions of part 2540 of this chapter.

(g) *Limitation on Grant.* In making a grant under paragraph (c) of this section with respect to a demonstration program to assist in converting an affected military installation, the Corporation will not make a grant for more than 25 percent of the total cost of the conversion.

### § 2531.20 Special Demonstration Project for the Yukon-Kuskokwim Delta of Alaska.

(a) *Special Demonstration Project for the Yukon-Kuskokwim Delta of Alaska.* The President may award grants to, and enter into contracts with, organizations to carry out programs that address significant human needs in the Yukon-Kuskokwim delta region of Alaska.

(b) *Application.—(1) General requirements.* To be eligible to receive a grant or enter into a contract under paragraph (a) of this section with respect to a program, an organization must submit an application to the President at such time, in such manner, and containing such information as required.

(2) *Contents.* The application submitted by the organization must, at a minimum—

(i) Include information describing the manner in which the program will utilize VISTA volunteers, individuals who have served in the Peace Corps, and other qualified persons, in partnership with the local nonprofit organizations known as the Yukon-Kuskokwim Health Corporation and the Alaska Village Council Presidents;

(ii) Take into consideration—

(A) The primarily noncash economy of the region; and

(B) The needs and desires of residents of the local communities in the region; and

(iii) Include specific strategies, developed in cooperation with the Yupi'k speaking population that resides in such communities, for comprehensive and intensive community development for communities in the Yukon-Kuskokwim delta region.

### § 2531.30 Other innovative and model programs.

(a) The Corporation may support other innovative and model programs such as the following: (1) Programs, including programs for rural youth, described in parts 2515 through 2524 of this chapter;

(2) Employer-based retiree programs;

(3) Intergenerational programs;

(4) Programs involving individuals with disabilities providing service;

(5) Programs sponsored by Governors; and

(6) Summer programs carried out between May 1 and October 1 (which may also contain a year-round component).

(b) The Corporation will support innovative service-learning programs.

(c) Application procedures, selection criteria, timing, and other requirements will be announced in the Federal Register.

## PART 2532—TECHNICAL ASSISTANCE, TRAINING, AND OTHER SERVICE INFRASTRUCTURE-BUILDING ACTIVITIES

Sec.

2532.10 Eligible activities.

**Authority:** 42 U.S.C. 12501 *et seq.*

### § 2532.10 Eligible activities.

The Corporation may support—either directly or through a grant, contract or agreement—any activity designed to meet the purposes described in part 2530 of this chapter. These activities include, but are not limited to, the following: (a) *Community-based agencies.* The Corporation may provide training and technical assistance and other assistance to project sponsors and other community-based agencies that provide volunteer placements in order to improve the ability of such agencies to use participants and other volunteers in a manner that results in high-quality service and a positive service experience for the participants and volunteers.

(b) *Improve ability to apply for assistance.* The Corporation will provide training and technical assistance, where necessary, to individuals, programs, local labor organizations, State educational agencies, State Commissions, local educational agencies, local governments, community-based agencies, and other entities to enable them to apply for funding under one of the national service laws, to conduct high-quality programs, to evaluate such programs, and for other purposes.

(c) *Conferences and materials.* The Corporation may organize and hold conferences, and prepare and publish materials, to disseminate information and promote the sharing of information among programs for the purpose of

improving the quality of programs and projects.

(d) *Peace Corps and VISTA training.* The Corporation may provide training assistance to selected individuals who volunteer to serve in the Peace Corps or a program authorized under title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 *et seq.*). The training will be provided as part of the course of study of the individual at an institution of higher education, involve service-learning, and cover appropriate skills that the individual will use in the Peace Corps or VISTA.

(e) *Promotion and recruitment.* The Corporation may conduct a campaign to solicit funds for the National Service Trust and other programs and activities authorized under the national service laws and to promote and recruit participants for programs that receive assistance under the national service laws.

(f) *Training.* The Corporation may support national and regional participant and supervisor training, including leadership training and training in specific types of service and in building the ethic of civic responsibility.

(g) *Research.* The Corporation may support research on national service, including service-learning.

(h) *Intergenerational support.* The Corporation may assist programs in developing a service component that combines students, out-of-school youths, and older adults as participants to provide needed community services.

(i) *Planning coordination.* The Corporation may coordinate community-wide planning among programs and projects.

(j) *Youth leadership.* The Corporation may support activities to enhance the ability of youth and young adults to play leadership roles in national service.

(k) *National program identity.* The Corporation may support the development and dissemination of materials, including training materials, and arrange for uniforms and insignia, designed to promote unity and shared features among programs that receive assistance under the national service laws.

(l) *Service-learning.* The Corporation will support innovative programs and activities that promote service-learning.

(m) *National youth service day*—(1) *Designation.* April 19, 1994, and April 18, 1995 are each designated as "National Youth Service Day". The President is authorized and directed to issue a proclamation calling on the people of the United States to observe the day with appropriate ceremonies and activities.

(2) *Federal activities.* In order to observe National Youth Service Day at the Federal level, the Corporation may organize and carry out appropriate ceremonies and activities.

(3) *Activities.* The Corporation may make grants to public or private nonprofit organizations with demonstrated ability to carry out appropriate activities, in order to support such activities on National Youth Service Day.

(n) *Clearinghouses*—(1) *Authority.* The Corporation may establish clearinghouses, either directly or through a grant or contract. Any service-learning clearinghouse to be established pursuant to part 2518 of this chapter is eligible to apply for a grant under this section. In addition, public or private nonprofit organizations are eligible to apply for clearinghouse grants.

(2) *Function.* A Clearinghouse may perform the following activities: (i) Assist entities carrying out State or local community service programs with needs assessments and planning;

(ii) Conduct research and evaluations concerning community service;

(iii) Provide leadership development and training to State and local community service program administrators, supervisors, and participants; and provide training to persons who can provide such leadership development and training;

(iv) Facilitate communication among entities carrying out community service programs and participants;

(v) Provide information, curriculum materials, and technical assistance relating to planning and operation of community service programs, to States and local entities eligible to receive funds under this chapter;

(vi) Gather and disseminate information on successful community service programs, components of such successful programs, innovative youth skills curriculum, and community service projects;

(vii) Coordinate the activities of the clearinghouse with appropriate entities to avoid duplication of effort;

(viii) Make recommendations to State and local entities on quality controls to improve the delivery of community service programs and on changes in the programs under this chapter; and

(ix) Carry out such other activities as the Chief Executive Officer determines to be appropriate.

(o) *Assistance for Head Start.* The Corporation may make grants to, and enter into contracts and cooperative agreements with, public or nonprofit private agencies and organizations that receive grants or contracts under the Foster Grandparent Program (part B of title II of the Domestic Volunteer Service Act of 1973 (29 U.S.C. 5011 et seq.)), for projects of the type described in section 211(a) of such Act (29 U.S.C. 5011) operating under memoranda of agreement with the ACTION Agency, for the purpose of increasing the number of low-income individuals who provide services under such program to children who participate in Head Start programs under the Head Start Act (42 U.S.C. 9831 et seq.).

(p) *Other assistance.* The Corporation may support other activities that are consistent with the purposes described in part 2530 of this chapter.

## PART 2533—SPECIAL ACTIVITIES

Sec.

2533.10 National service fellowships.
2533.20 Presidential awards for service.

**Authority:** 42 U.S.C. 12501 *et seq.*

### § 2533.10 National service fellowships.

The Corporation may award national service fellowships on a competitive basis. Application procedures, selection criteria, timing and other requirements will be announced in the **Federal Register.**

### § 2533.20 Presidential awards for service.

The President, acting through the Corporation, may make Presidential awards for service to individuals providing significant service, and to outstanding programs. Information about recipients of such awards will be widely disseminated. The President may provide such awards to any deserving individual or program, regardless of whether the individual is serving in a program authorized by this chapter or whether the program is itself authorized by this chapter. In no instance, however, may the award be a cash award.

## PART 2540—GENERAL ADMINISTRATIVE PROVISIONS

### Subpart A—Requirements Concerning the Distribution and Use of Corporation Assistance

Sec.

2540.100 What restrictions govern the use of Corporation assistance?
2540.110 Limitation on use of Corporation funds for administrative costs.

### Subpart B—Requirements Directly Affecting the Selection and Treatment of Participants

2540.200 Under what circumstances may participants be engaged?
2540.210 What provisions exist to ensure that Corporation-supported programs do not discriminate in the selection of participants and staff?

2540.220 Under what circumstances and subject to what conditions are participants in Corporation-assisted projects eligible for family and medical leave?
2540.230 What grievance procedures must recipients of Corporation assistance establish?

Subpart C—Other Requirements for Recipients of Corporation Assistance

2540.300 What must be included in annual State reports to the Corporation?
2540.310 Must programs that receive Corporation assistance establish standards of conduct?
2540.320 How are participant benefits treated?

Subpart D—Suspension and Termination of Corporation Assistance

2540.400 Under what circumstances will the Corporation suspend or terminate a grant or contract?

Authority: 42 U.S.C. 12501 *et seq.*

## Subpart A—Requirements Concerning the Distribution and Use of Corporation Assistance

### § 2540.100 What restrictions govern the use of Corporation assistance?

(a) *Supplantation.* Corporation assistance may not be used to replace State and local public funds that had been used to support programs of the type eligible to receive Corporation support. For any given program, this condition will be satisfied if the aggregate non-Federal public expenditure for that program in the fiscal year that support is to be provided is not less than the previous fiscal year.

(b) *Religious use.* Corporation assistance may not be used to provide religious instruction, conduct worship services, or engage in any form of proselytization.

(c) *Political activity.* Corporation assistance may not be used by program participants or staff to assist, promote, or deter union organizing; or finance, directly or indirectly, any activity designed to influence the outcome of a Federal, State or local election to public office.

(d) *Contracts or collective bargaining agreements.* Corporation assistance may not be used to impair existing contracts for services or collective bargaining agreements.

(e) *Nonduplication.* Corporation assistance may not be used to duplicate an activity that is already available in the locality of a program. And, unless the requirements of paragraph (f) of this section are met, Corporation assistance will not be provided to a private nonprofit entity to conduct activities that are the same or substantially equivalent to activities provided by a State or local government agency in which such entity resides.

(f) *Nondisplacement.* (1) An employer may not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the use by such employer of a participant in a program receiving Corporation assistance.

(2) A service opportunity will not be created under this chapter that will infringe in any manner on the promotional opportunity of an employed individual.

(3) A participant in a program receiving Corporation assistance may not perform any services or duties or engage in activities that would otherwise be performed by an employee as part of the assigned duties of such employee.

(4) A participant in any program receiving assistance under this chapter may not perform any services or duties, or engage in activities, that—

(i) Will supplant the hiring of employed workers; or

(ii) Are services, duties, or activities with respect to which an individual has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures.

(5) A participant in any program receiving assistance under this chapter may not perform services or duties that have been performed by or were assigned to any—

(i) Presently employed worker;

(ii) Employee who recently resigned or was discharged;

(iii) Employee who is subject to a reduction in force or who has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures;

(iv) Employee who is on leave (terminal, temporary, vacation, emergency, or sick); or

(v) Employee who is on strike or who is being locked out.

### § 2540.110 Limitation on use of Corporation funds for administrative costs.

Not more than five percent of the amount of assistance provided to the original recipient of any grant or any transfer of assistance from the Corporation in any fiscal year may be used to pay for administrative costs incurred by—

(a) The original recipient of assistance; and

(b) Any subgrantee of that recipient.

## Subpart B—Requirements Directly Affecting the Selection and Treatment of Participants

### § 2540.200 Under what circumstances may participants be engaged?

A State may not engage a participant to serve in any program that receives Corporation assistance unless and until amounts have been appropriated under section 501 of the Act (42 U.S.C. 12681) for the provision of AmeriCorps educational awards and for the payment of other necessary expenses and costs associated with such participant.

### § 2540.210 What provisions exist to ensure that Corporation-supported programs do not discriminate in the selection of participants and staff?

(a) An individual with responsibility for the operation of a project that receives Corporation assistance must not discriminate against a participant in, or member of the staff of, such project on the basis of race, color, national origin, sex, age, or political affiliation of such participant or member, or on the basis of disability, if the participant or member is a qualified individual with a disability.

(b) Any Corporation assistance constitutes Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and constitutes Federal financial assistance to an education program or activity for purposes of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

(c) An individual with responsibility for the operation of a project that receives Corporation assistance may not discriminate on the basis of religion against a participant in such project or a member of the staff of such project who is paid with Corporation funds. This provision does not apply to the employment (with Corporation assistance) of any staff member of a Corporation-supported project who was employed with the organization operating the project on the date the Corporation grant was awarded.

### § 2540.220 Under what circumstances and subject to what conditions are participants in Corporation-assisted programs eligible for family and medical leave?

(a) *Participants in State, local, or private nonprofits programs.* A participant in a State, local, or private nonprofit program receiving support from the Corporation is considered an eligible employee of the program's

project sponsor under the Family and Medical Leave Act of 1993 (29 CFR part 825) if—

(1) The participant has served for at least 12 months and 1,250 hours during the year preceding the start of the leave; and

(2) The program's project sponsors engages in commerce or any industry or activity affecting commerce, and employs at least 50 employees for each working day during 20 or more calendar workweeks in the current or preceding calendar year.

(b) *Participants in Federal programs.* Participants in Federal programs operated by the Corporation or by another Federal agency will be considered Federal employees for the purposes of the Family and Medical Leave Act if the participants have completed 12 months of service and the project sponsor is an employing agency as defined in 5 U.S.C 6381 *et seq.*; such participants therefore will be eligible for the same family and medical leave benefits afforded to such Federal employees.

(c) *General terms and conditions.* Participants that qualify as eligible employees under paragraphs (a) or (b) of this section are entitled to take up to 12 weeks of unpaid leave during a 12 month period for any of the following reasons (in the cases of both paragraphs (c)(1) and (2) of this section the entitlement to leave expires 12 months after the birth or placement of such child): (1) The birth of a child to a participant;

(2) The placement of a child with a participant for adoption or foster care;

(3) The serious illness of a participant's spouse, child or parent; or

(4) A participants serious health condition that makes that participant unable to perform his or her essential service duties (a serious health condition is an illness or condition that requires either inpatient care or continuing treatment by a health care provider).

(d) *Intermittent leave or reduced service.* The program, serving as the project sponsor, may allow a participant to take intermittent leave or reduce his or her service hours due to the birth of or placement of a child for adoption or foster care. The participant may also take leave to care for a seriously ill immediate family member or may take leave due to his or her own serious illness whenever it is medically necessary.

(e) *Alternate placement.* If a participant requests intermittent leave or a reduced service hours due to a serious illness or a family member's sickness, and the need for leave is foreseeable based on planned medical treatment, the program, or project sponsor may temporarily transfer the participant to an alternative service position if the participant: (1) Is qualified for the position; and

(2) Receives the same benefits such as stipend or living allowance and the position better accommodates the participants recurring periods of leave.

(f) *Certification of cause.* A program, or project sponsor may require that the participant support a leave request with a certification from the health care provider of the participant or the participant's family member. If a program sponsor requests a certification, the participant must provide it in a timely manner.

(g) *Continuance of coverage.* (1) If a State, local or private program provides for health insurance for the full-time participant, the sponsor must continue to provide comparable health coverage at the same level and conditions that coverage would have been provided for the duration of the participant's leave.

(2) If the Federal program provides health insurance coverage for the full-time participant, the sponsor must also continue to provide the same health care coverage for the duration of the participant's leave.

(h) *Failure to return.* If the participant fails to return to the program at the end of leave for any reason other than continuation, recurrence or onset of a serious health condition or other circumstances beyond his or her control, the program may recover the premium that he or she paid during any period of unpaid leave.

(i) *Applicability to term of service.* Any absence, due to family and medical leave, will not be counted towards the participant's term of service.

**§ 2540.230 What grievance procedures must recipients of Corporation assistance establish?**

State and local applicants that receive assistance from the Corporation must establish and maintain a procedure for the filing and adjudication of grievances from participants, labor organizations, and other interested individuals concerning programs that receive assistance from the Corporation. A grievance procedure may include dispute resolution programs such as mediation, facilitation, assisted negotiation and neutral evaluation. If the grievance alleges fraud or criminal activity, it must immediately be brought to the attention of the Corporation's inspector general.

(a) *Alternative dispute resolution.* (1) The aggrieved party may seek resolution through alternative means of dispute resolution such as mediation or facilitation. Dispute resolution proceedings must be initiated within 45 calendar days from the date of the alleged occurrence. At the initial session of the dispute resolution proceedings, the party must be advised in writing of his or her right to file a grievance and right to arbitration. If the matter is resolved, and a written agreement is reached, the party will agree to forego filing a grievance in the matter under consideration.

(2) If mediation, facilitation, or other dispute resolution processes are selected, the process must be aided by a neutral party who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the matter through a mutually achieved and acceptable written agreement. The neutral party may not compel a resolution. Proceedings before the neutral party must be informal, and the rules of evidence will not apply. With the exception of a written and agreed upon dispute resolution agreement, the proceeding must be confidential.

(b) *Grievance procedure for unresolved complaints.* If the matter is not resolved within 30 calendar days from the date the informal dispute resolution process began, the neutral party must again inform the aggrieving party of his or her right to file a formal grievance. In the event an aggrieving party files a grievance, the neutral may not participate in the formal complaint process. In addition, no communication or proceedings of the informal dispute resolution process may be referred to or introduced into evidence at the grievance and arbitration hearing. Any decision by the neutral party is advisory and is not binding unless both parties agree.

(c) *Time limitations.* Except for a grievance that alleges fraud or criminal activity, a grievance must be made no later than one year after the date of the alleged occurrence. If a hearing is held on a grievance, it must be conducted no later than 30 calendar days after the filing of such grievance. A decision on any such grievance must be made no later than 60 calendar days after the filing of the grievance.

(d) *Arbitration*—(1) *Arbitrator*—(i) *Joint selection by parties.* If there is an adverse decision against the party who filed the grievance, or 60 calendar days after the filing of a grievance no decision has been reached, the filing party may submit the grievance to binding arbitration before a qualified arbitrator who is jointly selected and independent of the interested parties.

(ii) *Appointment by Corporation.* If the parties cannot agree on an arbitrator within 15 calendar days after receiving a request from one of the grievance parties, the Corporations Chief Executive Officer will appoint an arbitrator from a list of qualified arbitrators.

(2) *Time Limits*—(i) *Proceedings.* An arbitration proceeding must be held no later than 45 calendar days after the request for arbitration, or, if the arbitrator is appointed by the Chief Executive Officer, the proceeding must occur no later than 30 calendar days after the arbitrator's appointment.

(ii) *Decision.* A decision must be made by the arbitrator no later than 30 calendar days after the date the arbitration proceeding begins.

(3) *The cost.* The cost of the arbitration proceeding must be divided evenly between the parties to the arbitration. If, however, a participant, labor organization, or other interested individual prevails under a binding arbitration proceeding, the State or local applicant that is a party to the grievance must pay the total cost of the proceeding and the attorney's fees of the prevailing party.

(e) *Suspension of placement.* If a grievance is filed regarding a proposed placement of a participant in a program that receives assistance under this chapter, such placement must not be made unless the placement is consistent with the resolution of the grievance.

(f) *Remedies.* Remedies for a grievance filed under a procedure established by a recipient of Corporation assistance may include—

(1) Prohibition of a placement of a participant; and

(2) In grievance cases where there is a violation of nonduplication or nondisplacement requirements and the employer of the displaced employee is the recipient of Corporation assistance—

(i) Reinstatement of the employee to the position he or she held prior to the displacement;

(ii) Payment of lost wages and benefits;

(iii) Re-establishment of other relevant terms, conditions and privileges of employment; and

(iv) Any other equitable relief that is necessary to correct any violation of the nonduplication or nondisplacement requirements or to make the displaced employee whole.

(g) *Suspension or termination of assistance.* The Corporation may suspend or terminate payments for assistance under this chapter.

(h) *Effect of noncompliance with arbitration.* A suit to enforce arbitration awards may be brought in any Federal district court having jurisdiction over the parties without regard to the amount in controversy or the parties' citizenship.

## Subpart C—Other Requirements for Recipients of Corporation Assistance

### § 2540.300 What must be included in annual State reports to the Corporation?

(a) *In general.* Each State receiving assistance under this title must prepare and submit, to the Corporation, an annual report concerning the use of assistance provided under this chapter and the status of the national and community service programs in the State that receive assistance under this chapter. A State's annual report must include information that demonstrates the State's compliance with the requirements of this chapter.

(b) *Local grantees.* Each State may require local grantees that receive assistance under this chapter to supply such information to the State as is necessary to enable the State to complete the report required under paragraph (a) of this section, including a comparison of actual accomplishments with the goals established for the program, the number of participants in the program, the number of service hours generated, and the existence of any problems, delays or adverse conditions that have affected or will affect the attainment of program goals.

(c) *Availability of report.* Reports submitted under paragraph (a) of this section must be made available to the public on request.

### § 2540.310 Must programs that receive Corporation assistance establish standards of conduct?

Yes. Programs that receive assistance under this title must establish and stringently enforce standards of conduct at the program site to promote proper moral and disciplinary conditions.

### § 2540.320 How are participant benefits treated?

Section 142(b) of the Job Training Partnership Act (29 U.S.C. 1552(b)) shall apply to the programs conducted under this chapter as if such programs were conducted under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*).

## Subpart D—Suspension and Termination of Corporation Assistance

### § 2540.400 Under what circumstances will the Corporation suspend or terminate a grant or contract?

(a) *Suspension of a grant or contract.* In emergency situations, the Corporation may suspend a grant or contract for not more than calendar 30 days. Examples of such situations may include, but are not limited to: (1) Serious risk to persons or property;

(2) Violations of Federal, State or local criminal statutes; and

(3) Material violation(s) of the grant or contract that are sufficiently serious that they outweigh the general policy in favor of advance notice and opportunity to show cause.

(b) *Termination of a grant or contract.* The Corporation may terminate or revoke assistance for failure to comply with applicable terms and conditions of this chapter. However, the Corporation must provide the recipient reasonable notice and opportunity for a full and fair hearing, subject to the following conditions: (1) The Corporation will notify a recipient of assistance by letter or telegram that the Corporation intends to terminate or revoke assistance, either in whole or in part, unless the recipient shows good cause why such assistance should not be terminated or revoked. In this communication, the grounds and the effective date for the proposed termination or revocation will be described. The recipient will be given at least 7 calendar days to submit written material in opposition to the proposed action.

(2) The recipient may request a hearing on a proposed termination or revocation. Providing five days notice to the recipient, the Corporation may authorize the conduct of a hearing or other meetings at a location convenient to the recipient to consider the proposed suspension or termination. A transcript or recording must be made of a hearing conducted under this section and be available for inspection by any individual.

[FR Doc. 94–6580 Filed 3–22–94; 8:45 am]
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federal register

Wednesday
March 23, 1994

Part III

# Environmental Protection Agency

40 CFR Parts 35 and 130
Indian Tribes: Eligibility of Indian Tribes for Financial Assistance; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 35 and 130**

**[FRL–4728–5]**

## Indian Tribes: Eligibility of Indian Tribes for Financial Assistance

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

**ACTION:** Amendments to interim final rule.

**SUMMARY:** The Clean Water Act contains provisions which authorize EPA to treat Indian tribes in substantially the same manner in which it treats states for purposes of various types of financial assistance. This action contains amendments to the interim final regulations implementing that authority for financial assistance programs. The purpose of these regulatory amendments is to make it easier for tribes to obtain EPA approval to assume the role Congress envisioned for them under this statute.

**EFFECTIVE DATES:** The amendments to the interim final rule are effective March 23, 1994. EPA will accept comments on these amendments until May 23, 1994.

**ADDRESSES:** Comments must be mailed (in duplicate, if possible) to C. Marshall Cain, Office of Federal Activities (A–104), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The docket for this rule and copies of the public documents submitted will be available for public inspection and copying at a reasonable fee at EPA Headquarters Library, Public Information Reference Unit, room 2904, 401 M Street, telephone (202) 260–5926.

**FOR FURTHER INFORMATION CONTACT:** C. Marshall Cain, Office of Federal Activities, U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460, telephone (202) 260–8792.

**SUPPLEMENTARY INFORMATION:** This preamble is organized according to the following outline:

I. Introduction
II. Regulations Governing Eligibility of Indian Tribes
A. The Existing Process
1. Recognition and a Government
2. Jurisdiction and Capability
3. Comment Process
4. Subsequent Tribal Applications
B. Workgroup Examination of Process
III. Revisions to the Process in Light of Statutory Requirements
A. Simplified Determination as To Recognition and Government
B. Case by Case Review of Jurisdiction and Capability
1. Simplified Jurisdictional Analysis
2. Capability
IV. Summary of Revised Process
V. Executive Order 12866
VI. Regulatory Flexibility Act
VII. Paperwork Reduction Act

### I. Introduction: Statutory and Regulatory Background

Under its American Indian Policy, EPA works directly with tribal governments as "sovereign entities with primary authority and responsibility for the reservation populace." At the time the Policy was adopted in 1984, the environmental statutes which EPA administers generally did not explicitly address the role of tribes in environmental management, but provided for a joint state and federal role in environmental management. Subsequently, three EPA regulatory statutes have been amended to address the tribal role specifically by authorizing EPA to treat tribes in a manner similar to that in which it treats states: the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), and the Clean Air Act (CAA).[1]

EPA recognizes that tribes are sovereign nations with a unique legal status and a relationship to the federal government that is significantly different than that of states. EPA believes that Congress did not intend to alter this when it authorized treatment of tribes "as States;" rather, the purpose of the statutory amendments was to reflect an intent that, insofar as possible, tribes should assume a role in implementing the environmental statutes on tribal land comparable to the role states play on state land.

All three regulatory statutes specify that, in order to receive such treatment, a tribe must be federally recognized and possess a governing body carrying out substantial duties and powers. 33 U.S.C. 1377 (e), (h) (CWA); 42 U.S.C. 300j–11 (SDWA); 42 U.S.C. 7601(d) (CAA). In addition, although there are some variations in language among the three statutes, each requires that a tribe possess civil regulatory jurisdiction to carry out the functions it seeks to exercise.[2] Finally, all three require that a tribe be reasonably expected to be capable of carrying out those functions.

The Agency initially chose to implement provisions of the Clean Water and Safe Drinking Water Acts regarding Indian tribes by establishing a formal prequalification process under which tribes can seek eligibility under these statutes. This prequalification process has in the past been referred to as approval for "treatment as a state" ("TAS"). Tribes that obtain such approval then become eligible to apply for certain grants and program approvals available to states.[3]

### II. Regulations Governing Eligibility of Indian Tribes

#### *A. The Existing Process*

The Agency has promulgated five regulations that utilize the "TAS" process to date: (1) Safe Drinking Water Act National Drinking Water Regulations and Underground Injection Control Regulations for Indian Lands, 53 FR 37395 (September 26, 1988), codified at 40 CFR parts 35, 124, 141, 142, 143, 144, 145, and 146; (2) Indian Tribes: Water Quality Planning and Management, 54 FR 14353 (April 11, 1989), Comprehensive Construction Grant Regulation Revision, 55 FR 27092 (June 29, 1990) (governing grant programs under the CWA), codified at 40 CFR parts 35 and 130; (3) Amendments to the Water Quality Standards Regulation that Pertain to Standards on Indian Reservations, 56 FR 64876 (December 12, 1991), codified at 40 CFR part 131; (4) Clean Water Act, section 404 Tribal Regulations, 58 FR 8171 (February 11, 1993), codified at 40 CFR parts 232 and 233; and (5) Treatment of Indian Tribes as States for Purposes of sections 308, 309, 401, 402, and 405 of the Clean Water Act ("NPDES") Rule, 58 FR 67966 (December 22, 1993), codified at 40 CFR parts 122, 123, 124 and 501.

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[1] In addition, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"), which is primarily a response, rather than a regulatory statute, has also been amended to authorize EPA to treat tribal governments in substantially the same way it treats states with respect to selected provisions of the statute.

[2] Under the Clean Water Act, the tribe must propose to carry out functions that "pertain to the management and protection of water resources which are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation." 33 U.S.C. 1377(e)(2). Under the Clean Air Act, "the functions to be exercised by the Indian tribe [must] pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction." 42 U.S.C. 7601(d)(2)(B). Under the SDWA, the tribe must propose to exercise functions "within the area of the Tribal Government's jurisdiction." 42 U.S.C. 300j–11 (b)(1)(B).

[3] By contrast, the provision of CERCLA authorizing EPA to afford a tribal government "substantially the same treatment as a State" does not establish any specific criteria a tribe must meet to qualify for such treatment. 42 U.S.C. 9626. EPA has established, by regulation, the criteria of recognition, a government, and jurisdiction, but has not adopted a formal prequalification process under CERCLA. See 40 CFR 300.515(b). The Agency is developing regulations pertaining to the treatment of American Indian tribes under the Clean Air Act.

Under all of these regulations, before a tribe can obtain financial assistance available to states or obtain approval to operate a program which states are authorized to operate on state lands, the tribe must first formally qualify for "treatment as a state." To qualify, a tribe must submit an application establishing that it is federally recognized, has a governing body carrying out substantial duties and powers, and has adequate jurisdiction and capability to carry out the proposed activities. Once a tribe obtains "TAS" approval, it is eligible to apply for financial assistance and program approval.

1. Recognition and Government

A tribe typically establishes recognition by showing its inclusion on the list of federally recognized Tribes published by the Secretary of the Interior in the **Federal Register**. A tribe establishes that it meets the governmental duties and powers requirement with a narrative statement describing the form of the tribal government and the types of functions it performs, and identifying the sources of the tribe's governmental authority.

2. Jurisdiction and Capability

To establish jurisdiction under the CWA grant regulations, a tribe must submit a statement signed by a tribal legal official explaining the legal basis for the Tribe's regulatory authority over its water resources. The CWA grant regulations do not require that a tribe submit any specific materials to establish capability.

The other regulations specify that a tribe must submit various specific documents to establish jurisdiction, including: a map or legal description of the area over which the tribe claims jurisdiction; a statement by a tribal legal official describing the basis, nature, and subject matter of the tribe's jurisdiction; copies of all documents supporting the jurisdictional assertions; and a description of the locations of the systems or sources the tribe proposes to regulate. Similarly, to establish capability a tribe must submit a narrative statement describing tribal capability to administer an effective program, and certain specific, listed materials in support of that statement.

3. Comment Process

Upon receiving a "TAS" application under these regulations, EPA notifies all "appropriate governmental entities," [4] as to the substance of and basis for the jurisdictional assertions in the application, and invites comment on those assertions. Where comments raise a competing or conflicting jurisdictional claim, the Agency must consult with the Department of the Interior before making a final decision on the tribe's application.

In practice, this comment process has sometimes led to delays in the processing and approval of tribal applications. Indeed, it has proven to be the single portion of "TAS" review most responsible for delays. The comment process also has created a perception that states have an oversight role in EPA's treatment of Indian tribes, which some tribes find objectionable, particularly since tribes have typically not been asked to offer their views on the scope and extent of state jurisdiction.

4. Subsequent Tribal Applications

The regulations require a separate "treatment as a state" application for each program for which the tribe seeks such treatment. However, after an initial approval, applications for each additional program need provide only that additional information unique to the additional program.

*B. Workgroup Examination of Process*

The Agency's "TAS" prequalification process has proven to be burdensome, time-consuming and offensive to tribes. Accordingly, in 1992 EPA established a working group to focus on ways of improving and simplifying that process. The Agency formally adopted the Workgroup's recommendations as Agency policy by Memorandum dated November 10, 1992. That Memorandum explicitly recognized that the policies it adopted would require amendments to existing regulations. The purpose of this regulation is to amend existing financial assistance regulations under the Clean Water Act in order to implement the new policy. To the extent possible, the Agency plans to use the same process in future regulations regarding determinations of tribal eligibility.

**III. Revisions to the Process in Light of Statutory Requirements**

No statute compels the use of a formal "TAS" or other prequalification process separate from approval of the underlying request for a grant or program approval. The only requirements imposed by statute are that, to be eligible for financial assistance and/or program authorization, a tribe must be federally recognized, have a governing body carrying out substantial duties and powers, and have adequate jurisdiction and capability to carry out the proposed activities. Thus, EPA may authorize a tribal program or grant without formally designating the tribe as "eligible for TAS," so long as the Agency establishes that the tribe meets applicable statutory requirements. In other words, the Agency can ensure compliance with statutory mandates without requiring tribes to undergo a discrete, formal process of seeking "TAS" approval.

Accordingly, EPA is amending its regulations to eliminate "TAS" review as a separate step in the processing of a tribal application for a grant. Under the new, simplified process, the Agency will ensure compliance with statutory requirements as an integral part of the process of reviewing grant applications. To the extent that this rule or preamble conflicts with the language of previous rules and preambles, the language herein shall be controlling. EPA will also, as far as possible, discontinue use of the term "treatment as a state;" however, since this phrase is included in several statutes, its continued use may sometimes be necessary.

*A. Simplified Determination as to Recognition and Government*

As a general rule, the recognition and governmental requirements are essentially the same under the Clean Water and Safe Drinking Water Acts. The new process will reflect this by establishing identical requirements for making this showing under each statute. Moreover, the fact that a tribe has met the recognition or governmental functions requirement under either of the Water Acts will establish that it meets those requirements under both statutes. To facilitate review of tribal applications, EPA therefore requests that tribal applications inform EPA whether a tribe has been approved for "TAS" (under the old process) or deemed eligible to receive funding or authorization (under the revised process) for any other program.

A tribe that has not done so may establish that it has been federally recognized by simply stating in its grant or program authorization application that it appears on the list of federally recognized tribes that the Secretary of the Interior publishes periodically in the **Federal Register**. If the tribe notifies EPA that it has been recognized but does not appear on this list because the

[4] The Agency defines this to include contiguous states, other tribes, and federal land agencies responsible for management of lands contiguous to the reservation. (Amendments to the Water Quality Standards Regulation that Pertain to Standards on Indian Reservations; Final Rule. 56 FR 64875, 64884 (December 12, 1991)). In response to public comments, EPA has considered, but decided against, providing interested political subdivisions of states, including local governments and water districts, the opportunity to comment on tribal jurisdictional assertions. *Id.*

list has not been updated, EPA will seek to verify the fact of recognition with the Department of the Interior.

A tribe that has not yet made its initial governmental showing can do so by certifying that it has a government carrying out substantial governmental functions. A tribe will be able to make the required certification if it is currently performing governmental functions to promote the public health, safety, and welfare of its population. Examples of such functions include, but are not limited to, levying taxes, acquiring land by exercise of the power of eminent domain, and exercising police power. Such examples should be included in a narrative statement supporting the certification. (1) Describing the form of tribal government and the types of essential governmental functions currently performed, and (2) identifying the legal authorities for performing those functions (e.g., tribal constitutions or codes). It should be relatively easy for tribes to meet this requirement without submitting copies of specific documents unless requested to do so by the Agency.

*B. Case by Case Review of Jurisdiction and Capability*

A tribe may have jurisdiction over, and capability to carry out, certain activities (e.g., protection of the quality of a particular lake for the Clean Lakes program under the Clean Water Act), but not others (e.g., waste management on a portion of the reservation far removed from any lakes). For this reason, EPA believes that the Agency must make a specific determination that a tribe has adequate jurisdictional authority and administrative and programmatic capability before it approves each tribal program. This will ensure that tribes meet the statutory requirements Congress has established as prerequisites to tribal eligibility for each particular program.

1. Simplified Jurisdictional Analysis

The portion of the jurisdictional determination under which governments comment on tribal jurisdiction will be substantially altered under this Rule. These changes are outlined below.

Comments will no longer be sought from "appropriate governmental entities" with regard to tribal grant applications. The Agency now has extensive experience awarding grants to tribes and is capable of evaluating tribal grant applications to ensure that a tribe has adequate jurisdiction to receive grants.

A separate "TAS" jurisdictional review is not needed to verify that a tribe meets the statutory jurisdictional requirement. This change will have the effect only of eliminating duplicative requirements.

Finally, the Agency notes that certain issues concerning tribal jurisdiction may be relevant to a tribe's authority to conduct activities. For example, if a tribe and a state or another tribe disagree as to the boundary of a particular tribe's reservation, each time the tribe seeks to assert authority over the disputed area, the dispute will recur. The Agency recognizes that its determinations regarding tribal jurisdiction apply only to activities to be carried out within the scope of the grant. However, it also believes that, once it makes a jurisdictional determination in response to a tribal application regarding any EPA program, it will ordinarily make the same determination for other programs unless a subsequent application raises different legal issues. Thus, for example, once the Agency has arrived at a position concerning a boundary dispute, it will not alter that position in the absence of significant new factual or legal information.

Under the new approval process, as under the old, the Agency will continue to retain authority to limit its approval of a tribal application to those land areas where the tribe has demonstrated jurisdiction. This would allow EPA to approve the portion of a tribal application covering certain areas, while withholding approval of the portion of an application addressing those land areas where tribal authority has not been satisfactorily established. See, e.g., 53 FR 37395, 37402 (September 26, 1988) (SDWA); 54 FR 14353, 14355 (April 11, 1989) (Clean Water Act Grants); 54 FR 39097, 39102 (September 12, 1989) (Clean Water Act Water Quality Standards); 58 FR 8171, 8176 (February 11, 1993) (Clean Water Act section 404); 58 FR 67966, 67972 (Clean Water Act NPDES) (December 22, 1993).

2. Capability

EPA must continue to make a separate determination of tribal capability for each program for which it approves a tribe. However, the Safe Drinking Water Act, Water Quality Standards, and section 404 regulations would be amended to conform to the CWA grant regulations, which do not specifically prescribe the material a tribe must submit to establish capability. Ordinarily, the inquiry EPA will make into the capability of any applicant, tribal or state, for a grant or program approval would be sufficient to enable the Agency to determine whether a tribe meets the statutory capability requirement. See, e.g., 40 CFR part 31 (grant regulations applicable to states and tribes); 40 CFR 142.3 (Public Water System primary enforcement responsibility requirements at parts 141, 142 apply to tribes); 145.1(h) (Underground Injection Control requirements of parts 124, 144, 145, and 146 that apply to states generally apply to tribes).

Nevertheless, EPA may request that the tribe provide a narrative statement or other documents showing that the tribe is capable of administering the program for which it is seeking approval. In evaluating tribal capability, EPA will consider: (1) The tribe's previous management experience; (2) existing environmental or public health programs administered by the tribe; (3) the mechanisms in place for carrying out the executive, legislative and judicial functions of the tribal government; (4) the relationship between regulated entities and the administrative agency of the tribal government which will be the regulator; and (5) the technical and administrative capabilities of the staff to administer and manage the program.

EPA recognizes that certain tribes may not have substantial experience administering environmental programs; a lack of such experience will not preclude a tribe from demonstrating capability, so long as it shows that it has the necessary management and technical and related skills or submits a plan describing how it will acquire those skills.

## IV. Summary of Revised Process

Under the new process, tribes will continue to seek grants under the authority of statutes authorizing EPA to treat eligible tribes in a manner similar to that in which it treats states. For instance, tribes seeking approval of an NPDES or Wetlands permits program will comply with the applicable provisions of 40 CFR parts 123 or 233. However, tribes will now generally be required to submit only a single application to demonstrate eligibility for the grant, without the need for a separate application for "TAS." EPA will verify that the tribe meets all statutory prerequisites for eligibility in the process of reviewing the single tribal application.

EPA believes that the changes outlined in this notice will simplify and streamline the process of assessing tribal eligibility while still ensuring full compliance with all applicable statutes. The Agency expects that the new process will reduce the burdens and barriers to tribes of participating in environmental management.

**V. Executive Order 12866**

OMB has reviewed this action under the terms of Executive Order 12886.

**VI. Regulatory Flexibility Act**

EPA did not develop a Regulatory Flexibility Analysis for the amendments in this rule. This is because they are exempt from notice and comment rulemaking under section 553(a)(2) of the Administrative Procedure Act (5 U.S.C. 553(a)(2)) and therefore are not subject to the analytical requirements of sections 603 and 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603 and 604).

**VII. Paperwork Reduction Act**

The proposed regulations contain no new or additional information collection activities and, therefore, no information collection request will be submitted to the Office of Management and Budget for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**List of Subjects**

*40 CFR Part 35*

Environmental protection, Air pollution control, Coastal zone, Grant programs-environmental protection, Grant programs-Indians, Hazardous waste, Indians, Intergovernmental relations, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

*40 CFR Part 130*

Environmental protection, Grant programs-environmental protection, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: March 10, 1994.

**Carol M. Browner,**

*Administrator.*

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

## PART 35—STATE AND LOCAL ASSISTANCE

### Subpart A—Financial Assistance for Continuing Environmental Programs

1. The authority citation for subpart A of part 35 continues to read as follows:

**Authority:** Secs. 105 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7405 and 7601(a); Secs. 106, 205(g), 205(j), 208, 319, 501(a), and 518 of the Clean Water Act, as amended (33 U.S.C. 1256, 1285(g), 1285(j), 1288, 1361(a) and 1377); secs. 1443, 1450, and 1451 of the Safe Drinking Water Act (42 U.S.C. 300j-2, 300j-9 and 300j-11); secs. 2002(a) and 3011 of the Solid Waste Disposal Act, as amended by the Resource Conservation, and Recovery Act of 1976 (42 U.S.C. 6912(a), 6931, 6947, and 6949); and secs. 4, 23, and 25(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 136(b), 136(u) and 136w(a).

2. Section 35.105 is amended by adding a definition of *Eligible Indian Tribe* in alphabetical order and by revising the definition of "State" to read as follows:

**§ 35.105 Definitions.**

* * * *

*Eligible Indian Tribe* means for purposes of the Clean Water Act, any federally recognized Indian Tribe that meets the requirements set forth at 40 CFR 130.6(d).

* * * * *

*State* means within the context of Public Water Systems Supervision and Underground Water Source Protection grants or of financial assistance programs under the Clean Water Act, one of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territories of the Pacific Islands or an eligible Indian Tribe.

* * * * *

**§ 35.115 [Amended]**

3. Section 35.115 is amended by revising the phrase "Indian Tribes treated as States" in paragraphs (b), (d), and (f) to read "eligible Indian Tribes" and paragraph (g) is amended by revising the phrase "Indian Tribe treated as a State" to read "eligible Indian Tribe".

**§ 35.155 [Amended]**

4. In § 35.155 paragraph (c) is amended by revising the phrase "Indian Tribes treated as States" to read "eligible Indian Tribes".

**§ 35.250 [Amended]**

5. Section 35.250 is amended by revising the phrase "Indian Tribes treated as States" to read "eligible Indian Tribes."

**§ 35.255 [Amended]**

6. Section 35.255(b) is amended by revising the phrase "Indian Tribes treated as States" to read "eligible Indian Tribes".

**§ 35.260 [Amended]**

7. In § 35.260 paragraph (a) is amended by revising the phrase "Indian Tribes treated as States" to read "eligible Indian Tribes" and paragraph (b) is amended by revising the phrase "Indian Tribe treated as a State" to read "eligible Indian Tribe".

**§§ 35.265, 35.365 and 35.755 [Amended]**

8. Sections 35.265(a), 35.365(a)(1), 35.755(a), and 35.755(b)(1) are amended by revising the phrase "requirements for treatment as a State in accordance with 40 CFR 130.6(d) and 130.15" to read "requirements set forth at 40 CFR 130.6(d)".

**§§ 35.350 and 35.750 [Amended]**

9. Sections 35.350 introductory text and 35.750 are amended by revising the phrase "Indian Tribes treated as States" to read "eligible Indian Tribes".

**§ 35.400 [Amended]**

10. Section 35.400 is amended by revising the phrase "Indian Tribes treated as States for" to read "eligible Indian Tribes under".

**§ 35.1605–9 [Amended]**

11. Section 35.1605–9 is amended by revising the phrase "treated as a State" in the heading to read "set forth at 40 CFR 130.6(d)" and by revising the phrase "set forth for treatment as a State in accordance with 40 CFR 130.6(d) and 130.15" to read "set forth at 40 CFR 130.6(d)".

**§ 35.1620–1 [Amended]**

12. Section 35.1620–1 (c) is amended by revising the phrase "treated as States" in the paragraph heading to read "eligible Indian Tribe" and by revising the phrase "Indian tribe treated as a State" to read "eligible Indian Tribe".

**§ 35.415 [Amended]**

13. Section 35.415(a)(1) is amended by removing the words "—Treatment of Indian Tribes as States".

**§ 35.450 [Amended]**

14. Section 35.450 is amended by revising the phrase "Indian Tribes treated as States for" to read "eligible Indian Tribes under".

**§ 35.465 [Amended]**

15. Section 35.465(a)(1) is amended by removing the words "—Treatment of Indian Tribes as States".

## PART 130—WATER QUALITY PLANNING AND MANAGEMENT

1. The authority citation for part 130 continues to read as follows:

**Authority:** 33 U.S.C. 1251 et. seq.

**§ 130.1 [Amended]**

1. Section 130.1(a) is amended by revising the phrase "Indian Tribe

treated as a State" to read "eligible Indian Tribe".

**§ 130.6 [Amended]**

2. Section 130.6(d) introductory text is amended by revising the phrase "may be treated as a State" to read "is eligible".

**§ 130.15 [Amended]**

3. Section 130.15 is amended by revising the phrase "for treatment as a State" in the heading to read "for Indian tribes"; by removing the phrase "for treatment as a State" from paragraph (a); by removing paragraphs (b), (c), and (d); and by removing the paragraph designation "(a)" from the remaining text.

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federal register

Wednesday
March 23, 1994

Part IV

# Environmental Protection Agency

40 CFR Parts 123, 124, et al.
Indian Tribes: Eligibility of Indian Tribes for Program Authorization; Proposed Rule

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 123, 124, 131, 142, 144, 145, 233, and 501

[FRL–4852–1]

### Indian Tribes: Eligibility of Indian Tribes for Program Authorization

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

**ACTION:** Proposed amendments.

**SUMMARY:** The Clean Water and Safe Drinking Water Acts contain provisions which authorize EPA to treat Indian tribes in substantially the same manner in which it treats states for purposes of various types of financial assistance and program authorization. This action proposes amendments to regulations addressing the role of Indian tribes under both Acts. The purpose of these proposed amendments is to make it easier for tribes to obtain EPA approval to assume the role Congress envisioned for them under these statutes.

**DATES:** EPA will accept comments on the proposed amendments in this package until May 23, 1994.

**ADDRESSES:** Comments must be mailed (in duplicate, if possible) to C. Marshall Cain, Office of Federal Activities (A–104), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The docket for this rule and copies of the public documents submitted will be available for public inspection and copying at a reasonable fee at EPA Headquarters Library, Public Information Reference Unit, room 2904, 401 M Street, telephone (202) 260–5926.

**FOR FURTHER INFORMATION CONTACT:** C. Marshall Cain, Office of Federal Activities, U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460 at (202) 260–8792.

**SUPPLEMENTARY INFORMATION:** This preamble is organized according to the following outline:

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V. Executive Order 12866.
VI. Regulatory Flexibility Act.
VII. Paperwork Reduction Act.

## I. Introduction: Statutory and Regulatory Background

Under its American Indian Policy, EPA works directly with tribal governments as "sovereign entities with primary authority and responsibility for the reservation populace." At the time the Policy was adopted in 1984, the environmental statutes which EPA administers generally did not explicitly address the role of tribes in environmental management, but provided for a joint state and federal role in environmental management. Subsequently, three EPA regulatory statutes have been amended to address the tribal role specifically by authorizing EPA to treat tribes in a manner similar to that in which it treats states: the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), and the Clean Air Act (CAA).[1]

EPA recognizes that tribes are sovereign nations with a unique legal status and a relationship to the federal government that is significantly different than that of states. EPA believes that Congress did not intend to alter this when it authorized treatment of tribes "as States;" rather, the purpose of the statutory amendments was to reflect an intent that, insofar as possible, tribes should assume a role in implementing the environmental statutes on tribal land comparable to the role states play on state land.

All three regulatory statutes specify that, in order to receive such treatment, a tribe must be federally recognized and possess a governing body carrying out substantial duties and powers. 33 U.S.C. 1377 (e), (h) (CWA); 42 U.S.C. 300j–11 (SDWA); 42 U.S.C. 7601(d) (CAA). In addition, although there are some variations in language among the three statutes, each requires that a tribe possess civil regulatory jurisdiction to carry out the functions it seeks to exercise.[2] Finally, all three require that a tribe be reasonably expected to be capable of carrying out those functions.

The Agency initially chose to implement provisions of the Clean Water and Safe Drinking Water Acts regarding Indian tribes by establishing a formal prequalification process under which tribes can seek eligibility under these statutes. This prequalification process has in the past been referred to as approval for "treatment as a state" ("TAS"). Tribes that obtain such approval then become eligible to apply for certain grants and program approvals available to states.[3]

## II. Regulations Governing Eligibility of Indian Tribes

### *A. The Existing Process*

The Agency has promulgated five regulations that utilize the "TAS" process to date: (1) Safe Drinking Water Act, National Drinking Water Regulations and Underground Injection Control Regulations for Indian Lands, 53 FR 37395 (September 26, 1988), codified at 40 CFR parts 35, 124, 141, 142, 143, 144, 145, and 146; (2) Indian Tribes: Water Quality Planning and Management, 54 FR 14353 (April 11, 1989), Comprehensive Construction Grant Regulation Revision, 55 FR 27092 (June 29, 1990) (governing grant programs under the CWA), codified at 40 CFR parts 35 and 130; (3) Amendments to the Water Quality Standards Regulation that Pertain to Standards on Indian Reservations, 56 FR 64876 (December 12, 1991), codified at 40 CFR part 131; (4) Clean Water Act, section 404 Tribal Regulations, 58 FR 8171 (February 11, 1993), codified at 40 CFR parts 232 and 233; and (5) Treatment of Indian Tribes as States for Purposes of sections 308, 309, 401, 402, and 405 of the Clean Water Act ("NPDES") rule, 58 FR 67966 (December 22, 1993), codified at 40 CFR parts 122, 123, 124 and 501.

Under all of these regulations, before a tribe can obtain financial assistance

[1] In addition, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"), which is primarily a response, rather than a regulatory statute, has also been amended to authorize EPA to treat tribal governments in substantially the same way it treats states with respect to selected provisions of the statute.

[2] Under the Clean Water Act, the tribe must propose to carry out functions that "pertain to the management and protection of water resources which are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation." 33 U.S.C. 1377(e)(2). Under the Clean Air Act, "the functions to be exercised by the Indian tribe (must) pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction." 42 U.S.C. 7601(d)(2)(B). Under the SDWA, the tribe must propose to exercise functions "within the area of the Tribal Government's jurisdiction." 42 U.S.C. 300j–11 (b)(1)(B).

[3] By contrast, the provision of CERCLA authorizing EPA to afford a tribal government "substantially the same treatment as a State" does not establish any specific criteria a tribe must meet to qualify for such treatment. 42 U.S.C. 9626. EPA has established, by regulation, the criteria of recognition, a government, and jurisdiction, but has not adopted a formal prequalification process under CERCLA. See 40 CFR 300.515(b). The Agency is developing regulations pertaining to the treatment of American Indian tribes under the Clean Air Act.

available to states or obtain approval to operate a program which states are authorized to operate on state lands, the tribe must first formally qualify for "treatment as a state." To qualify, a tribe must submit an application establishing that it is federally recognized, has a governing body carrying out substantial duties and powers, and has adequate jurisdiction and capability to carry out the proposed activities. Once a tribe obtains "TAS" approval, it is eligible to apply for financial assistance and program approval.

1. Recognition and Government

A tribe typically establishes recognition by showing its inclusion on the list of federally recognized Tribes published by the Secretary of the Interior in the **Federal Register**. A tribe establishes that it meets the governmental duties and powers requirement with a narrative statement describing the form of the tribal government and the types of functions it performs, and identifying the sources of the tribe's governmental authority.

2. Jurisdiction and Capability

To establish jurisdiction under the CWA grant regulations, a tribe must submit a statement signed by a tribal legal official explaining the legal basis for the Tribe's regulatory authority over its water resources. The CWA grant regulations do not require that a tribe submit any specific materials to establish capability.

The other regulations specify that a tribe must submit various specific documents to establish jurisdiction, including: a map or legal description of the area over which the tribe claims jurisdiction; a statement by a tribal legal official describing the basis, nature, and subject matter of the tribe's jurisdiction; copies of all documents supporting the jurisdictional assertions; and a description of the locations of the systems or sources the tribe proposes to regulate. Similarly, to establish capability a tribe must submit a narrative statement describing tribal capability to administer an effective program, and certain specific, listed materials in support of that statement.

3. Comment Process

Upon receiving a "TAS" application under these regulations, EPA notifies all "appropriate governmental entities,"[4] as to the substance of and basis for the jurisdictional assertions in the application, and invites comment on those assertions. Where comments raise a competing or conflicting jurisdictional claim, the Agency must consult with the Department of the Interior before making a final decision on the tribe's application.

In practice, this comment process has sometimes led to delays in the processing and approval of tribal applications. Indeed, it has proven to be the single portion of "TAS" review most responsible for delays. The comment process also has created a perception that states have an oversight role in EPA's treatment of Indian tribes, which some tribes find objectionable, particularly since tribes have typically not been asked to offer their views on the scope and extent of state jurisdiction.

4. Subsequent Tribal Applications

The regulations require a separate "treatment as a state" application for each program for which the tribe seeks such treatment. However, after an initial approval, applications for each additional program need provide only that additional information unique to the additional program.

*B. Workgroup Examination of Process*

The Agency's "TAS" prequalification process has proven to be burdensome, time-consuming and offensive to tribes. Accordingly, in 1992 EPA established a working group to focus on ways of improving and simplifying that process. The Agency formally adopted the Workgroup's recommendations as Agency policy by Memorandum dated November 10, 1992. That Memorandum explicitly recognized that the policies it adopted would require amendments to existing regulations. The purpose of this regulation is to propose amendments to existing regulations under the Safe Drinking Water and Clean Water Acts in order to implement the new policy. To the extent possible, the Agency plans to use the same process in future regulations regarding determinations of tribal eligibility.

**III. Revisions to the Process in Light of Statutory Requirements**

No statute compels the use of a formal "TAS" or other prequalification process separate from approval of the underlying request for a grant or program approval. The only requirements imposed by statute are that, to be eligible for financial assistance and/or program authorization, a tribe must be federally recognized, have a governing body carrying out substantial duties and powers, and have adequate jurisdiction and capability to carry out the proposed activities. Thus, EPA may authorize a tribal program or grant without formally designating the tribe as "eligible for TAS," so long as the Agency establishes that the tribe meets applicable statutory requirements. In other words, the Agency can ensure compliance with statutory mandates without requiring tribes to undergo a discrete, formal process of seeking "TAS" approval.

Accordingly, EPA is amending its regulations to eliminate "TAS" review as a separate step in the processing of a tribal application for a grant or for program approval. Under the new, simplified process, the Agency will ensure compliance with statutory requirements as an integral part of the process of reviewing grant or program approval applications. To the extent that this rule or preamble conflicts with the language of previous rules and preambles, the language herein shall be controlling. EPA will also, as far as possible, discontinue use of the term "treatment as a state;" however, since this phrase is included in several statutes, its continued use may sometimes be necessary.

*A. Simplified Determination as to Recognition and Government*

As a general rule, the recognition and governmental requirements are essentially the same under the Clean Water and Safe Drinking Water Acts. The new process will reflect this by establishing identical requirements for making this showing under each statute. Moreover, the fact that a tribe has met the recognition or governmental functions requirement under either of the Water Acts will establish that it meets those requirements under both statutes. To facilitate review of tribal applications, EPA therefore requests that tribal applications inform EPA whether a tribe has been approved for "TAS" (under the old process) or deemed eligible to receive funding or authorization (under the revised process) for any other program.

A tribe that has not done so may establish that it has been federally recognized by simply stating in its grant or program authorization application that it appears on the list of federally recognized tribes that the Secretary of the Interior publishes periodically in the **Federal Register**. If the tribe notifies EPA that it has been recognized but

[4] The Agency defines this to include contiguous states, other tribes, and federal land agencies responsible for management of lands contiguous to the reservation. (Amendments to the Water Quality Standards Regulation that Pertain to Standards on Indian Reservations; Final Rule. 56 FR 64875, 64884 (December 12, 1991)). In response to public comments, EPA has considered, but decided against, providing interested political subdivisions of states, including local governments and water districts, the opportunity to comment on tribal jurisdictional assertions. *Id.*

does not appear on this list because the list has not been updated, EPA will seek to verify the fact of recognition with the Department of the Interior.

A tribe that has not yet made its initial governmental showing can do so by certifying that it has a government carrying out substantial governmental functions. A tribe will be able to make the required certification if it is currently performing governmental functions to promote the public health, safety, and welfare of its population. Examples of such functions include, but are not limited to, levying taxes, acquiring land by exercise of the power of eminent domain, and exercising police power. Such examples should be included in a narrative statement supporting the certification. (1) Describing the form of tribal government and the types of essential governmental functions currently performed, and (2) identifying the legal authorities for performing those functions (*e.g.*, tribal constitutions or codes). It should be relatively easy for tribes to meet this requirement without submitting copies of specific documents unless requested to do so by the Agency.

*B. Case-by-Case Review of Jurisdiction and Capability*

A tribe may have jurisdiction over, and capability to carry out, certain activities (*e.g.*, protection of the quality of a particular lake for the Clean Lakes program under the Clean Water Act), but not others (*e.g.*, waste management on a portion of the reservation far removed from any lakes). For this reason, EPA believes that the Agency must make a specific determination that a tribe has adequate jurisdictional authority and administrative and programmatic capability before it approves each tribal program. This will ensure that tribes meet the statutory requirements Congress has established as prerequisites to tribal eligibility for each particular program.

1. Simplified Jurisdictional Analysis

The portion of the jurisdictional determination under which governments comment on tribal jurisdiction will be substantially altered under this rule. These changes are outlined below.

For approvals of all Drinking Water regulatory programs and most Clean Water programs under existing regulations, EPA will not authorize a state to operate a program without determining that the state has adequate authority to carry out those actions required to run the program. See *e.g.* 40 CFR 142.10 (PWS), 145.24 (UIC). This applies also to a tribe seeking program approval, and ensures that a close analysis of the legal basis of a tribe's jurisdiction will occur before program authorization.

Accordingly, a separate "TAS" jurisdictional review is not needed to verify that a tribe meets the statutory jurisdictional requirement, and is therefore proposed to be eliminated for all programs under the Safe Drinking Water Act, and for the Clean Water Act's 404 and NPDES programs. This change would have the effect only of eliminating duplicative requirements. In no case can a tribe receive program approval until the Agency has received full and adequate input concerning the scope and extent of the tribe's jurisdiction. Moreover, EPA would expect each tribe seeking program approval to provide a precise description of the physical extent and boundaries of the area for which it seeks regulatory authority. This description should ordinarily include a map and should identify the sources or systems to be regulated by the tribe.

However, for the Water Quality Standards program, there is no review of tribal civil regulatory authority as part of the standards approval process under section 303(c) of the Clean Water Act. Accordingly, for that program, a comment process would be retained. However, the Agency wishes to clarify the operation of that process by reiterating that comments must be offered in a timely manner, and, further, by specifying that where no timely comments are offered, the Agency will conclude that there is no objection to the tribal applicant's jurisdictional assertion. Moreover, to raise a competing or conflicting claim a comment must clearly explain the substance, basis, and extent of its objections. Finally, when questions are raised concerning a tribe's jurisdiction, EPA may, in its discretion, seek additional information from the tribe or the commenting party, and may consult as it sees fit with other federal agencies prior to making a determination as to tribal jurisdictional authority, but is not required to do so. Henceforth, EPA would/will no longer be required, by regulation, to consult with the Department of the Interior.

Finally, the Agency notes that certain disputes concerning tribal jurisdiction may be relevant to a tribe's authority to conduct activities and obtain program approval under several environmental statutes. For example, if a tribe and a state or another tribe disagree as to the boundary of a particular tribe's reservation, each time the tribe seeks to assert authority over the disputed area, the dispute will recur. The Agency recognizes that its determinations regarding tribal jurisdiction apply only to activities within the scope of EPA programs. However, it also believes that, once it makes a jurisdictional determination in response to a tribal application regarding any EPA program, it will ordinarily make the same determination for other programs unless a subsequent application raises different legal issues. Thus, for example, once the Agency has arrived at a position concerning a boundary dispute, it will not alter that position in the absence of significant new factual or legal information. By contrast, however, a determination that a tribe has inherent jurisdiction to regulate activities in one medium might not conclusively establish its jurisdiction over activities in another medium. See generally Discussion of inherent tribal authority in Water Quality Standards Regulation, 56 FR 64877–64879.

Under the new approval process, as under the old, the Agency will continue to retain authority to limit its approval of a tribal application to those land areas where the tribe has demonstrated jurisdiction. This would allow EPA to approve the portion of a tribal application covering certain areas, while withholding approval of the portion of an application addressing those land areas where tribal authority has not been satisfactorily established. See, *e.g.*, 53 FR 37395, 37402 (September 26, 1988) (SDWA); 54 FR 14353, 14355 (April 11, 1989) (Clean Water Act Grants); 54 FR 39097, 39102 (September 12, 1989) (Clean Water Act Water Quality Standards); 58 FR 8171, 8176 (February 11, 1993) (Clean Water Act section 404); 58 FR 67966, 67972 (Clean Water Act NPDES) (December 22, 1993).

2. Capability

EPA must continue to make a separate determination of tribal capability for each program for which it approves a tribe. However, the Safe Drinking Water Act, Water Quality Standards, section 404, and NPDES regulations would be amended to conform to the CWA grant regulations, which do not specifically prescribe the material a tribe must submit to establish capability. Ordinarily, the inquiry EPA will make into the capability of any applicant, tribal or state, for a grant or program approval would be sufficient to enable the Agency to determine whether a tribe meets the statutory capability requirement. See, *e.g.*, 40 CFR part 31 (grant regulations applicable to states and tribes); 40 CFR 142.3 (Public Water System primary enforcement responsibility requirements at parts 141, 142 apply to tribes); 145.1(h)

(Underground Injection Control requirements of parts 124, 144, 145, and 146 that apply to states generally apply to tribes).

Nevertheless, EPA may request that the tribe provide a narrative statement or other documents showing that the tribe is capable of administering the program for which it is seeking approval. In evaluating tribal capability, EPA will consider: (1) The tribe's previous management experience; (2) existing environmental or public health programs administered by the tribe; (3) the mechanisms in place for carrying out the executive, legislative and judicial functions of the tribal government; (4) the relationship between regulated entities and the administrative agency of the tribal government which will be the regulator; and (5) the technical and administrative capabilities of the staff to administer and manage the program.

EPA recognizes that certain tribes may not have substantial experience administering environmental programs; a lack of such experience will not preclude a tribe from demonstrating capability, so long as it shows that it has the necessary management and technical and related skills or submits a plan describing how it will acquire those skills.

### IV. Summary of Revised Process

Under the new process, tribes will continue to seek program approvals under the authority of statutes authorizing EPA to treat eligible tribes in a manner similar to that in which it treats states. For instance, tribes seeking approval of an NPDES or Wetlands permits program will comply with the applicable provisions of 40 CFR parts 123 or 233. However, tribes will now generally be required to submit only a single application to demonstrate eligibility for the program approval, without the need for a separate application for "TAS." EPA will verify that the tribe meets all statutory prerequisites for eligibility in the process of reviewing the single tribal application.

EPA believes that the changes outlined in this notice will simplify and streamline the process of assessing tribal eligibility while still ensuring full compliance with all applicable statutes. The Agency expects that the new process will reduce the burdens and barriers to tribes of participating in environmental management.

### V. Executive Order 12866

OMB has reviewed this action under the terms of Executive Order 12866.

### VI. Regulatory Flexibility Act

Pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities because it merely revises existing procedural requirements for Indian tribes by making them simpler and less burdensome; Indian tribes are not considered small entities under this rulemaking for RFA purposes.

### VII. Paperwork Reduction Act

The proposed regulations contain no new or additional information collection activities and, therefore, no information collection request will be submitted to the Office of Management and Budget for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

### List of Subjects

*40 CFR Part 123*

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous substances, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply.

*40 CFR Part 124*

Administrative practice and procedure, Air pollution control, Environmental Protection, Hazardous substances, Indian lands, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control, Water supply.

*40 CFR Part 131*

Environmental protection, Reporting and recordkeeping requirements, Water pollution control.

*40 CFR Part 142*

Environmental protection, Administrative practice and procedure, Chemicals, Indians-lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

*40 CFR Part 144*

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Indians-lands, Reporting and recordkeeping requirements, Surety bonds, Water supply.

*40 CFR Part 145*

Environmental protection, Indians-lands, Intergovernment relations, Penalties, Reporting and recordkeeping requirements, Water supply.

*40 CFR Part 233*

Environmental protection, Administrative practice and procedure, Intergovernment relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

*40 CFR Part 501*

Administrative practice and procedure, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Sewage disposal.

Dated: March 10, 1994.

**Carol M. Browner,**

*Administrator.*

For the reasons set forth in the preamble, 40 CFR parts 123, 124, 131, 142, 144, 145, 233, and 501 are proposed to be amended as follows:

## PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for part 123 continues to read as follows:

**Authority:** Clean Water Act, 33 U.S.C. 1251 *et. seq.*

**§ 123.1 [Amended]**

2. Section 123.1 (h) is amended by removing the phrase "treated as a State."

**§ 123.2 [Amended]**

3. In § 123.21 paragraph (a)(1) is amended by revising the phrase "eligible for treatment as a state in accordance with § 123.33(e)" to read "in accordance with § 123.33(b)".

4. In § 123.21 paragraph (b)(2) is amended by removing the phrase "for treatment as a state" both times they appear and by revising the text "§ 123.33(e)" to read "§ 123.33(b)".

**§ 123.22 [Amended]**

5. In § 123.22 paragraph (g) is amended by removing the phrase "for treatment as a state" and by revising the text "§ 123.33(e)" to read "§ 123.33(b)".

**§ 123.31 [Amended]**

6. The heading of § 123.31 is amended by revising the phrase "for treatment of Indian Tribes as States" to read "for eligibility of Indian Tribes."

7. In § 123.31 paragraph (a) is amended by removing the phrase "a State for purposes of making the Tribe."

8. In § 123.31 paragraph (a)(4) is amended by removing all language following "in a manner consistent with the terms and purposes of the Act and applicable regulations, of an effective NPDES permit program."

**§ 123.32 [Amended]**

9. The heading of § 123.32 is amended by removing "for treatment as a State."

10. In § 123.32 the introductory text is amended by removing the phrase "for treatment as a state."

11. In § 123.32 paragraph (b) introductory text is amended by revising the words "This statement shall" to read "This statement should."

12. In § 123.32 paragraph (c) is amended by revising the phrase "a copy of all documents" to read "copies of those documents" and by revising the phrase "support the Tribe's assertion" to read "the Tribe believes are relevant to its assertion."

13. In § 123.32 paragraph (d) introductory text is amended by revising the phrase "The statement shall include" to read "The statement should include."

14. In § 123.32 paragraph (d)(1) is amended by revising the words "including, but not limited to," to read "which may include."

15. In § 123.32 paragraph (e) is amended by revising the phrase "a Tribal request for treatment as a State" to read "a Tribe's eligibility."

16. In § 123.32 paragraph (f) is revised to read as follows:

**§ 123.32 Request by an Indian Tribe for a determination of eligibility.**

* * * * *

(f) If the Administrator or his or her delegatee has previously determined that a Tribe has met the prerequisites that make it eligible to assume a role similar to that of a state as provided by statute under the Safe Drinking Water Act, the Clean Water Act, or the Clean Air Act, then that Tribe need provide only that information unique to the NPDES program which is requested by the Regional Administrator.

**§ 123.33 [Amended]**

17. The heading of § 123.33 is amended by removing the phrase "for treatment as a state."

18. In § 123.33 paragraph (a) is amended by removing the phrase "for treatment as a State."

19. In § 123.33 paragraphs (b), (c), (d), and (e) are removed and paragraph (f) is redesignated as paragraph (b).

## PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for part 124 continues to read as follows:

**Authority:** Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; Clean Air Act, 42 U.S,C. 7401 *et seq.*

**§ 124.2 [Amended]**

2. In § 124.2 the definition of "State" is amended by revising the phrase "an Indian Tribe treated as a State" to read "an Indian Tribe that meets the statutory criteria which authorize EPA to treat the Tribe in a manner similar to that in which it treats a State".

**§ 124.5 [Amended]**

3. In § 124.51 paragraph (c) is amended by revising the phrase "is qualified for treatment as a State" to read "meets the statutory criteria which authorize EPA to treat the Tribe in a manner similar to that in which it treats a State" and by revising the phrase "is likewise qualified for treatment as a State" to read "is likewise qualified for such treatment."

## PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

**Authority:** Clean Water Act, Pub. L. 92–500, as amended: 33 U.S.C. 1251 *et seq.*

**§ 131.3 [Amended]**

2. In § 131.3 paragraph (j) is amended by revising the phrase "qualify for treatment as States for purposes of water quality standards" to read "to be eligible for purposes of a water quality standards program".

**§ 131.4 [Amended]**

3. In § 131.4 paragraph (c) is amended by revising the phrase "qualifies for treatment as a State" in both places that it appears to read "is eligible to the same extent as a State".

**§ 131.7 [Amended]**

4. In § 131.7 paragraph (b)(2) is amended by revising the phrase "qualifies to be treated as a State" to read "is eligible to the same extent as a State".

**§ 131.8 [Amended]**

5. The heading of § 131.8 is amended by revising the phrase "to be treated as States for purposes of water quality standards," to read "to administer a water quality standards program".

6. In § 131.8 paragraph (a) introductory text is amended by revising the phrase "treat an Indian Tribe as a State for purposes of the water quality standards program" to read "accept and approve a tribal application for purposes of administering a water quality standards program".

7. In § 131.8 paragraph (b) introductory text is amended by revising the phrase "for treatment as states for purposes of water quality standards" to read "for administration of a water quality standards program".

8. In § 131.8 paragraph (b)(2) introductory text is amended by revising the word "shall" to read "should".

9. In § 131.8 paragraph (b)(3) introductory text is amended by revising the word "shall" to read "should".

10. In § 131.8 paragraph (b)(3)(ii) is amended by adding to the end of the paragraph the phrase "and which may include a copy of documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertion of authority; and".

11. Section 131.8(b)(3)(iii) is removed.

12. In § 131.8 paragraph (b)(3)(iv) is redesignated as (b)(3)(iii).

13. In § 131.8 paragraph (b)(4) introductory text is amended by revising the word "shall" to read "should".

14. In § 131.8 paragraph (b)(4)(i) is amended by revising the phrase "including, but not limited to" to read "which may include".

15. In § 131.8 paragraph (b)(5) is amended by revising the phrase "request for treatment as a State," to read "application".

16. In § 131.8 paragraph (b)(6) is amended by revising the phrase "qualified for treatment as a State" to read "qualified for eligibility or 'treatment as a state'" and by removing the second occurrence of the phrase "treatment as a State".

17. In § 131.8 paragraphs (c) introductory text, (c)(1) and (c)(2) introductory text are amended by removing the words "for treatment as a State".

18. In § 131.8 paragraph (c)(4) is amended by revising the phrase "after consultation with the Secretary of the Interior, or his designee" to read "after due consideration".

19. In § 131.8 paragraph (c)(5) is amended by revising the words "has qualified to be treated as a State for purposes of water quality standards and that the Tribe may initiate the formulation and adoption of water quality standards approvable under this part" to read "is authorized to administer the Water Quality Standards program".

## PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for part 142 continues to read as follows:

**Authority:** 42 U.S.C. 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

**§ 142.2 [Amended]**

2. In § 142.2 the definition of "State" is amended by revising the phrase "or an Indian Tribe treated as a State," to read "or an eligible Indian tribe".

**§ 142.3 [Amended]**

3. In § 142.3 paragraph (c) is amended by revising the phrase "be designated by the Administrator for treatment as a State" to read "meet the statutory criteria at 42 U.S.C. 300j–11(b)(1)".

**Subpart H to Part 142 [Amended]**

4. The heading for subpart H of part 142 is revised to read as follows:
Subpart H Indian Tribes

**§ 142.72 [Amended]**

5. The heading of § 142.72 is revised to read "Requirements for Tribal Eligibility".

6. Section 142.72 is amended by revising the introductory text to read as follows:

**142.72 Requirements for tribal eligibility.**

The Administrator is authorized to treat an Indian Tribe as eligible to apply for primary enforcement responsibility for the Public Water System Program if it meets the following criteria:

* * * * *

7. In § 142.72 paragraph (d) is amended by removing all language following "(in a manner consistent with the terms and purposes of the Act and all applicable regulations) an effective Public Water System program".

**§ 142.76 [Amended]**

8. The heading of § 142.76 is amended by revising the phrase "of treatment as a State" to read "of eligibility".

9. Section 142.76 is amended by revising in the introductory text the phrase "qualifies for treatment as a State pursuant to" to read "meets the criteria of."

10. In § 142.76 paragraph (b) introductory text is amended by revising the word "shall" to read "should".

11. In § 142.76 paragraph (c) is amended by revising the word "all" to read "those" and by revising the phrase "support the Tribe's asserted jurisdiction" to read "the Tribe beliefs are relevant to its assertions regarding jurisdiction".

12. In § 142.76 paragraph (d) introductory text is amended by revising the word "shall" to read "should".

13. In § 142.76 paragraph (d)(1) is amended by revising the words "including, but not limited to" to read "which may include".

14. In § 142.76 paragraph (e) is amended by revising the phrase "a Tribal request for treatment as a State" to read "a Tribe's eligibility".

15. In § 142.76 paragraph (f) is revised to read as follows:

**§ 142.76 Request by an Indian Tribe for a determination of eligibility.**

* * * * *

(f) If the Administrator has previously determined that a Tribe has met the prerequisites that make it eligible to assume a role similar to that of a state as provided by statute under the Safe Drinking Water Act, the Clean Water Act, or the Clean Air Act, then that Tribe need provide only that information unique to the Public Water System program (paragraphs (c) and (d)(5) and (6) of this section).

**§ 142.78 [Amended]**

16. The heading of § 142.78 is amended by removing the phrase "for treatment as a State".

17. In § 142.78 paragraph (a) is amended by removing the words "for treatment as a State submitted pursuant to § 142.76".

18. In § 142.78 paragraphs (b), (c), and (d) are removed and paragraph (e) is redesignated as (b) and amended by revising the language "If the Administrator determines that a Tribe meets the requirements of § 142.72, the Indian Tribe is then eligible to apply for" to read "A tribe that meets the requirements of § 142.72 is eligible to apply for".

## PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for part 144 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Resource Conservation and Recovery Act, 42 U.S.C. 6902 *et seq.*

2. Section 144.3 is amended by adding the definition of "eligible Indian Tribe" in alphabetical order to read as follows:

**§ 144.3 Definitions.**

* * * * *

An *eligible Indian Tribe* is a Tribe that meets the statutory requirements established at 42 U.S.C. 300j–11(b)(1).

* * * * *

## PART 145—STATE UIC PROGRAM REQUIREMENTS

1. The authority citation for part 145 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

**§ 145.1 [Amended]**

2. In § 145.1 paragraph (h) is amended in the first sentence by adding the word "eligible" between "to" and "Indian Tribes," and by removing the second sentence.

**Subpart E to Part 145—[Amended]**

3. The heading of subpart E of part 145 is revised to read as follows:
Subpart E—Indian Tribes

**§ 145.52 [Amended]**

4. The heading of § 145.52 is revised to read "Requirements for Tribal eligibility".

5. In § 145.52 the introductory text is revised to read as follows:

**§ 145.52 Requirements for Tribal eligibility.**

The Administrator is authorized to treat an Indian Tribe as eligible to apply for primary enforcement responsibility for the Underground Injection Control Program if it meets the following criteria:

* * * * *

6. In § 145.52 paragraph (d) is amended by removing all language following "(in a manner consistent with the terms and purposes of the Act and all applicable regulations) an effective Underground Injection Control Program".

**§ 145.56 [Amended]**

7. The heading of § 145.56 is amended by revising the phrase "of treatment as a State" to read "of eligibility".

8. In § 145.56 the introductory text is amended by revising the phrase "qualifies for treatment as a State pursuant to" to read "meets the criteria of".

9. In § 145.56 paragraph (b) introductory text is amended by revising the word "shall" to read "should".

10. In § 145.56 paragraph (c) is amended by revising the word "all" to read "those," and by revising the phrase "support the Tribe's asserted jurisdiction" to read "the Tribe believes are relevant to its assertions regarding jurisdiction".

11. In § 145.56 paragraph (d) introductory text is amended by revising the word "shall" to read "should".

12. In § 145.56 paragraph (d)(1) is amended by revising the words "including, but not limited to" to read "which may include."

13. In § 145.56 paragraph (e) is amended by revising the phrase "a Tribal request for treatment as a State" to read "a Tribe's eligibility".

14. In § 145.56 paragraph (f) is revised to read as follows:

**§ 145.56 Request by an Indian Tribe for a determination of eligibility.**

(f) If the Administrator has previously determined that a Tribe has met the prerequisites that make it eligible to assume a role similar to that of a State as provided by statute under the Safe Drinking Water Act, the Clean Water

Act, or the Clean Air Act, then that Tribe need provide only that information unique to the Underground Injection Control program (§ 145.76(c) and (d)(6)).

**§ 145.58 [Amended]**

15. The heading of § 145.58 is amended by removing the phrase "for treatment as a State".

16. In § 145.58 paragraph (a) is amended by removing the phrase "for treatment as a State submitted pursuant to § 145.56".

17. In § 145.58 paragraphs (b), (c), and (d) are removed and paragraph (e) is redesignated as paragraph (b) and amended by revising the language "If the Administrator determines that a Tribe meets the requirements of § 145.52, the Indian Tribe is then eligible to apply for" to read "A tribe that meets the requirements of § 145.52 is eligible to apply for".

## PART 233—404 STATE PROGRAM REGULATIONS

1. The authority citation for part 233 continues to read as follows:

**Authority:** Clean Water Act, 33 U.S.C. 1251 *et seq.*

**Subpart G to Part 233 [Amended]**

2. The heading of subpart G of part 233 is revised to read as follows:

Subpart G—Eligible Indian Tribes

**§ 233.60 [Amended]**

3. The heading of 233.60 is revised to read "Requirements for eligibility".

4. Section 233.60 introductory text is amended by removing the words "a State for purposes of making the Tribe".

**§ 233.61 [Amended]**

5. The heading of § 233.61 is revised to read "Determination of Tribal eligibility."

6. In § 233.61 the introductory text is amended by revising the phrase "that it qualifies for treatment as a State pursuant to section 518 of the Act" to read "that it meets the statutory criteria which authorize EPA to treat the Tribe in a manner similar to that in which it treats a State"; by revising the word "shall" in the last sentence to read "should".

7. In § 233.61 paragraph (b) introductory text is amended by revising the word "shall" to read "should".

8. In § 233.61 paragraph (c)(2) is amended by adding "which may include a copy of documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertion of authority;".

9. Section 233.61 (c)(3) is removed.

10. In § 233.61 paragraph (d) introductory text is amended by revising the word "shall" to read "may".

11. In § 233.61 paragraph (d)(1) is amended by revising the words "including, but not limited to" to read "which may include".

12. In § 233.61 paragraph (e) is amended by revising the words "request for treatment as a State" to read "application".

13. In § 233.61 paragraph (f) is amended by adding the words "for eligibility or" between "has met the requirements" and "for 'treatment as a state.'"

**§ 233.62 [Amended]**

14. The heading of § 233.62 is amended by removing the phrase "for treatment as a State".

15. In § 233.62 paragraph (a) is amended by removing the phrase "for treatment as a state".

16. In § 233.62 paragraphs (b), (c), (d), and (e) are removed.

17. In § 233.62 paragraph (f) is redesignated as paragraph (b).

## PART 501—STATE SLUDGE MANAGEMENT PROGRAM REGULATIONS

1. The authority citation for part 501 continues to read as follows:

**Authority:** The Clean Water Act, 33 U.S.C. 1251 et seq.

**§ 501.11 [Amended]**

2. In § 501.11 (a)(1) remove the phrase "eligible for treatment as a state" and revise the text "§ 501.24(e)" to read "§ 501.24(b)".

3. In § 501.11(b)(2) remove the phrase "for treatment as a State" both times it appears and revise the text "§ 501.24(e)" to read "§ 501.24(b)".

**§ 501.12 [Amended]**

4. In § 501.12(g) remove the phrase "for treatment as a State" and revise the text "§ 501.24(e)" to read "§ 501.24(b)".

**§ 502.22 [Amended]**

5. The heading of § 501.22 is amended by revising the phrase "for treatment of Indian Tribes as States" to read "for eligibility of Indian Tribes."

6. In § 501.22 paragraph (a) introductory text is amended by removing the phrase "a State for purposes of making the Tribe."

7. In § 501.22 paragraph (a)(4) is amended by removing the last two sentences.

**§ 501.23 [Amended]**

8. The heading of § 501.23 is amended by removing the phrase "for treatment as a State".

9. In § 501.23 the introductory text is amended by removing the phrase "for treatment as a State."

10. In § 501.23 paragraph (b) introductory text is amended by revising the word "shall" to read "should."

11. In § 501.23 paragraph (c) is amended by revising the phrase "a copy of all documents" to read "copies of those documents" and by revising the phrase "support the Tribe's assertion" to read "the Tribe believes are relevant to its assertion."

12. In § 501.23 paragraph (d) introductory text is amended by revising the word "shall" to read "should."

13. In § 501.23 paragraph (d)(1) is amended by revising the words "including, but not limited to" to read "which may include."

14. In § 501.23 paragraph (e) is amended by revising the phrase "a Tribal request for treatment as a State" to read "a Tribe's eligibility."

15. In § 501.23 paragraph (f) is revised to read as follows:

**§ 501.23 Request by an Indian Tribe for a determination of eligibility.**

* * * * *

(f) If the Administrator or her delegatee has previously determined that a Tribe has met the prerequisites that make it eligible to assume a role similar to that of a state as provided by statute under the Safe Drinking Water Act, the Clean Water Act, or the Clean Air Act, then that Tribe need provide only that information unique to the sludge management program which is requested by the Regional Administrator.

**§ 501.24 [Amended]**

16. The heading of § 501.24 is amended by removing the phrase "for treatment as a State."

17. In § 501.24 paragraph (a) is amended by removing the words "for treatment as a State."

18. In § 501.24 paragraphs (b), (c), (d) and (e) are removed and paragraph (f) is redesignated as paragraph (b).

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Part V

# Department of Health and Human Services

## Food and Drug Administration

21 CFR Part 806
Medical Devices; Reports of Corrections and Removals; Proposed Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 806**

**[Docket No. 91N-0396]**

# Medical Devices; Reports of Corrections and Removals

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

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to require that manufacturers, importers, and distributors report promptly to FDA any corrections or removals of a device undertaken to reduce a risk to health posed by the device or to remedy a violation of the Federal Food, Drug, and Cosmetic Act (the act) caused by the device which may present a risk to health. Manufacturers, distributors, and importers would not have to report actions taken to improve the performance or quality of a device which are not intended to reduce a risk to health posed by the device or remedy a violation of the act caused by the device. Nor would manufacturers, distributors, and importers have to report actions defined as routine servicing. FDA believes that the proposed reporting requirements are necessary to protect the public health by assuring that the agency has current and complete information regarding those actions taken to eliminate risk to health caused by devices. Reports of such actions will improve the agency's ability to evaluate device-related problems and to take prompt action against potentially dangerous devices.

FDA is directed to implement this new authority by regulation under certain provisions of the Safe Medical Devices Act of 1990 (the SMDA).

**DATES:** Written comments by June 21, 1994. The agency proposes that any final rule that may issue based on this proposal become effective 30 days after the date of publication of the final rule.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:**

John H. Samalik, Center for Devices and Radiological Health (HFZ-300), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-4595.

**SUPPLEMENTARY INFORMATION:**

## I. Statutory Authority and Legislative History

The current regulatory framework for medical devices is the result of four statutes: (1) The act (21 U.S.C. 321-394), (2) the Medical Device Amendments of 1976 (Pub. L. 94-295) (the 1976 amendments), (3) the SMDA (Pub. L. 101-629), and (4) the Medical Device Amendments of 1992 (Pub. L. 102-300) (the 1992 amendments).

The act prohibited the marketing of adulterated or misbranded devices. The 1976 amendments amended the act with new authority expressly designed to ensure the safety and effectiveness of medical devices.

The 1976 amendments gave FDA, for the first time, premarket controls over medical devices (e.g., classification, premarket notification, and premarket approval). Additionally, the 1976 amendments strengthened the act's postmarket controls relating to medical devices, giving FDA the authority to require patient notification; repair, replacement, or refund; reporting and recordkeeping; current good manufacturing practices (CGMP's); and restrictions on the distribution of certain devices.

The SMDA, by streamlining in some places and augmenting authority in others, refines the premarket and postmarket controls relating to medical devices added to the act by the 1976 amendments. Among the provisions of the SMDA that augment postmarket controls is the reports and records of corrections and removals requirement of section 519(f) of the act (21 U.S.C. 360i(f)).

Section 519(f) of the act directs FDA to promulgate regulations requiring reporting and recordkeeping of correction and removal actions taken by device manufacturers, distributors, and importers. Under section 519(f)(1) of the act, device manufacturers, distributors, and importers are to report promptly to FDA any correction or removal of a device undertaken: (1) To reduce a risk to health posed by the device; or (2) to remedy a violation of the act caused by a device which may present a risk to health. Section 519(f)(1) of the act also requires manufacturers, distributors, and importers to keep records of those corrections and removals that are not required to be reported to FDA. Section 519(f)(2) of the act provides that no report of a correction or removal action under section 519(f)(1) of the act may be required if a report of the correction or removal action is required and has been submitted to FDA under section 519(a) of the act. Section 519(f)(3) of the act states that the terms "correction" and "removal" do not include routine servicing.

Section 519(f) of the act was enacted because Congress was concerned that device manufacturers, distributors, and importers were carrying out product corrections or removals without notifying FDA, or not notifying the agency in a timely fashion. (H. Rept. 808, 101st Cong., 2d sess. 29 (1990); S. Rept. 513, 101st Cong., 2d sess. 23 (1990)). Industry's failure to report corrections and removals, particularly those undertaken to reduce risks associated with the use of a device, Congress explained, "denies the agency the opportunity to fulfill its public health responsibilities by evaluating device-related problems and the adequacy of corrective actions," (S. Rept. 513, 101st Cong., 2d sess. 23 (1990)), and "has seriously interfered with the FDA's ability to take prompt action against potentially dangerous devices," (H. Rept. 808, 101st Cong., 2d sess. 29 (1990)).

At the same time, Congress did not want to overburden industry or FDA with overreporting requirements. The reporting requirements thus apply only to the "more important postmarket actions, excluding those events already reported to the [agency]." However, to ensure that FDA has access to all relevant information on corrections or removals, for those corrections and removals that need not be reported, Congress provided that records be maintained. (S. Rept. 513, 101st Cong., 2d sess. 23 (1990)).

Section 701(a) of the act (21 U.S.C. 371(a)) authorizes FDA to promulgate substantive binding regulations for the efficient enforcement of the act. *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609 (1973); see also *Weinberger* v. *Bentex Pharmaceuticals, Inc.*, 412 U.S. 645, 653 (1973); *National Ass'n of Pharmaceutical Manufacturers* v. *FDA*, 637 F.2d 877 (2d Cir. 1981); *National Confectioners Ass'n* v. *Califano*, 569 F.2d 690 (D.C. Cir. 1978); *National Nutritional Foods Ass'n* v. *Weinberger*, 512 F.2d 688 (2d Cir.), cert. denied, 423 U.S. 827 (1975).

Section 704(a) of the act (21 U.S.C. 374(a)) provides that for purposes of enforcement of the act, any duly designated FDA employee is authorized, among other things: (1) To enter, at reasonable times, any factory, warehouse, or establishment in which devices are manufactured, processed, packed, or held, or to enter any vehicle being used to transport or hold devices, and (2) to inspect, at reasonable times and within reasonable limits and in a

reasonable manner, such factory, warehouse, establishments, or containers, and labeling therein. Section 704(e) of the act requires that any person required under section 519 of the act to maintain records and every person who is in charge or custody of such records must, upon request of an officer or employee designated by FDA, permit such officer or employee at all reasonable times to have access to, and copy and verify, such record.

## II. Scope of the Proposed Regulations

The proposed regulations implementing the provisions of section 519(f) of the act will be set out in new 21 CFR part 806. Proposed § 806.1(a) provides generally that device manufacturers, distributors, and importers are required to report promptly to FDA certain actions concerning device corrections and removals, and to maintain records of all corrections and removals regardless of whether such corrections and removals are required to be reported to FDA.

Proposed § 806.1(b) describes the actions that are not subject to the reporting and recordkeeping requirements of the regulation (set out at proposed § 806.10). Those actions are:

1. Actions undertaken by device manufacturers, distributors, and importers to improve the performance or quality of a device which are not intended to reduce a risk to health posed by the device or remedy a violation of the act caused by the device.

2. Routine servicing as defined in proposed § 806.2(i).

3. Actions similar to item 1, undertaken by manufacturers of general purpose articles, such as chemical reagents or laboratory equipment, whose uses are generally known by persons trained in their use and which are not labeled or promoted or otherwise intended for medical uses.

## III. Reports of Corrections and Removals

### *A. Who Must Report and When*

Proposed § 806.10(a) requires device manufacturers, distributors, and importers to submit a written report to FDA of any correction or removal of a device undertaken: (1) To reduce a risk to health posed by the device; or (2) to remedy a violation of the act caused by the device which may present a risk to health. Only one report is required for each reportable event. The person initiating the action to correct or remove a device is required to report. In the case of a foreign manufacturer or distributor, the U.S. designated agent is required to report. If the distributor or importer corrects or removes a product on its own, then the distributor or importer is required to report the action. Regardless of who submits the report or to which FDA district office the report is submitted, the name and location of the manufacturer must be reported.

### *B. Time and Place for Submission of Reports*

Under proposed § 806.10(b), device manufacturers, distributors, and importers must submit required correction or removal reports within 10 calendar days of initiating a device correction or removal to the appropriate FDA district office listed in § 5.115 (21 CFR 5.115) for their location and region. If the device is manufactured at multiple manufacturing sites, the report must be submitted to the FDA district office where the device is finally assembled and/or packaged. A foreign manufacturer or distributor that ships devices to the United States shall submit its own reports of corrective or removal actions through the U.S. designated agent on its behalf. The U.S. designated agent shall submit such reports to the FDA district office in which the agent's office is located.

### *C. What to Report*

Under proposed § 806.10(c), device manufacturers, distributors, and importers must include the following information in the report:

1. The name, address, and telephone number of the manufacturer or distributor, (including foreign manufacturer), and the name, title, address, and telephone number of the individual responsible for conducting the device correction or removal.

2. The brand name, common or usual name, classification name and product name if known, and the intended use of the device.

3. Marketing status of the device, i.e., any applicable premarket notification number, premarket approval number, or indicate if a preamendments device, and the device listing number. (A manufacturer or distributor that does not have an FDA establishment registration number must indicate in the report whether it has ever registered with FDA).

4. The correction or removal report number.

5. The model, catalog, or code number of the device and the manufacturing lot or serial number of the device or other identification number.

6. The manufacturer's name, address, telephone number, and contact person if different from that of the person submitting the report.

7. A complete description of the event(s) giving rise to the information reported and the corrective or removal actions that have been, and are expected to be taken.

8. Any illnesses or injuries that have occurred with use of the device. If applicable, include the medical device report numbers.

9. The total number of devices manufactured or distributed and the number in the same batch, lot, or equivalent unit of production subject to the correction or removal.

10. The date of manufacture or distribution and the device's expiration date if applicable.

11. The names, addresses, and telephone numbers of all domestic and foreign consignees of the device and the dates and number of devices distributed to each such consignee.

12. A copy of all communications regarding the correction or removal, and the names and addresses of all recipients of the communications if the number of recipients of the communications is different than number 11 above.

The agency is using the opportunity under this proposed rule to solicit comments regarding whether it would be desirable to develop a form to collect reports of removal and correction data. Interested persons should submit written comments to the Dockets Management Branch (address above). FDA will consider any comments received and will address the development and use of a form to collect reports of correction and removal data in any final rule that is published.

### *D. FDA Review of Reports*

FDA will review any correction or removal report submitted under proposed § 806.10 and where the correction or removal involves:

1. Some, but not all, of the devices of a particular lot, model, code, etc., FDA will determine whether the action should be extended to other units of the same device, other products of the same manufacturer or distributor, or to similar products of other manufacturers or distributors.

2. All of the devices of a particular lot, model, code, etc., FDA will classify the action as either one of the following: (a) Recall, if the action was undertaken to remedy a violation of the act caused by the device which may present a risk to health; or (b) safety alert, if the action was undertaken to reduce a risk to health posed by the device and not to remedy a violation of the act caused by the device.

### IV. Records of Corrections and Removals Not Required To Be Reported

Proposed § 806.20(a) would require manufacturers, distributors, and importers who undertake a correction or removal of a device that is not required to be reported to FDA under proposed § 806.10 to keep a record of such correction or removal.

Under proposed § 806.20(b), records of corrections and removals not required to be reported to FDA under proposed § 806.10 must contain the following information:

1. The brand name, common or usual name, classification name and product code if known, and the intended use of the device.

2. The model, catalog, or code number of the device and the manufacturing lot or serial number of the device or other identification number.

3. A complete description of the event giving rise to the information reported and the corrective or removal action that has been, and is expected to be, taken.

4. Justification for not reporting the correction or removal action to FDA shall contain conclusions, any followups, and be reviewed and evaluated by a designated person.

5. A copy of all communications regarding the correction or removal.

Under proposed § 806.20(c), manufacturers, distributors, and importers must retain all records required under proposed § 806.20 for a period of 2 years beyond the expected life of the device, even if the manufacturer or distributor has ceased to manufacture or distribute the device. Records required to be maintained under § 806.20(c) must be transferred to the new owner of the device and maintained for the required period of time.

### V. FDA Access to Records and Reports

Under proposed § 806.30, manufacturers, distributors, and importers required to maintain records concerning corrections or removals and every person who is in charge or custody of such records must, upon request of an officer or employee designated by FDA and pursuant to section 704(e) of the act, permit such officer or employee at all reasonable times to have access to, and to copy and verify, such records and reports.

### VI. Public Availability of Reports

Proposed § 806.40 makes clear that any device correction or removal report submitted to FDA is available for public disclosure in accordance with the agency's public information regulations at part 20 (21 CFR part 20).

Before public disclosure of a report, FDA will delete the following from the report in accordance with part 20: (1) Any information that constitutes trade secret or confidential commercial or financial information under § 20.61; and (2) any personnel, medical, and similar information, including the serial numbers of implanted devices, which would constitute a clearly unwarranted invasion of personal privacy under § 20.63; provided, that except for the information under § 20.61, FDA will disclose to a patient who requests a report all the information in the report concerning that patient.

### VII. Enforcement

Section 301 of the act (21 U.S.C. 331) sets forth prohibited acts. Persons who violate section 301 of the act may be restrained, under section 302 of the act (21 U.S.C. 332), or may be imprisoned or fined under section 303 of the act (21 U.S.C. 333).

Violations of any final rule based on this proposed rule, which is issued under the authority of sections 502, 510, 519, 520, 701, and 704 of the act (21 U.S.C. 352, 360, 360i, 360j, 371, and 374), will result in committing one or more of the following violations of section 301 of the act:

1. Section 301(e) of the act, which prohibits, among other things, the failure to establish or maintain any record, or make any report, required under section 519 of the act or the refusal to permit officers or employees designated by FDA to have access to or verification or copying of any such required record.

2. Section 301(f) of the act prohibits the refusal to permit entry or inspection as authorized by section 704 of the act. Section 704(e) of the act requires every person required under section 519 of the act to maintain records and every person who is in charge or custody of such records, upon request of an officer or employee designated by FDA, to permit such officer or employee to have access to, and copy and verify, such records.

3. Section 301(q) of the act prohibits, among other things, the failure or refusal to furnish any material or information required by or under section 519 of the act.

In addition, section 502(t)(2) of the act deems a device to be misbranded if there is a failure or refusal to furnish any material or information required by or under section 519 of the act respecting the device. Sections 301 (a), (b), (c), (g), and (k) of the act prohibit several actions with respect to interstate commerce in misbranded devices. FDA may also seize misbranded devices under section 304 of the act (21 U.S.C. 334) as well as restrain or prosecute violations of section 301 of the act relating to misbranded devices.

In addition to the criminal and civil enforcement mechanisms described above, the SMDA added section 303(f) to the act, which provides for the first time that any person who fails to demonstrate substantial compliance with section 519(f) of the act may be subject to civil penalties. These penalties do not apply to any person who commits minor violations of section 519(f) (only with respect to correction reports) if such person demonstrates substantial compliance with section 519(f). A civil penalty may not exceed $15,000 for a single violation, and may not exceed $1,000,000 for all such violations adjudicated in a single proceeding.

### VIII. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### IX. Economic Impact

FDA has carefully examined the costs and benefits of this proposed rule in accordance with the requirements of Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). The agency concludes that this proposed rule is not a significant regulatory action as defined in Executive Order 12866. Further, the agency certifies that the proposed rule, if implemented, will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. The agency estimates that it will receive no more than 800 reports per year from device manufacturers regarding removals and corrections. For the estimated 800 reports the total cost would be $240,000. In addition, the agency expects that there will be other instances of corrections and removals that will not have to be reported to the agency, but will have to be maintained in files at the manufacturer's site. These records are to be made available to FDA inspectors upon request. The cost of preparing these records would be $120,000 per year. An assessment of the economic impact of any final rule based on this proposal has been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

## X. Paperwork Reduction Act

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Title:* "Reports of Corrections and Removals" for manufacturers, importers, and distributors of medical devices under Public Law 101–629—General Requirements.

*Description:* FDA is proposing to implement provisions of the SMDA that require a manufacturer, importer, or distributor of a device to report promptly to FDA any correction or removal of a device undertaken by a manufacturer, importer, or distributor of a device if the correction or removal was undertaken to reduce a risk to health posed by the device or to remedy a violation of the act caused by the device which may present a risk to health. The purpose of the proposed changes is to improve the protection of the public health by assuring that FDA has current and complete information regarding those actions taken to eliminate any risk to health caused by the device.

*Estimated Annual Reporting Burden*

| | |
|---|---|
| Section 806.10: | |
| Annual Number of Responses | 800 |
| Average Burden per Response (hours) | 10 |
| Total Annual Burden (hours) | 8,000 |
| Section 806.20: | |
| Annual Number of Responses | 400 |
| Average Burden per Response (hours) | 10 |
| Total Annual Burden (hours) | 4,000 |

As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to OMB for its review of these information collection requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspects of these information collection requirements, including suggestions for reducing the burden, should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

## XI. Request for Comments

Interested persons may, on or before June 21, 1994, 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 in the office above between 9 a.m. and 4 p.m., Monday through Friday.

## List of Subjects in 21 CFR Part 806

Corrections and removals, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 806 be added to read as follows:

# PART 806—MEDICAL DEVICE CORRECTIONS AND REMOVALS

### Subpart A—General Provisions

Sec.

806.1 Scope.
806.2 Definitions.

### Subpart B—Reports and Records

806.10 Reports of corrections and removals.
806.20 Records of corrections and removals not required to be reported.
806.30 FDA access to records.
806.40 Public availability of reports.

**Authority:** Secs. 502, 510, 518, 519, 520, 701, 704, and 705 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360h, 360i, 360j, 371, 374, 375).

## Subpart A—General Provisions

### § 806.1 Scope.

(a) The regulations in this part implement section 519(f) of the Federal Food, Drug, and Cosmetic Act (the act) which requires device manufacturers, distributors, and importers to report promptly to the Food and Drug Administration (FDA) certain actions concerning device corrections and removals, and to maintain records of all corrections and removals regardless of whether such corrections and removals are required to be reported to FDA.

(b) The following actions are exempt from the reporting requirements of this part:

(1) Actions undertaken by device manufacturers, distributors, and importers to improve the performance or quality of a device which are not intended to reduce a risk to health posed by the device or remedy a violation of the act caused by the device.

(2) Routine servicing as defined in § 806.2(i).

(3) Actions similar to paragraph (b)(1) of this section, undertaken by manufacturers of general purpose articles, such as chemical reagents or laboratory equipment whose uses are generally known by persons trained in their use and which are not labeled or promoted or otherwise intended for medical use.

(c) The failure of a manufacturer, distributor, or importer or any person to comply with any applicable requirement of this part renders the device misbranded within the meaning of section 502(t) of the act and further constitutes a prohibited act within the meaning of section 301(q)(1)(B) of the act.

### § 806.2 Definitions.

The following terms and definitions apply to this part:

(a) *Act* means the Federal Food, Drug, and Cosmetic Act.

(b) *Agency* or *FDA* means the Food and Drug Administration.

(c) *Consignee* means any person who received, purchased, or used the device subject to this part.

(d) *Correction* means the repair, modification, adjustment, relabeling, or inspection of a device without its physical removal from its point of use to another location.

(e) *Distributor* means any person, including any person who imports a device into the United States, who furthers the marketing or distribution of a device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user, but who does not repackage or otherwise change the container, wrapper, or labeling of the device or device package.

(f) *Manufacturer* means any person who manufactures, prepares, propagates, compounds, assembles, or processes a device by chemical, physical, biological, or other procedures. The term includes any person who:

(1) Repackages or otherwise changes the container, wrapper, or labeling of a device in furtherance of the distribution of the device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user or consumer;

(2) Initiates specifications for devices that are manufactured by a second party for subsequent distribution by the person initiating the specifications; or

(3) Manufactures components or accessories which are devices that are

ready to be used and are intended to be commercially distributed and are intended to be used as is, or are processed by a licensed practitioner or other qualified person to meet the needs of a particular patient.

(g) *Removal* means the physical removal of a device from the point of use to some other location for repair, modification, adjustment, relabeling, destruction, inspection, or replacement.

(h) *Risk to health* means that the risk of harm to a person for whom a device is intended exists, and the harm is not trivial. This risk to health may result from a fault or defect in the device, deficient labeling, or error in the use of the device.

(i) *Routine servicing* means any regularly scheduled maintenance of a device, including the replacement of parts at the end of their normal life expectancy, e.g., calibration, replacement of batteries, and responses to normal wear and tear. Repairs of an unexpected nature, replacement of parts earlier than their normal life expectancy, or identical repairs or replacements of multiple units of a device are not routine servicing.

(j) *U.S. designated agent* means the person designated by the owner or operator of a foreign establishment responsible for the annual certification of the number of medical device reports (MDR's) submitted.

(k) *Correction or removal report number* means the number that uniquely identifies each report submitted. Manufacturers, importers, or distributors shall use their seven digit registration number, the calendar year that the report is made, a sequence number, and the report type designation "C" or "R"; for example, the complete number will appear as follows: 1234567–1993–001–C for correction, or 1234567–1993–001–R for removal.

## Subpart B—Reports and Records

### § 806.10 Reports of corrections and removals.

(a) Each device manufacturer or distributor shall submit a written report to FDA of any correction or removal of a device undertaken by such manufacturer or distributor if the correction or removal was undertaken:

(1) To reduce a risk to health posed by the device; or,

(2) To remedy a violation of the act caused by the device which may present a risk to health.

(b) The manufacturer or distributor shall submit any report required by paragraph (a) of this section within 10 calendar days of initiating such correction or removal. The report shall be submitted to the appropriate FDA district office listed in § 5.115 of this chapter. A foreign manufacturer or distributor that ships devices to the United States shall submit its own reports of corrective or removal actions through the U.S. designated agent on its behalf. The U.S. designated agent shall submit such reports to the district office in which the agent's office is located.

(c) The manufacturer or distributor shall include the following information in the report:

(1) The name, address, and telephone number of the manufacturer or distributor, (including foreign manufacturer), and the name, title, address, and telephone number of the manufacturer's or distributor's representative responsible for conducting the device correction or removal.

(2) The brand name and the common name, classification name, or usual name of the device and the intended use of the device.

(3) Marketing status of the device, i.e., any applicable premarket notification number, premarket approval number, or indicate if a preamendments device, and the device listing number. (A manufacturer or distributor that does not have an FDA establishment registration number must indicate in the report whether it has ever registered with FDA).

(4) The correction or removal report number.

(5) The model, catalog, or code number of the device and the manufacturing lot or serial number of the device or other identification number.

(6) The manufacturer's name, address, telephone number, and contact person if different from that of the person submitting the report.

(7) A complete description of the event(s) giving rise to the information reported and the corrective or removal actions that have been, and are expected to be, taken.

(8) Any illnesses or injuries that have occurred with use of the device. If applicable, include the medical device report numbers.

(9) The total number of devices manufactured or distributed and the number in the same batch, lot, or equivalent unit of production subject to the correction or removal.

(10) The date of manufacture or distribution and the device's expiration date if applicable.

(11) The names, addresses, and telephone numbers of all domestic and foreign consignees of the device and the dates and number of devices distributed to each such consignee.

(12) A copy of all communications regarding the correction or removal, and the names and addresses of all recipients of the communications if the number of recipients of the communications is different than paragraph (c)(11) of this section.

### § 806.20 Records of corrections and removals not required to be reported.

(a) Each device manufacturer or distributor who undertakes a correction or removal of a device that is not required to be reported to FDA under § 806.10 shall keep a record of such correction or removal.

(b) Records of corrections and removals not required to be reported to FDA under § 806.10 shall contain the following information:

(1) The brand name, common or usual name, classification name and product code if known, and the intended use of the device.

(2) The model, catalog, or code number of the device and the manufacturing lot or serial number of the device or other identification number.

(3) A complete description of the event giving rise to the information reported and the corrective or removal action that has been, and is expected to be taken.

(4) Justification for not reporting the correction or removal action to FDA shall contain conclusions, any followups, and be reviewed and evaluated by a designated person.

(5) A copy of all communications regarding the correction or removal.

(c) The manufacturer or distributor shall retain all records required to be retained under this section for a period of 2 years beyond the expected life of the device, even if the manufacturer or distributor has ceased to manufacture, import, or distribute the device. Records required to be maintained under paragraph (c) of this section must be transferred to the new owner of the device and maintained for the required period of time.

### § 806.30 FDA access to records.

Each device manufacturer or distributor required under this part to maintain records concerning corrections or removals and every person who is in charge or custody of such records shall, upon request of an officer or employee designated by FDA and pursuant to section 704(e) of the act, permit such officer or employee at all reasonable times to have access to, and to copy and verify, such records and reports.

**§ 806.40 Public availability of reports.**

(a) Any report submitted under this part is available for public disclosure in accordance with part 20 of this chapter.

(b) Before public disclosure of a report, FDA will delete from the report:

(1) Any information that constitutes trade secret or confidential commercial or financial information under § 20.61 of this chapter; and

(2) Any personnel, medical, and similar information, including the serial numbers of implanted devices, which would constitute a clearly unwarranted invasion of personal privacy under § 20.63 of this chapter; provided, that except for the information under § 20.61 of this chapter, FDA will disclose to a patient who requests a report all of the information in the report concerning that patient.

Dated: March 17, 1994.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 94–6691 Filed 3–22–94; 8:45 am]

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federal register

Wednesday
March 23, 1994

Part VI

# Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC41

## Endangered and Threatened Wildlife and Plants; Reclassification of the Sacramento River Winter-Run Chinook Salmon From Threatened to Endangered Status

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service is reclassifying the Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*) from threatened to endangered status. This measure, required by the Endangered Species Act of 1973 (Act), reflects a final determination of endangered status by the National Marine Fisheries Service, which has jurisdiction for the Sacramento River winter-run chinook salmon.

EFFECTIVE DATE: March 23, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Jamie Rappaport Clark, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop 452, Arlington, Virginia 22203 (703/358–2171).

SUPPLEMENTARY INFORMATION: Under the Endangered Species Act (16 U.S.C. 1531 et seq.), and in accordance with Reorganization Plan No. 4 of 1970, the National Marine Fisheries Services (NMFS), National Oceanic and Atmospheric Administration, Department of Commerce, is responsible for the Sacramento River winter-run chinook salmon. Under section 4(a)(2)(A) of the Act, NMFS must decide whether a species under its jurisdiction should be changed in status from a threatened species to an endangered species. The Fish and Wildlife Service (FWS) is responsible for the actual addition of a species to the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h).

NMFS published its determination of endangered status for the Sacramento River winter-run chinook salmon on January 4, 1994 (59 FR 440). Accordingly, the FWS is revising the status of the Sacramento River winter-run chinook salmon from threatened to endangered on the List of Endangered and Threatened Wildlife. Because this action of the FWS is nondiscretionary, and in view of the public comment period provided by NMFS on the proposed reclassification (June 19, 1992; 57 FR 27416), the FWS finds that good cause exists to omit the notice and public comment procedures of 5 U.S.C. 553(b) and to make this action effective on March 23, 1994.

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, and Transportation.

### Regulation Promulgation

Accordingly, part 17, subchapter B of chapter 1, title 50 of the Code of Federal Regulations, is amended as set forth below:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

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

### § 17.11 [Amended]

2. Section 17.11(h) is amended by revising the entry under FISHES for "Salmon, chinook" for the vertebrate population that reads "Sacramento R. (U.S.A.—CA) winter run, wherever found" to read "E" under "Status" and to read "383E, 407, 534" under "When listed."

Dated: February 28, 1994.

**Mollie H. Beattie,**

*Director, Fish and Wildlife Service.*

[FR Doc. 94–6789 Filed 3–22–94; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 17

RIN 1018–AB66

## Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plant Ipomopsis Sancti-Spiritus (Holy Ghost Ipomopsis)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the plant *Ipomopsis sancti-spiritus* (Holy Ghost ipomopsis) is an endangered species, under the authority of the Endangered Species Act of 1973 (Act), as amended. This species occurs at a single location in the Sangre de Cristo Mountains, San Miguel County, New Mexico. Its survival is threatened by limited distribution, low plant numbers, the proximity of development, and intensity of human activity in the area. Potential threats include road maintenance, chemical herbicide and pesticide use, biological pest controls, and any natural or manmade factors that would reduce the already low numbers or significantly alter the habitat. This action will implement Federal protection provided by the Act for Holy Ghost ipomopsis. Critical habitat is not being designated.

EFFECTIVE DATE: April 22, 1994.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, 3530 Pan American Highway NE., suite D, Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Philip Clayton, at the above address (505/883–7877).

SUPPLEMENTARY INFORMATION:

### Background

*Ipomopsis sancti-spiritus* (Holy Ghost ipomopsis) is an erect, biennial to short-lived perennial plant, known only from the Sangre de Cristo Mountains of San Miguel County, in north central New Mexico. It was first collected by Dr. Edward F. Castetter in 1929. Mr. Reggie Fletcher, U.S.D.A. Forest Service, collected the species in 1977. Wilken and Fletcher (1988) later described the plant as a species distinct from the closely related *Ipomopsis aggregata*.

The Holy Ghost ipomopsis is a member of the phlox family (Polemoniaceae). It is 30–80 centimeters (cm) (12–31 inches (in)) tall, with mostly solitary stems, occasionally branched from the base. The leaves are oval in outline, 3–6 cm (1–2.4 in) long, with 9–15 linear divisions. The basal leaves form a loose to compact rosette that dies back at flowering. The leaves are gradually reduced in size up the length of the stem. The flowers are tubular, pink, and about 2–2.5 cm (0.8–1 in) long. The stamens do not extend beyond the corolla tube.

The Holy Ghost ipomopsis occurs at an elevation of approximately 2,440 meters (m) (8,000 feet (ft)). The species is found only in a 3.2-kilometer (km) (2-

mile (mi)) segment of a canyon in the Sangre de Cristo Mountains. The plants are restricted to steep, south- or southwest-facing slopes, primarily in openings under ponderosa pine (*Pinus ponderosa*), Douglas fir (*Pseudotsuga menziesii*), Gambel oak (*Quercus gambellii*), and quaking aspen (*Populus tremuloides*). The substrate is a sandy to pebbly limestone conglomerate derived from the Terrero and Espritu Santo formations (Wilken and Fletcher 1988).

The plant grows in small openings or clearings on the forested slopes, and it is likely that fire may have played a role in the past in maintaining open habitat for this species. Plants have colonized the cut-and-fill slopes of a Forest Service road, indicating some preference for open, disturbed areas. The entire population of the Holy Ghost ipomopsis consists of approximately 1,200–2,500 plants, located on Forest Service and private lands within the boundaries of the Santa Fe National Forest. Approximately 80 percent of the population occupies the cut-and-fill slopes along a Forest Service road; the remaining 20 percent of the population occurs on the natural dry and open habitat higher up on the canyon slopes.

Most of the occupied habitat is along a Forest Service road that provides access to summer homes and Forest Service campgrounds. In this location, the plants and their habitat are vulnerable to harm from road maintenance, wildfire, fire management, and possible pesticide spraying. Surveys conducted by Forest Service personnel and New Mexico Energy, Minerals and Natural Resources Department botanists within a 24-km (15-mi) radius of the known population have failed to locate any additional populations of the species (Sivinski and Lightfoot 1991).

The Holy Ghost ipomopsis was included as a Category 2 candidate species in a February 21, 1990, notice of plants under review for classification as threatened or endangered species (55 FR 6184). Category 2 includes those taxa for which available information indicates that proposing to list them as endangered or threatened may be appropriate, but for which there are insufficient data to support listing proposals at this time. A status report was completed on the Holy Ghost ipomopsis in 1991 (Sivinski and Lightfoot 1991). This report, along with other available data, provided sufficient biological information to justify proposing to list the Holy Ghost ipomopsis as endangered. On September 22, 1992, the Service published in the **Federal Register** a proposed rule to list this species as endangered (57 FR 43682). A notice of public hearing and reopening of the comment period was published in the **Federal Register** (58 FR 4144) on January 13, 1993, and a public hearing was held on January 27, 1993.

**Summary of Comments and Recommendations**

In the September 22, 1992, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final action on this species. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was published in the Santa Fe New Mexican on September 30, 1992. The public comment period was reopened and extended until February 23, 1993, in order to accommodate a request for a public hearing. Newspaper notices announcing the public hearing and extending the comment period were published in the Las Vegas Daily Optic on December 23, 1992, and in the Santa Fe New Mexican on January 1, 1993.

A total of 11 written comments were received within the proposed rule comment period. One Federal agency and one State agency supported the proposal. Of the four individuals who commented on the proposal, three supported it and one opposed it. Five private organizations commented on the proposal; three supported it, one opposed it, and one was neutral.

A public hearing was requested by Mr. Bert Turner, President of the Mora/San Juan County Farm and Livestock Bureau, Wagon Mound, New Mexico. The hearing was held at the Public Employees Retirement Association Building, Santa Fe, New Mexico, on January 27, 1993, with 21 people attending. Nine oral comments were presented at the hearing. One comment was supportive, three were in opposition, and five were neutral.

Written comments received during the comment period and oral statements presented at the public hearing are covered in the following summary. Comments of a similar nature or point are grouped into a number of general issues. These issues, and the Service's response to each, are discussed below.

*Issue 1:* Why was the public hearing held in the middle of winter rather than in the summer, when more of the nonresident owners of the summer homes could attend and people could see the plant?

*Response:* The Act requires that a public hearing be held promptly if requested within 45 days after the date of publication of the proposed rule. The Service received a public hearing request on October 21, 1992, and scheduled the hearing for January 27, 1993. A delay would have violated the requirement to hold the hearing promptly and would have made it difficult to prepare a final action on the proposed rule within the 1-year deadline mandated by the Act.

*Issue 2:* Why wasn't the public hearing held in Pecos, New Mexico, instead of Santa Fe, New Mexico?

*Response:* Service policy dictates that, if requested, a public hearing will be held within the general area in which the species occurs. Santa Fe was thought to be the most convenient location for the public hearing.

*Issue 3:* Why were the homeowners' association and adjacent landowners not notified about the upcoming public hearing?

*Response:* The Act requires notification of various parties at certain stages in the rulemaking process. The Service attempts to notify all interested parties of all notices and rules and to solicit data and comments when appropriate. Notification is provided and comments solicited by correspondence, public hearings (if requested), newspaper notices, press releases, and **Federal Register** notices. Newspaper notices were published in the Las Vegas Daily Optic on December 23, 1992, and in the Santa Fe New Mexican on January 1, 1993. Both are newspapers of general circulation within the vicinity of Pecos, New Mexico. A notice of the upcoming hearing was also published in the **Federal Register** on January 13, 1993 (58 FR 4144).

In cases where numerous landowners are involved, the Service attempts to contact the major owners. The Santa Fe National Forest, which contains most of the known Holy Ghost ipomopsis plants, was notified of the public hearing. Several individuals in the local area were notified in writing of the public hearing. The former president of the homeowners' association was advised by telephone on November 30, 1992, and was later sent a letter (January 13, 1993), notifying him of the proposed listing and upcoming hearing.

*Issue 4:* Is Holy Ghost ipomopsis a distinct species?

*Response:* The senior author of the paper describing Holy Ghost ipomopsis as a species is a leading authority on the phlox family (Polemoniaceae), of which Holy Ghost ipomopsis is a member. The paper (Wilken and Fletcher 1988) was published in a peer-reviewed journal and met the general professional

requirements for naming new species. The paper has been reviewed by Service botanists and others who find no reason to doubt Wilken and Fletcher's findings. Also, Wolf et al. (1991), using electrophoretic enzyme analysis, confirmed that Holy Ghost ipomopsis is a distinct species.

*Issue 5:* Does unique flower coloration make Holy Ghost ipomopsis a distinct species?

*Response:* This species is unique among plants of the genus *Ipomopsis* in having pink-purple flowers, but even more significant are the anatomical differences. The flower's ovary and stigma are shorter in Holy Ghost ipomopsis than in any other species in the genus.

*Issue 6:* Were enough field surveys conducted to determine that Holy Ghost ipomopsis has a very restricted distribution?

*Response:* Wilken and Fletcher (1988) surveyed within a 24-km (15-mi) radius of the known locality for this species in July 1986, but failed to locate additional plants. Dr. Wilken visited the area and adjacent areas at least three times in 1987, 1989, and 1990, but failed to locate additional plants in similar habitats in either the Pecos River drainage or adjoining drainages in eastern Santa Fe County, southeastern Taos County, or western San Miguel County (Dieter Wilken, Colorado State University, *in litt.*, 1992). He also conducted an exhaustive search of U.S. herbaria and failed to locate any additional collections of this species. The State of New Mexico (Sivinski 1991) also surveyed for Holy Ghost ipomopsis but failed to find additional plants. The Service believes sufficient searches have been made to confirm that Holy Ghost ipomopsis is a very rare species. However, the Service also believes that other natural populations may be found and will likely recommend additional searches as part of the recovery program for the species.

*Issue 7:* Two other possible populations of Holy Ghost ipomopsis were mentioned at the public hearing, one between Glorieta and Pecos, New Mexico, and one near the Grand Canyon in Arizona.

*Response:* The Service relies on the best available biological information when determining to propose or list a species as endangered or threatened. No reference to either of these populations was available in the literature or through contacts with botanists who are familiar with the species. The State of New Mexico surveyed between Glorieta and Pecos during the summer of 1993, but no Holy Ghost ipomopsis was found (Robert Sivinski, New Mexico Energy, Minerals and Natural Resources Department, pers. comm., 1993). There is no way to verify the location or the identity of the plant from the Grand Canyon. However, Arizona has been botanically explored for at least 100 years, and if Holy Ghost ipomopsis did occur there, it is likely that a specimen would have been collected, deposited in a herbarium, and then noted during Dr. Wilken's examination of herbarium specimens.

*Issue 8:* Is *Bacillus thuringiensis* (BT) a threat to Holy Ghost ipomopsis?

*Response:* The biological pest control BT is commonly used for outbreaks of spruce budworm. Both the U.S. Forest Service and the State of New Mexico (Forestry and Resources Conservation Division of the Energy, Minerals and Natural Resources Department) have used BT to control spruce budworm in New Mexico. Because of the anatomical characteristics of its flowers, Holy Ghost ipomopsis is thought to be pollinated by various moths and butterflies, which are highly susceptible to BT. Elimination of these pollinators could reduce seed production and seedling recruitment, and contribute to a decline in the population and range of Holy Ghost ipomopsis.

*Issue 9:* The Forest Service's use of BT, a biological pest control, was listed as a primary threat to Holy Ghost ipomopsis in the proposed rule, yet no such activities have taken place on the Santa Fe National Forest for over 25 years.

*Response:* One commenter stated that the area was sprayed with BT in the 1980's. Although the Forest Service has no current plans to use BT, the potential to destroy the lepidopteran pollinators for Holy Ghost ipomopsis still exists. The State of New Mexico has also been involved in spraying BT for control of spruce budworm infestation on private property in New Mexico.

*Issue 10:* How will the listing of Holy Ghost ipomopsis restrict recreation, wilderness and campground access, or existing cabin leases in the area?

*Response:* The Service believes that listing will have little, if any, impact on recreation, wilderness and campground access, and cabin leases. The Service will work with the Forest Service to minimize possible adverse impacts to the species from human activities in Holy Ghost ipomopsis habitat.

*Issue 11:* Listing the Holy Ghost ipomopsis will not provide any more protection for this species than it already receives under Forest Service management.

*Response:* Holy Ghost ipomopsis is currently protected under the State of New Mexico Endangered Plant Species Act (75–6–1 NMSA) and is on the U.S. Forest Service's Sensitive Species List. Even so, it does not have the same degree of protection and management as a federally listed species. Listing under the Endangered Species Act promotes recovery through the development and implementation of a recovery plan, provides additional management opportunities by drawing attention to the species and its habitat requirements, creates the requirement for interagency consultation through the section 7 process, and makes it illegal, with possibly severe penalties, to maliciously damage, destroy, or remove and possess plants from lands under Federal jurisdiction.

*Issue 12:* A commercial nursery has Holy Ghost ipomopsis under cultivation.

*Response:* Apparently, propagation material was obtained several years ago by a commercial grower of native plants. Nursery propagation of this material could provide a commercial source for Holy Ghost ipomopsis plants, and thus help conserve this species by discouraging the collection or digging of plants from wild populations. Propagation knowledge gained by the commercial grower may be of considerable value in establishing a refugial population or in reestablishing populations in natural habitat within the species' historic range.

*Issue 13:* Critical habitat should be designated and an economic analysis should be done. Although critical habitat was not proposed for Holy Ghost ipomopsis because of a perceived threat from overcollection that could be worsened by publication of critical habitat locality maps, this species can be located from available information.

*Response:* Overcollection of plants with unusual coloration or showy flowers is a real threat. Horticulturists and rare plant enthusiasts are constantly looking for new plants for commercial use. Locality information for this species is available in the scientific literature; however, the Service does not wish to attract additional or undue attention to the exact location of Holy Ghost ipomopsis populations by publication of maps in the Federal Register. An analysis of economic impacts is required for critical habitat designation, but cannot be considered for the species' listing itself. Nor can a decision not to list a species be based on economic considerations. A decision not to list a species or to delist a species can only be made if the Service determines, based on the best scientific and commercial information available, that listing is not warranted. Because the Service has determined that critical

habitat designation is not prudent, no economic analysis is required.

**Summary of Factors Affecting the Species**

After a thorough review and consideration of all information available, the Service has determined that Holy Ghost ipomopsis should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Ipomopsis sancti-spiritus* Wilken and Fletcher (Holy Ghost ipomopsis) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Holy Ghost ipomopsis occurs in an area that has been heavily used for recreation for at least the last 50 years. This use includes approximately 36 recreation cabins and a Forest Service campground. A nearby trout stream receives significant use by anglers. These high-use recreational values have been protected by the almost complete exclusion of timber harvests and forest fires. As the forest has become more mature and natural openings less numerous, the majority of the known population of the Holy Ghost ipomopsis has become associated with the manmade disturbance associated with the Forest Service road.

Road maintenance poses a potential threat to the species. An example is a nearby Forest Service road that was graveled using crushed waste rock from an abandoned mine. The sulfides in this mine waste created highly acid road runoff that killed the surrounding vegetation. If this or other toxic materials were used for the Forest Service road occupied by Holy Ghost ipomopsis, those portions of occupied habitat would no longer be suitable for the species. Although Forest Service roads in the area are not presently sprayed with herbicides, this type of weed control could be a future maintenance threat. The Forest Service road occupied by Holy Ghost ipomopsis was straightened and paved in 1989. The 111 plants that would have been destroyed by the activity were moved in mid-June of that year to similar habitat at Elk Mountain. None of the transplants survived.

The control of spruce budworm is a potential threat to pollinators of Holy Ghost ipomopsis. The spruce budworm is a moth larva that can defoliate large areas of spruce and Douglas fir. When infestations occur in residential areas, the State of New Mexico receives numerous requests for large area aerial broadcast of *Bacillus thuringiensis* as a pesticide. This pesticide kills not only the spruce budworm moth, but all other lepidopterans including those that serve as pollinators for the Holy Ghost ipomopsis. If this treatment were repeated for more than one year, it might have a serious impact on seed production and population recruitment for this short-lived species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No economic uses for the Holy Ghost ipomopsis are known. However, the low population numbers make the species vulnerable to harm from both scientific and non-scientific collecting. The species produces a very attractive flower, which may make the plants more likely to be picked by visitors to the canyon. If the plants become well known, there may be interest in propagating the species for commercial purposes.

C. *Disease or predation.* No significant disease or predation has been observed for this species.

D. *The inadequacy of existing regulatory mechanisms.* There is no Federal law that protects the Holy Ghost ipomopsis. The plant is protected by the New Mexico Endangered Plant Species Act. Any person wishing to collect a species listed under this Act for the purposes of scientific investigation, documenting a new population, or transplanting must first obtain a permit from the New Mexico Energy, Minerals and Natural Resources Department. The Forest Service has included the Holy Ghost ipomopsis on its Sensitive Plant Species List. The species is considered in Forest Service environmental assessments and planning. The Endangered Species Act would provide additional protection for this species through section 7 (interagency cooperation) requirements and through section 9, which prohibits malicious damage, destruction, or removal and reduction to possession of plants occurring on lands under Federal jurisdiction.

E. *Other natural or manmade factors affecting its continued existence.* Low numbers and limited distribution make this species vulnerable to extinction from natural and manmade threats. Reduction in plant numbers could reduce the reproductive capabilities and genetic potential of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list Holy Ghost ipomopsis as endangered without critical habitat. This status is appropriate because of the species' limited distribution, low population numbers, proximity of human development, and intensity of human use of the area. Potential threats include road maintenance, habitat alteration, pesticide application, and fire suppression. Critical habitat is not being designated for the reasons discussed below.

**Critical Habitat**

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. Pursuant to 50 CFR 424.12(a)(1), a designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. As discussed under Factor B in the "Summary of Factors Affecting the Species," Holy Ghost ipomopsis is threatened by taking, an activity that is difficult to prevent and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any state law or regulation, including state criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make Holy Ghost ipomopsis more vulnerable and increase enforcement problems. All involved parties and principal landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through section 7 consultation. Therefore, it would not now be prudent to determine critical habitat for Holy Ghost ipomopsis.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or

threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Possible future Federal actions that could affect Holy Ghost ipomopsis on the Santa Fe National Forest include road construction and maintenance, aerial spraying of *Bacillus thuringiensis* to control spruce budworm infestations, and fire suppression within the habitat area.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the Act prohibits the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few trade permits would ever be sought or issued because Holy Ghost ipomopsis is not common in cultivation or in the wild. However, because of its beautiful and uniquely colored flowers, local demands for garden cultivation may increase as the species becomes better known. Requests for copies of the regulations on listed species and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 420C, 4401 N. Fairfax Drive, Arlington, Virginia 22203 (703/541–2104; FAX 703/358–2281).

### National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### References Cited

Sivinski, R., and K. Lightfoot. 1991. Status report on *Ipomopsis sancti-spiritus*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 17 pp.

Wilken, D.H., and R. Fletcher. 1988. *Ipomopsis sancti-spiritus* (Polemoniaceae), a new species from northern New Mexico. Brittonia 40(1):48–51.

Wolf, P.G., P.S. Soltis, and D.E. Soltis. 1991 Genetic relationships and patterns of allozymic divergence in the *Ipomopsis aggregata* complex and related species (Polemoniaceae). American Journal of Botany 78(4):515–526.

### Author

The primary author of this final rule is Philip Clayton (see **ADDRESSES** section).

### List of Subjects in 50 CFR Part 17

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

### Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

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

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Polemoniaceae, to the List of Endangered and Threatened Plants to read as follows:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | Historic range | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | |
| Polemoniaceae—Phlox family: | | | | | | |
| * | * | * | * | * | * | * |
| *Ipomopsis sancti-spiritus.* | Holy Ghost ipomopsis | U.S.A. (NM) | E | 535 | NA | NA |
| * | * | * | * | * | * | * |

Dated: March 7, 1994.

**Mollie H. Beattie,**

*Director, Fish and Wildlife Service.*

[FR Doc. 94–6790 Filed 3–22–94; 8:45 am]

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March 23, 1994

Part VII

# Office of Personnel Management

5 CFR Part 591

Cost-of-Living Allowances (Nonforeign Areas); Final Rule

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 591

RIN 3206–AF52

### Cost-of-Living Allowances (Nonforeign Areas)

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations to increase certain cost-of-living allowance (COLA) rates paid to General Schedule, U.S. Postal Service, and certain other Federal employees in Guam and the Commonwealth of the Northern Mariana Islands; the City and County of Honolulu, Hawaii; and St. Thomas and St. John, Virgin Islands. The increases are based on living cost surveys conducted by Runzheimer International, under contract with OPM, during the summer of 1992 and winter of 1993.

**EFFECTIVE DATES:** These regulations are effective March 23, 1994, and are applicable on the first day of the first pay period beginning on or after March 23, 1994.

**FOR FURTHER INFORMATION CONTACT:** Allan G. Hearne, (202) 606–2838.

**SUPPLEMENTARY INFORMATION:** Under section 5941 of title 5, United States Code, certain Federal employees in nonforeign areas outside the 48 contiguous States are eligible for cost-of-living allowances (COLAs) when local living costs are substantially higher than those in Washington, DC. Currently, nonforeign area COLAs are paid in the following locations: Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, and Guam and the Commonwealth of the Northern Mariana Islands.

OPM contracted with Runzheimer International to conduct living cost surveys in the allowance areas in 1992 and 1993. All allowance areas, except those in Alaska, were surveyed in the summer of 1992. Alaska was surveyed during the winter of 1993.

The surveys showed that adjustments in various COLA rates were warranted. This included increases of three COLA rates in three allowance areas and reductions of eight COLA rates in six allowance areas. However, a provision in the Treasury, Postal Service, and General Government Appropriations Act of 1992 (Public Law 102–141) bars OPM from reducing any COLA rate through December 31, 1995. Therefore, only the COLA rate increases will be implemented.

The increases implemented by this rulemaking are summarized in the following table:

INCREASES IN COLA RATES

| Allowance area/category | Current rate | Final rate |
|---|---|---|
| City and County of Honolulu, Hawaii | | |
| Commissary/Exchange | 15.0 | 17.5 |
| Territory of Guam and Commonwealth of the Northern Mariana Islands: | | |
| Local Retail | 15.0 | 22.5 |
| Commissary/Exchange | 7.5 | 17.5 |
| St. Thomas and St. John, Virgin Islands | | |
| all employees | 15.0 | 17.5 |

On August 30, 1993, OPM published proposed regulations (58 FR 45556) that would effect the above increases in COLA rates. On the same day, OPM published a notice (58 FR 45558) that included Runzheimer's "Report to OPM on Living Costs in Selected Nonforeign Areas and in the Washington, DC Area, May 1993." In response to the proposed regulations and notice, OPM received comments from nearly 250 persons. An analysis of the comments follows.

#### General Comments

One commenter stated that OPM did not comply with provisions of the Treasury, Postal, and General Government Appropriations Act 1992 (Pub. L. 102–141) as these provisions apply to COLA. This law requires that OPM study living cost issues and submit to Congress a report on possible changes in the COLA methodology. The report is due March 1, 1995. The commenter believes that the law directs OPM to make changes in the COLA model before 1995.

OPM's General Counsel carefully reviewed Pub. L. 102–141 and the related Senate Appropriations Committee report. The General Counsel determined that the law has two requirements: (1) COLA rates may not be reduced through December 31, 1995, and (2) OPM must submit a report to Congress on possible changes to the COLA methodology. The law does not direct OPM to implement methodological changes at this time.

The Senate Committee, however, requested that OPM research specific methodological issues. This OPM is doing, and OPM plans to include the results of this research in its report to Congress. Although the law does not require OPM to implement changes, OPM will continue to make improvements in the COLA methodology as appropriate.

Another commenter said that OPM regulations should describe in greater detail the COLA model and survey. The commenter also stated that all of the data collected should be made public.

OPM believes that its COLA regulations are adequately detailed and that any attempt to subject the COLA survey process to a set of overly detailed and inflexible rules would impair rather than improve the COLA program. The flexibility results in a more accurate COLA model because improvements can be made from one year to the next. Such changes are made public because, before COLA rates are adjusted, OPM publishes in the **Federal Register** a detailed report on the survey methodology and results. Therefore, employees have the opportunity to comment on any changes.

OPM does not publish all of the raw data collected in the survey because of the tremendous volume of data. As Runzheimer stated in its report, over 16,000 price quotes were collected. The report, however, provides detailed information on the results of the survey. In addition, OPM provides to those who request it additional data to the extent authorized under the Freedom of Information Act.

One commenter referred to the confidentiality statement on the information collection materials that was included in Appendix 5 of the report. The confidentiality statement says that the Government will hold all micro or "raw" data in confidence. The commenter stated that OPM should not keep secret the survey data that it collects.

Runzheimer inadvertently included an obsolete version of the information collection materials in Appendix 5. This version was not used in the surveys. OPM's policy is to release "raw" or micro data to the extent authorized under the Freedom of Information Act. In conducting OPM's surveys, Runzheimer does *not* pledge to hold confidential the survey data unless such data are covered by the provisions of the Freedom of Information Act that allow certain data to be held in confidence.

One commenter stated that the model was inappropriate and said that OPM should measure differences in levels of living rather than differences in prices.

Comparison of levels of living implies comparing lifestyles and that involves comparing differences in needs and preferences. This is a highly subjective area because one person's "need" might be another person's luxury. OPM is examining this complex issue and plans

to include a discussion of it in its report to Congress.

One commenter stated that OPM should include a component to compensate employees for the allowance area's remoteness and isolation. He suggested that 5 percentage points be added to all COLA rates to reflect intangible living costs caused by remoteness and isolation. The commenter did not provide an example of an intangible living cost.

OPM does not know what the commenter meant by the term "intangible living costs." The commenter may have been referring to monetary costs that are difficult to measure, or he may have been referring to nonmonetary factors, such as hardship and inconvenience.

OPM believes that the COLA model adequately measures differences in monetary costs, although improvements and refinements in the model may be possible. For example, OPM is researching certain additional items, particularly those that might be purchased more frequently in remote areas. These items include air transportation, out-of-area college and university education, and extraordinary medical expenses. OPM is looking at ways the tangible cost of these items might be included in the COLA model and plans to address this issue in its report to Congress.

OPM believes, however, that nonmonetary factors, such as hardship and inconvenience, should not be part of the COLA program. There are other programs that compensate Federal employees for such circumstances.

One commenter maintained that an item needed in an allowance area, but not needed in Washington, DC, should be priced only in the allowance area. The commenter said that the frequency of need also should be a factor.

Generally, the model compares the cost of an item in an allowance area with the cost for the same item in the DC area. OPM believes that this is consistent with the settlement of *Hector Arana, et al.* v. *United States*, in which the plaintiffs asked that OPM adopt a methodology that compared specified brands, models, and sizes whenever possible.

Nevertheless, the COLA model does reflect some differences between areas. For example, the model assumes that cars in Alaska have certain accessories, such as engine block heaters, that are not common in the DC area. Also, differences in home construction (e.g., triple pane windows and greater wall insulation common in Alaska) are included in the model to the extent that these differences are reflected in real estate prices. OPM is researching related issues and plans to address them in its report to Congress.

A few commenters objected to the use of national consumer expenditure patterns in the living cost model. The commenters believed that local consumption patterns should be used. More than one commenter noted that the spending pattern data were old.

To compare living costs between areas, Runzheimer assigned a common set of weights to each item, category, and component. These weights reflect how consumers spend their money and were used to derive comparative indices measuring overall living costs. Runzheimer used Bureau of Labor Statistics (BLS) nationwide Consumer Expenditure Survey (CES) data for these weights.

As discussed in the report, the COLA model uses an indexing methodology similar to the Laspeyres index. As the report also notes, it would be preferable to use Washington, DC, consumer expenditure data with the Laspeyres approach. Washington, DC, CES data, however, are not available by income level, and OPM regulations require measurement of living costs at multiple income levels. On the other hand, nationwide CES data are arrayed by income level. Therefore, Runzheimer used these data in the COLA model.

CES data are also available for Honolulu and Anchorage; but as with the Washington, DC, data, the Honolulu and Anchorage data are not available by income level. BLS CES data are not available for any other nonforeign area (outside the 48 contiguous States), and OPM knows of no other source of comprehensive consumer expenditure information by income level suitable for use in the COLA model. Therefore, the use of local weights is not practical.

Both OPM and Runzheimer recognize that the CES data are old. OPM is developing a methodology to introduce gradually more recent CES data into the model. OPM plans to use this approach beginning with the surveys to be conducted in the summer of 1994.

One commenter suggested that the COLA model be simplified to use only one income level. The commenter believed that using only one income level would reduce survey costs and the number of subjective assumptions required.

As noted earlier, OPM's regulations require the measurement of living costs at multiple income levels. This approach recognizes that relative living costs may vary by income level and that the distribution of employees by income level may vary among areas. Therefore, the multiple income approach yields a more accurate measure of overall living cost differences than a single income approach.

Nevertheless, to the extent that multiple income levels require additional subjective assumptions, the overall integrity of the model might not be impaired by using a single income level. OPM is examining this issue and plans to include its findings in the report to Congress.

One commenter objected to Runzheimer's recommendation that OPM include income taxes in the COLA model. The commenter believed that this would unduly complicate the model and argued that it would also be necessary to compare the level of government services available in each area. Another commenter, however, stated that income taxes were high in Hawaii and recommended that income taxes be included in the model.

OPM is studying Runzheimer's recommendation and issues relating to Federal, State, and local income taxes and plans to include the results of this study in its report to Congress.

A few commenters seemed to have confused the annual living cost surveys with the special Federal Employee Housing and Living Patterns Survey, which OPM conducted in the winter of 1992/1993. The commenters said they could not see how Runzheimer had incorporated the results of the employee survey in calculating living cost indices.

As OPM stated in the preface to the employee survey, the purpose of the survey was to collect information that would be used to improve the COLA model. The preface made it clear that the results of the survey would not be used directly to set COLA rates.

OPM is now in the process of analyzing the results of the employee survey. It is expected that these analyses will allow OPM to identify the subdivisions and communities in which Federal employees live, the types of housing expenses they incur, the kinds of stores they frequent, their transportation needs, and so on. OPM plans to use this information in the design of future COLA surveys to reflect more closely Federal employee living costs. The information will also aid OPM as it studies the COLA methodology and prepares its report to Congress.

**Comments on the Goods and Services Component**

A commenter from Hawaii said that Federal employees on Oahu did not make many catalog purchases. In contrast, an employee from Maui stated that she made many catalog purchases. Likewise, a St. Croix resident wrote that

Virgin Island employees made frequent catalog purchases.

OPM asked Runzheimer to include a limited number of catalog items in the survey because catalogs are a common source of retail goods and are used by many persons in all areas, including the Washington, DC, area. Of course, all catalog prices surveyed included shipping costs and any applicable local sales and excise taxes. Catalog pricing also allows better comparisons of items that would otherwise be difficult to compare. For example, some furniture items were priced in catalogs because finding comparable styles, brands, and models in earlier surveys proved difficult.

In the employee survey, OPM asked Federal employees about their purchasing patterns including whether they typically purchased various types of items by catalog. OPM plans to use this information in designing future surveys and in its report to Congress on possible changes in the COLA methodology.

One commenter believed that catalog pricing understated price differences between the allowance area and the Washington, DC, area. The commenter said that in the DC area consumers could buy an item locally if catalog prices were relatively high but that in the allowance areas consumers frequently did not have that choice.

Many of the items that Runzheimer priced by catalog are not sold locally unless the catalog retailer also has a local retail outlet and that outlet carries the same item. If the item is sold locally by the retailer, it is usually sold at a price comparable to the catalog price, unless the item is on sale in either the catalog or in the retail store. Since Runzheimer does not survey sale prices, the use of catalog pricing probably does not cause bias.

Another commenter questioned whether representative types of stores were surveyed in the allowance areas. He believed that stores frequented in the allowance areas could be significantly different from those frequented in the Washington, DC, area. He also stated that there was only one "warehouse-type" grocery store on Oahu and that, because this outlet was less accessible than others, it was inappropriate to include it in the survey.

Runzheimer surveyed prices at the largest, most popular stores in each area. These stores included major grocery stores, department stores, discount stores, and specialty stores. OPM believes that this process is objective and leads to an equitable comparison of typical prices between areas.

In addition, Runzheimer selects outlets that are apt to be frequented by residents of the living communities in which housing is surveyed. At times, a balance between the types of outlets and their proximity to certain living communities is difficult to achieve. During the 1992 survey on Oahu, the grocery store in question was included in the survey. Subsequently, it was determined that this store was probably located outside the area normally frequented by residents of the living communities covered by the survey. Therefore, for the 1993 survey a different outlet was selected to replace the one in question. Since there were no other "warehouse-type" outlets on Oahu, the new outlet was a conventional, large supermarket.

In the employee survey, OPM asked Federal employees where they lived, where they shopped, what they purchased, and so on. The survey included specific questions on the kinds of stores employees frequented. OPM plans to use the results of the employee survey to review outlet selection and make changes as appropriate.

One commenter criticized Runzheimer for not considering the cost of college and university education in the living cost surveys. The commenter stated that due to limited post-high school educational opportunities in the allowance areas, Federal employees must send their children to out-of-area schools.

Runzheimer noted in the report that post-high school educational opportunities vary significantly among the allowance areas. Most of the allowance areas, however, have colleges or universities in the major population areas, and many of these institutions offer a wide range of degree programs. Nevertheless, Federal employees may send their children to out-of-area schools.

Without additional information about the frequency of use of within-area and out-of-area schools, it is not appropriate to include post-high school education expense in the COLA model. In the employee survey, OPM asked employees several questions about college and university usage. OPM plans to use the results of the employee survey to review the issue of post-high school education. OPM is also researching the cost of within-area and out-of-area tuition, books, room and board, transportation, and related expenses. OPM plans to include the results of this research and the employee survey in its report to Congress.

Several commenters questioned whether Runzheimer's survey adequately covered childcare expenses. An employee from Alaska stated that her childcare costs were high and accounted for a large percentage of her total budget.

Two kinds of childcare are included in the survey—day care and babysitting. Runzheimer prices the monthly cost of professional day care services (eight hours a day, five days a week). Runzheimer also obtains the price of casual babysitting services. Both are assigned appropriate weights based on the CES and are used in the COLA model.

**Comments on the Housing Component**

Some commenters objected to trimming the high and low values in the housing component. The commenters believed that housing market price anomalies should be tolerated or that another approach should be used to reduce these anomalies.

As was stated in the report, the purpose of trimming was to stabilize the housing data from one year to the next. Trimming is essentially a nonparametric technique, similar to using the median rather than the average. OPM and Runzheimer considered using the median but rejected it because the limited number of observations obtained in some smaller allowance areas could cause the median to be erratic from one year to the next. Runzheimer recommended trimming as an alternative to the median, and OPM agreed. Trimming provides stability; and because equal numbers of high and low values are trimmed, no bias is introduced.

Another commenter objected to the comparison of new and older home prices combined. He felt that the survey should compare the prices of homes of a similar age as well as a similar size and room count.

Numerous factors influence rents and selling prices. Information on some of these factors is readily available, but much of it is not. Runzheimer uses home size and room count as the major criteria in housing comparisons because these factors generally have the most influence on housing costs. Age is not used because it frequently is not available and probably has less influence.

One commenter from Alaska noted the high cost of her new home in Alaska. She also said that the cost of drilling a deep well significantly increased the cost of her new home.

Runzheimer surveys the selling price of homes that sold during the 6 month period prior to the survey. The selling price generally reflects the cost of

construction, including the cost of appurtenances such as water wells.

One commenter stated that the residential areas surveyed on Oahu did not properly reflect where Federal employees live nor the income levels that Runzheimer associated with the communities.

OPM recognizes that community selection is an important part of the COLA survey. The communities surveyed in Hawaii were changed in response to comments OPM received on earlier surveys. Additional changes may be warranted. OPM plans to use the results of the employee survey to review community selection and make appropriate changes.

A commenter from Alaska stated that the cost of utilities was high and provided examples of her utility costs. She also stated that utility costs vary with the size of the home.

Runzheimer included in the COLA surveys the cost of utilities. The average costs for Owners and Renters for each area were shown in Appendix 7 of the report and were part of the Federal Register notice. As shown in the appendix, the cost of utilities is the second highest cost of housing, exceeded only by the cost of mortgage payments or rent.

The COLA model takes into account that utility costs vary with home size. Section 4.2.4.1 of the report described the process used and the factors that were applied.

One commenter stated that the survey failed to take into consideration the use of solar water heaters in Hawaii and Guam. The commenter believed that the model did not account for the capital cost of such heaters nor the possible reduction in overall utility consumption.

As noted above, significant home features and improvements generally are reflected in the selling price of the home.

Therefore, OPM's living cost surveys will reflect the cost of solar water heaters to the extent that such items influence home market values and are commonly found on homes in any area, including Hawaii and Guam. If the use of solar water heaters is so common that it generally reduces the consumption of utilities, this too will be reflected in the survey results.

This is as it should be. The COLA model compares overall living costs in the allowance area with overall living costs in the DC area. If housing is more expensive because solar heaters are common in an allowance area but not the DC area and if overall utility costs are lower in the allowance area because solar heaters are used extensively but are not used in the DC area, the final comparison of overall housing costs will be equitable. No special consideration of capital improvement costs or reduced utility consumption is appropriate.

Several commenters noted that employees in the allowance areas face extreme weather disturbances, particularly typhoons or hurricanes. The commenters stated that these weather disturbances create higher costs in home maintenance and insurance.

Runzheimer surveys the cost of home insurance. If insurance costs increase after a major natural disaster, the COLA surveys will reflect these higher costs. Other issues, such as the cost of repairing storm damage, are more difficult to address in the surveys. Although it may be possible to price the cost of repairing or replacing an item such as a window or a roof, it is difficult to know how often this must be done in each allowance area compared with the Washington, DC, area. In the employee survey, OPM asked about storm damage, home maintenance, and frequency of repairs. OPM plans to review this issue carefully in light of the results of the employee survey.

One commenter asserted that Federal employees frequently purchase disaster insurance (e.g., home insurance covering damage caused by floods, storms, or earthquakes) and criticized Runzheimer for not including the cost of these additional insurance riders.

Runzheimer interviews local insurance agents to obtain the cost of insurance in each area. In these interviews, Runzheimer asked agents about disaster insurance and whether it was typically purchased by homeowners in the allowance area. Runzheimer concluded from these interviews that such insurance is not typically purchased and, therefore, recommended against including it in the COLA model. OPM agreed. However, questions regarding disaster insurance were included in the employee survey. OPM plans to reevaluate this issue in light of the results of the employee survey and address this issue in its report to Congress.

The same commenter noted that Runzheimer was unable to obtain the price of home insurance on Guam because insurance companies had issued a temporary "moratorium" on the sales of new policies after Typhoon Omar. The commenter criticized Runzheimer for using 1991 survey data in place of the missing data.

Runzheimer discussed the Guam insurance issue with OPM as soon as the issue arose. Because there was no indication of the amount of any forthcoming rate increase or that rates would increase at all, Runzheimer and OPM believed that it was inappropriate to adjust artificially the 1991 insurance rates. To the extent insurance companies adjusted their rates after the moratorium, such rate changes were obtained in the following Guam survey and will be appropriately reflected in the results of that survey.

One commenter questioned how Runzheimer obtained survey data in Kauai after Hurricane Iniki because the Runzheimer researcher from the central office had not been allowed to visit the island.

Most of the living cost data are obtained by either: (1) Local data collectors who are residents of the area or (2) by telephone research conducted from Runzheimer's central office. Senior personnel from Runzheimer's central office visit the allowance areas to monitor and review the survey process. These visits are conducted after the on-site data collection is complete.

In the case of the Kauai survey, all on-site data collection had been completed prior to the arrival of Iniki. The fact that Runzheimer officials from the central office were unable to visit the island is not significant because the data collector had done an excellent job, and the quality of the data collected was quite good. Because the prices surveyed were pre-Iniki, they were not influenced by any short-term perturbations caused by the hurricane. Runzheimer officials were able to visit Kauai as part of the summer 1993 survey, and a great deal of attention was given to collecting and analyzing data from that later survey.

The commenter also stated that because some utilities were not widely available for an extended period after Hurricane Iniki, the living cost surveys might show that utility usage was low. He said that this could bias the survey results.

The utility usage factors that Runzheimer obtained on Kauai were based on a period prior to Iniki. Therefore, the hurricane did not distort the survey data. In the conduct of the most recent survey, Runzheimer paid close attention to utility usage rates to ensure that the survey results were not unduly influenced by the effects of Iniki.

Several commenters said that climate conditions (such as high humidity, high rainfall, sunlight intensity, airborne salt, snow, and cold weather) resulted in higher home maintenance costs in the allowance areas than in the Washington, DC, area. One commenter believed that some home maintenance expenses were incurred more frequently in the allowance areas but that Runzheimer

considered only annual maintenance costs.

In the employee survey, OPM asked several questions concerning home maintenance, such as painting and roof replacement. OPM is also studying these issues in a closely related, special research project. OPM plans to integrate the results of the employee survey with the special research and include this in its report to Congress.

One commenter from Hawaii stated that leasehold to fee-simple ownership conversions contributed to higher housing costs in Hawaii.

Runzheimer surveys only fee-simple home sales in Hawaii. Leasehold properties are excluded. OPM believes that the fair market value of fee-simple property adequately reflects the market as a whole—both the leasehold market (in which the homeowner may have to purchase the land or renegotiate a land lease) and the fee-simple market.

Another commenter expressed concern whether the survey of fee-simple home sales only resulted in the survey of typical housing. The commenter suggested that Runzheimer also survey leasehold properties and include the annual cost of the land lease.

When OPM published previous Runzheimer reports in the **Federal Register**, numerous commenters expressed the view that leasehold sales in Hawaii should not be included in OPM's living cost surveys. For the reasons discussed above, OPM agrees with this position and has directed Runzheimer to continue its practice of surveying only fee-simple sales.

**Comments on the Transportation Component**

A number of commenters stated that private transportation costs were greater in the allowance areas because of the high cost of automobiles and increased auto maintenance due to poor roads, rough terrain, salt air, and harsh weather. Many also felt that their automobile insurance premiums were quite high. One commenter suggested that OPM price the cost of tinting car windows.

The COLA model takes into consideration automobile purchase price, maintenance, insurance, and depreciation. Purchase costs and insurance are based on price data obtained in each area. Maintenance is also based on local price data, and the model assumes that certain types of maintenance occur more frequently in the allowance areas than in the DC area. For example, the model assumes that tires wear out faster in the allowance areas than in the Washington, DC, area, and that tires have to be purchased more frequently in the allowance areas.

Depreciation is based on used car values, and Runzheimer found that used cars generally depreciate at the same rate in nearly all areas. The exceptions are Nome and Fairbanks where cars depreciate at a faster rate, perhaps because of the severe climate. Runzheimer used special factors for these two areas to reflect greater depreciation.

In the employee survey, OPM asked employees about their car purchases, accessories, maintenance, road conditions, terrain, and several other issues. OPM plans to review transportation costs in light of the results of the employee survey. OPM plans to address items, such as window tinting, at that time.

Some commenters were confused about the composition of the Public Transportation Category. Some commenters from the Virgin Islands stated that the lack of an effective mass transportation system compelled them to purchase cars or to use taxis.

As explained in the report, Runzheimer surveys airline fares to determine the cost of Public Transportation. Runzheimer does not survey municipal mass transportation. The cost of bus, subway, or taxi service is not part of the surveys because the service available in many allowance areas is not comparable to the service available in the DC area. Instead of public mass transportation, Runzheimer compares the cost of round-trip airfare from the allowance area to Los Angeles, California, with the cost of round-trip airfare from Washington, DC, to Los Angeles.

Two commenters objected to the selection of Los Angeles as the common destination point for comparing airfares. They stated that the Los Angeles routes were highly competitive and resulted in lower fares compared with other destinations.

As stated in the report, Los Angeles was selected because it is a common point within the continental United States that is roughly equidistant from each of the allowance areas and the Washington, DC, area. The route may be highly competitive, but that does not invalidate cost comparisons because it is the relative cost of air travel that is being measured. If competition reduces fares, the reductions will be reflected in the Washington, DC, to Los Angeles fares as well as the allowance area to Los Angeles fares. Therefore, OPM believes the comparisons are appropriate.

Some commenters stated that the model did not measure true air transportation costs. The commenters stated that inter-island travel, travel within Alaska, and travel to the contiguous 48 States required more frequent use of air transportation.

OPM included in the employee survey several questions regarding travel. OPM plans to review the transportation component of the COLA model in light of the results of the employee survey.

**Comments on the Miscellaneous Component**

One commenter objected to the assumption in the model that the cost of certain Miscellaneous Component items is the same in the allowance area as in the Washington, DC, area. The commenter said that cultural differences might lead to larger expenditures for gifts. The commenter also noted that the Senate Committee asked OPM to review the Miscellaneous Component to ensure that the results reflect actual living costs and do not assume equal costs between areas.

The relative costs of the majority of the items in the Miscellaneous Component are based on surveyed prices. Therefore, the Miscellaneous Component index reflects "actual" living cost differences. The cost of only two items does not differ among areas—(1) Life insurance and pensions and (2) cash contributions and gifts.

For Federal employees, the cost of life insurance and required contributions to a Federal retirement system do not vary by area. Any additional insurance or contributions to retirement systems are a matter of personal preference. Gifts and cash contributions for church, charity, or other purposes are a matter of personal preference and/or reflect lifestyle differences that are beyond the scope of the COLA program. As noted earlier, OPM is studying the issue of lifestyle differences and plans to discuss it in its report to Congress.

One commenter proposed using the Goods and Services Component index to adjust the cash contributions/gifts category to reflect the cost of gift items purchased locally.

OPM is researching this issue along with the general composition of and assumptions used in the Miscellaneous Component. OPM plans to include the results of this review in its report to Congress.

One commenter said that the medical expense portion of the Miscellaneous Component failed to reflect the higher out-of-pocket expenses that Federal employees in the allowance areas frequently incurred. The commenter cited several possible causes for such higher costs including higher costs not

covered by insurance carriers, the absence of Health Maintenance Organizations (HMOs) in several allowance areas, and the need to travel outside the area to obtain some medical services.

In the employee survey, OPM asked several questions regarding medical expenses, and in addition, OPM is researching related health cost issues. OPM plans to include the results of its research and the employee survey in its report to Congress.

One commenter stated that employees in the allowance areas have to save at a higher rate to afford the down payment for a house or car or to pay for college/university education. The commenter said that OPM should take this into consideration and use the Goods and Services Component index to adjust the amount of money saved relative to Washington, DC.

As noted in the report, Runzheimer believes that savings and investments made for the purpose of future purchases of housing, durable goods, education, and similar items are best accounted for in the category or component associated with the item. OPM agrees with this approach and notes that this approach is consistent with the methodology the Bureau of Labor Statistics uses in the CES.

The commenter also stated that the COLA model should take into consideration the fact that COLAs do not count toward retirement. The commenter believed that Federal employees had to invest at a higher rate in pensions and other savings vehicles to afford to retire in the allowance areas.

Under sections 8331(3) and 8401(4) of title 5, United States Code, allowances (which includes COLAs) are excluded from basic pay in the computation of Federal annuities under the Civil Service Retirement System and the Federal Employees' Retirement System. It would be inappropriate to adjust COLA to take into consideration that which the law has specifically excluded. Therefore, OPM believes that no adjustments to the pensions and investments portion of the model are in order.

**Comments About the Virgin Islands Surveys**

A number of employees from the Virgin Islands felt that the COLA surveys did not accurately reflect living costs, particularly in St. Croix. The employees said that the COLA rates were too low. One commenter questioned the validity of the price data collected in St. Croix.

OPM closely monitors Runzheimer's work and believes that the surveys and analyses are accurate. OPM specifically reviewed in great detail all survey data from the Virgin Islands. We are satisfied that Runzheimer followed appropriate procedures in collecting data, analyzing, and reporting data.

Some commenters from St. Croix referred to a Virgin Island Department of Labor survey that indicated that food costs in St. Croix were 25 percent higher than food costs in the Washington, DC, area. The employees cited this as evidence that the St. Croix COLA rate should be higher.

Runzheimer priced a wide variety of food items in each allowance area, including St. Croix. The results of the food portion of the survey were provided in Appendix 4 of the report and were part of the **Federal Register** notice. These results showed that food consumed at home was approximately 28 percent more expensive in St. Croix than in the DC area.

COLA rates, however, are based on more than just the relative cost of food; and in St. Croix, the relative costs of other items were generally lower than the relative cost of food. Therefore, the St. Croix COLA rate is lower than the food index.

Over 200 employees from St. Croix, stated that their COLA rate should be the same as the rate for St. Thomas and St. John.

The COLA surveys for the two areas showed that some prices were higher in St. Croix than in St. Thomas and that some were lower. Overall, St. Croix prices were about 4 percentage points lower than St. Thomas prices. The difference in the final COLA rates for the two areas generally reflects this overall price difference.

OPM notes that the American Chamber of Commerce Research Association (ACCRA) surveyed living costs in the Virgin Islands in 1992. The results of the ACCRA survey also showed that living costs in St. Thomas were higher than living costs in St. Croix.

One commenter stated that the Virgin Island COLA surveys should not be conducted during the summer. He maintained that pricing in the summer reflected lower, off-season prices.

OPM recognizes that survey timing is an important consideration, and COLA surveys are scheduled to collect prices in a "typical" month. OPM believes that the current surveys are conducted at a reasonable time of year but will consider timing changes. Survey timing will be part of OPM's report to Congress.

Several commenters from the Virgin Islands stated that certain medical services were not available in their area and that they had to fly to other areas to obtain these services. One commenter from Alaska also noted this problem. In addition, many commenters in St. Croix stated that the local hospital was not accredited. They said they had to fly to Puerto Rico or to the U.S. mainland for hospital services.

OPM is studying the availability and cost of medical services in the allowance areas. In addition, OPM's employee survey included questions regarding where Federal employees obtain medical services. OPM plans to include the results of its research and the employee survey in its report to Congress.

Many employees in St. Croix cited the high cost of air travel for medical treatment. They also noted the cost of air ambulance service.

As part of its research, OPM is studying the cost of obtaining medical services in the appropriate area if such services are not available locally. OPM is also researching the issue of air ambulance insurance. OPM plans to include the results of this research in its report to Congress.

Many commenters from St. Croix criticized the quality of public schools in their area and said that a high percentage of Federal employees sent their children to private schools. The commenters believed that OPM should consider the cost of private education in the survey.

OPM is studying private education issues. In addition, OPM asked employees in the employee survey whether they sent their children to public or private schools. OPM plans to include the results of this research in its report to Congress.

Some employees in St. Croix want OPM to take into account the cost of sending children to out-of-area colleges and universities. They noted the high cost of travel, campus housing, and out-of-state tuition.

OPM is studying the cost of college and university education, and the employee survey included questions concerning college and university education. OPM plans to include the results of its research and the employee survey in its report to Congress.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will affect only Federal agencies and employees.

**List of Subjects in 5 CFR Part 591**

Government employees, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.

**James B. King,**

*Director.*

Accordingly, OPM is amending 5 CFR part 591 as follows:

## PART 591—ALLOWANCES AND DIFFERENTIALS

### Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

1. The authority citation for subpart B of part 591 continues to read as follows:

**Authority:** 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; E.O. 12510, 3 CFR, 1985 Comp., p. 338.

2. Appendix A of subpart B is revised to read as follows:

### Appendix A of Subpart B—Places and Rates at Which Allowances Shall Be Paid

This appendix lists the places where a cost-of-living allowance has been approved and shows the allowance rate to be paid to employees along with any special eligibility requirements for the allowance payment. The allowance percentage rate shown is paid as a percentage of an employee's rate of basic pay.

| Geographic coverage/allowance category | Authorized allowance rate (percent) |
|---|---|
| **State of Alaska** | |
| City of Anchorage and 50 mile radius by road: | |
| Local retail | 25.0 |
| Commissary/exchange | 17.5 |
| City of Fairbanks and 50 mile radius by road: | |
| Local retail | 25.0 |
| Commissary/exchange | 20.0 |
| City of Juneau and 50 mile radius by road: | |
| All employees | 25.0 |
| Rest of the State: | |
| All employees | 25.0 |
| **State of Hawaii** | |
| City and County of Honolulu: | |
| Local retail | 22.5 |
| Commissary/exchange | 17.5 |
| County of Hawaii: | |
| All employees | 15.0 |
| County of Kauai: | |
| All employees | 17.5 |
| County of Maui and County of Kalawao: | |
| All employees | 22.5 |
| **Territory of Guam and Commonwealth of the Northern Mariana Islands** | |
| All locations: | |
| Local retail | 22.5 |
| Commissary/exchange | 17.5 |
| **Commonwealth of Puerto Rico** | |
| All locations: | |
| Local retail | 10.0 |
| Commissary/exchange | 0.0 |
| **The Virgin Islands** | |
| St. Croix: | |
| All employees | 12.5 |
| St. Thomas and St. John: | |
| All employees | 17.5 |

### Definitions of Allowance Categories

The following definitions of the allowance categories identified in the tables in this appendix shall be used to determine employee eligibility for the appropriate allowance rate:

| Allowance category | Definition |
|---|---|
| Local retail | This category includes those employees who purchase goods and services from private retail establishments. |
| Commissary/exchange. | This category includes those employees who shop at private retail establishments, but who, as a result of their Federal civilian employment, also have unlimited access to commissary and exchange facilities. This category is established only in those allowance areas that have these facilities. |

**Note:** Eligibility for access to military commissary and exchange facilities is determined by the appropriate military department. If an employee is furnished with these privileges for reasons associated with his or her Federal civilian employment, he or she will have an identification card that authorizes access to such facilities. Possession of such an identification card—i.e., one issued by reason of his or her Federal civilian employment—is sufficient evidence that the employee uses the facilities.

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Wednesday
March 23, 1994

Part VIII

# Department of Education

Federal Pell Grant Program; Notice

## DEPARTMENT OF EDUCATION

### Federal Pell Grant Program

**AGENCY:** Department of Education.

**ACTION:** Notice; deadline dates for receipt of applications, reports, and other documents for the 1993–94 award year.

**SUMMARY:** The Secretary announces the deadline dates for receiving documents from persons applying for financial assistance under, and from institutions participating in, the Federal Pell Grant Program during the 1993–94 award year.

**SUPPLEMENTARY INFORMATION:** The Federal Pell Grant Program provides grants to students attending eligible institutions of higher education to help them pay for their educational costs. The program supports Goals 2000, the President's strategy for moving the Nation toward the National Education Goals, by enhancing opportunities for postsecondary education. The National Education Goals call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education and for supporting life-long learning. Authority for the Federal Pell Grant Program is contained in section 401 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1070a. Regulations that govern the Federal Pell Grant Program are codified in 34 CFR part 690 and 34 CFR part 668.

The Pell Grant Program includes a three-step application process. Under the first step, the student must submit an application to have his or her expected family contribution (EFC) determined. The student may submit a paper application, or, if the institution he or she attends or will attend participates in the Department of Education's Electronic Data Exchange (EDE), the student may submit an electronic application. Under EDE, using software provided by the Department of Education (Department) or a needs analysis servicer, an institution electronically transmits the student's application data to the Department's Federal Student Aid Central Processing System (central processor). The institution may enter the application data, or the institution may have the student enter that data.

In the second step, the central processor determines a student's EFC based upon the information provided in a paper or electronic application and forwards the results to the student. The central processor may also forward the results to the student's institution.

As a result of submitting a paper application, the student receives a Student Aid Report (SAR), and any institution designated by the student may draw down a student's data in the form of an electronic SAR (ESAR) if the institution participates in EDE. An ESAR or SAR contains the student's EFC and the information on which that EFC was based. If application data was submitted electronically under EDE, the student will not receive an SAR, but the institution may draw down an ESAR.

The central processor may also transmit, to the institution that a student indicates he or she is attending or will attend, an institutional student information report (ISIR) that includes the student's EFC and the information on which that EFC was based. An ISIR is a paper document or an institutional paper printout from a computer-generated magnetic or electronic record.

Under the third step, a student must submit a valid SAR to the institution or sign a valid ESAR or ISIR. A valid SAR, ESAR, or ISIR is one on which all the information used to calculate the student's EFC is accurate and complete. In addition, a valid ESAR or ISIR must be signed by the student, and if corrections were made, signed by one of the student's parents if the student is a dependent student. If corrections are made to an ESAR or ISIR, the ESAR or ISIR must also be signed by the student's spouse if the student is married. However, a student may receive a Federal Pell Grant by signing a valid ISIR only if the institution he or she attends reports its Federal Pell Grant payment data to the Department by floppy disk, magnetic tape, or electronically under EDE. (Part IV of this notice describes the disbursement reporting requirements.)

#### I. Applications for Determination of Expected Family Contribution—Table I

Under the first application step described above, if a student uses a paper application, he or she must submit an approved application to an agency listed in table I of this notice, at the address indicated in table I. That application must be received at that address no later than May 2, 1994. A paper application may not be hand-delivered.

An approved application is an application listed in the first column of table I. Moreover, the student must send the application to the address of the organization whose application is being used. Thus, the Free Application for Federal Student Aid (FASFA) printed and distributed by the Department must be sent to the FAFSA processor in Iowa City, forms printed and distributed by the College Scholarship Service (CSS) must be sent to CSS, forms printed and distributed by the American College Testing Program (ACT) must be sent to ACT, and forms distributed by the Pennsylvania Higher Education Assistance Agency (PHEAA) must be sent to PHEAA.

If a student submits an electronic application under EDE, that application must be received by the Department's central processor prior to midnight (Central Daylight Savings Time) on May 2, 1994. (For purposes of this notice, this deadline means that a student has all of May 2, 1994, to apply.)

For the balance of this notice, the first application submitted by or on behalf of a student shall be called an "original application."

#### Applications of Students Receiving "Dependency Overrides"

Under section 480(d)(7) of the HEA, a financial aid administrator (FAA) may determine that a student qualifies as an "independent student" as a result of unusual circumstances even though the student does not qualify as an independent student under the other criteria in section 480(d). This determination, using what is known as "professional judgment," results in a "dependency override."

If an FAA makes a dependency override with regard to a student, the student must submit an original Correction Application to the Federal Student Aid Programs after that application has been specially coded for the dependency override and signed by the FAA. If the student attends an nstitution that participates in EDE, the institution may electronically transmit an original application or a Correction Application, coded for the dependency override, to the central processor.

If a student has not submitted an original application, the deadline date for the submission of a Correction Application for a dependency override is May 2, 1994. If the student has submitted an original application, the deadline date for the submission of a Correction Application is August 1, 1994. (For purposes of this notice, this deadline means that a student has all of August 1, 1994, to apply.) Applications submitted electronically must be received by the central processor prior to midnight Central Daylight Savings Time on the applicable deadline date.

(Approved by the Office of Management and Budget under OMB Control Number Application: 1840–0110)

#### II. Other Documents—Table I

Once a student has filed his or her original application, additional transactions may occur as a result of that application. In some cases, the

agency receiving the original application may request additional information. In other cases, the student is responsible for initiating a request to the agency to consider additional or alternative information.

Table I of this notice lists the addresses to which additional forms and information, known as transactions, must be sent and the deadline dates for the receipt of those transactions.

The following explains each type of transaction:

*A. Correction Application*

In addition to being used when a student receives a "dependency override," the Secretary provides a Correction Application to a student if the student's original application lacks sufficient information to be processed or contains inaccurate information. The student must include on the Correction Application all the information necessary to process that application.

If a student has misreported his or her dependency status, or if that status has changed after the student submitted an original application for reasons other than a change in marital status, the student must submit a Correction Application with the correct dependency status.

A Correction Application may be obtained (1) from an FAA or an Educational Opportunity Center counselor, (2) by writing to the addresses listed in table I, (3) by writing to Federal Student Aid Information Center, P.O. Box 84, Washington, DC, 20044, or (4) by calling (800) 4 FED AID. The Correction Application must be returned to one of the addressees listed in table I and received at that address no later than August 1, 1994, unless the Correction Application is submitted as an original application, in which case it must be received by May 2, 1994. A Correction Application submitted electronically under EDE through the electronic application process must be received by the central processor prior to midnight (Central Daylight Savings Time) on August 1, 1994, unless the Correction Application is submitted as an original application, in which case the correction application must be received prior to midnight (Central Daylight Savings Time) on May 2, 1994.

*B. SAR and ISIR*

• Correction or Verification of Information Requested by the Secretary—If the Secretary returns an SAR to a student for correction or notifies an institution through an ISIR that a student needs to correct application information, the student must correct that information on the SAR. The student must return the SAR to the appropriate address listed in table I, and that corrected SAR must be received at the appropriate address no later than August 1, 1994. If the student attends an institution that participates in EDE, the corrected SAR may be transmitted electronically to the central processor. That SAR must be received by the central processor prior to midnight (Central Daylight Savings Time) on August 1, 1994.

If the Secretary returns an SAR to a student for verification of certain data items included on the application or notifies an institution through an ISIR that a student needs to verify application information, the student must verify the information. The student verifies the information on the SAR, and returns the SAR in the same manner as described for required corrections. This request for verification is separate and apart from the verification requirements contained in 34 CFR part 668, subpart E.

• Correction of Inaccurate Information—If an SAR or an ISIR reflects information that was inaccurate when the application was signed, the student must correct that information on the SAR and send the SAR to the appropriate address listed in table I or submit the change electronically. The SAR must be received at that address no later than August 1, 1994.

• If the student attends an institution that participates in EDE, the corrected information may be transmitted electronically to the central processor. That SAR must be received by the central processor prior to midnight (Central Daylight Savings Time) on August 1, 1994.

• Recomputation of EFC—A student may request on his or her SAR that the Secretary recompute his or her EFC if the student believes the EFC is inaccurate because of an arithmetic or clerical error. The student must return the SAR to the appropriate address listed in table I, and that SAR must be received at the appropriate address no later than August 1, 1994. If the student attends an institution that participates in EDE, the request for a recomputation may be transmitted electronically to the central processor. That SAR must be received by the central processor prior to midnight (Central Daylight Savings Time) on August 1, 1994.

• Request for Duplicate SAR—If a student wishes to receive a duplicate SAR, the student may write to the appropriate agency's address listed in table I or call the appropriate agency's telephone number listed in table I. All written and telephone requests must be received no later than August 1, 1994. A written request sent to the appropriate agency (listed in table I) must be received through a U.S. Postal facility by August 1, 1994. Individuals at the agencies listed in table I are not authorized to personally accept hand-delivered documents.

**Note:** Although corrections and requests for a duplicate SAR will be processed through August 1, 1994, this deadline date does not extend the deadline date by which a student must submit to the institution's financial aid office his or her valid SAR, valid ESAR, or valid ISIR with an EFC that permits the student to receive a Federal Pell Grant. If the student does not submit such a valid SAR, valid ESAR, or valid ISIR to the financial aid office by his or her last date of enrollment or June 30, 1994, whichever is earlier, he or she will be ineligible for a Federal Pell Grant award for the 1993–94 award year.

## III. Verification Procedures and Deadline Dates Under 34 CFR 668, Subpart E

The information provided on an application and included on an SAR, ESAR, or ISIR may be subject to verification under verification procedures contained in 34 CFR part 668, subpart E. In that case, in order to receive a Federal Pell Grant award for the 1993–94 award year, the student—and his or her parents, if applicable—must submit the necessary verification documents in accordance with the following procedures and by the deadline dates specified below. These dates do not conflict with or supersede the deadline dates specified in table I of this notice.

*A. Verification of Information on Application*

If a student is selected to have the information on his or her application verified under the verification procedures set forth in subpart E of the Student Assistance General Provisions regulations (34 CFR part 668, subpart E), he or she must submit the requested documents as specified below in steps 1–4. The deadline date for the completion of these steps is the earlier of 60 days after the student's last date of enrollment for a student who leaves school because of graduation, completion of an academic term, or withdrawal; or August 30, 1994. A student who will still be enrolled in a course of study in the 1993–94 award year after August 30, 1994, must submit the requested documents by August 30, 1994. (Documents that are hand-delivered must be received by the institution by the close of business on August 30, 1994. Documents sent by mail must be postmarked or

demonstrate other comparable proof of mailing by August 30, 1994.)

This process is complete when the student has: (1) Submitted all requested verification documents to his or her institution;

(2) Made all necessary corrections on (a) part 2 of the SAR, (b) an ESAR, (c) a correction application, or (d) an EDE Correction Application;

(3) Either (a) signed the corrected part 2 of the SAR or completed and signed a paper Correction Application and submitted it to the appropriate address indicated in table I so that the addressee receives the form prior to midnight (Central Daylight Savings Time) on August 1, 1994; or (b) signed and submitted the corrected ESAR or electronic Correction Application to the institution so that the institution can transmit the data to the central processor (for those institutions participating in EDE) prior to midnight (Central Daylight Savings Time) on August 1, 1994; and

(4) By August 30, 1994, submitted to the institution the corrected and reprocessed SAR, ESAR, or ISIR that, if required, is appropriately signed (34 CFR 668.60).

*B. Application Forms and Information*

Student aid application forms, Correction Applications, and information brochures may be obtained at an institution's financial aid office, at an Educational Opportunity Center, or by writing or calling: Federal Student Aid Information Center, P.O. Box 84, Washington, DC 20044. Telephone: (800) 4 FED AID.

TABLE I.—DEADLINE DATE FOR RECEIPT OF ORIGINAL APPLICATION FORMS FOR DETERMINING EXPECTED FAMILY CONTRIBUTIONS: MAY 2, 1994. DEADLINE DATE FOR RECEIPT OF CORRECTION APPLICATION FORMS OTHER THAN AN ORIGINAL CORRECTION APPLICATION FORM, APPLICATIONS OTHER THAN ORIGINALS, AND OTHER DOCUMENTS: AUGUST 1, 1994

| Type of form | For information about | Contact Federal student aid programs |
|---|---|---|
| Free Application for Federal Student Aid (FAFSA) printed and distributed by ED. | English/Spanish/correction application request. | Box 84, Washington, DC 20044. (800) 4 FED AID.TTY (800) 730–8913 |
| | English application submission | c/o Federal Student Aid Programs: P.O. Box 4032, Iowa City, IA 52243. |
| | Spanish application submission | P.O. Box 4039, Iowa City, IA 52243. |
| | Correction application submission | P.O. Box 4033, Iowa City, IA 52243. |
| | SAR corrections | P.O. Box 4037, Iowa City, IA 52243. |
| | Duplicate requests/address changes | P.O. Box 4038, Iowa City, IA 52243. |
| | All other correspondence/inquiries | P.O. Box 84, Washington, DC 20044, (800) 4 FED AID |
| Free Application for Federal Student Aid (printed, distributed, and processed by CSS). | Application or correction request application | c/o College Scholarship Service: P.O. Box 6327, Princeton, NJ 08541–6327, Eastern and Central Time Zones: (609) 951–1025, TTY (609) 951–6763. |
| | Application submission | Federal Student Aid Programs, P.O. Box 6376, Princeton, NJ 08541. |
| | Correction application submission | Federal Student Aid Programs, P.O. Box 6369, Princeton, NJ 08541. |
| | SAR corrections | c/o Federal Student Aid Programs: P.O. Box 7424, London, KY 40742–7424. |
| | Duplicate request and address changes | c/o Federal Student Aid Programs, P.O. Box 7425, London, KY 40742–7425. |
| Free application for Federal Student Aid (printed, distributed, and processed by PHEAA). | Application request and other inquiries | c/o Pennsylvania Higher Education Assistance Agency, (PHEAA): Grant Division, 1200 North Street, Harrisburg, PA 17102, 800–692–7435 (PA only), Out of state—(717) 257–2800 |
| | Application and correction submission application. | P.O. Box 8172, Harrisburg, PA 17105–8172. |
| | SAR corrections/duplicate requests/address changes. | P.O. Box 8135, Harrisburg, PA 17105–8135. |
| Federal Electronic application, correction application, or renewal application of the Electronic Data Exchange. | Application, correction application, or renewal application request, electronic corrections, electronic duplicate requests, and other inquiries. | Contact institution's financial aid office to find out if it participates in the electronic application of EDE. Electronically submitted by the institution to the central processor via General Electronic Support computer network |
| | Diskette and tape submission | c/o National Computer Systems—Electronic Application, Box 30, Iowa City, IA 52244, (319) 339–6642. |
| Free application for Federal Student Aid (printed, distributed, and processed by ACT). | Application request | American College Testing, P.O. Box 1002, Iowa City, IA 52243. |
| | Application submission | Federal Student Aid Programs, P.O. Box 4005, Iowa City, IA 52243. |
| | Correction application submission | P.O. Box 4006, Iowa City, IA 52243. |
| | SAR corrections | P.O. Box 4025, Iowa City, IA 52243. |
| | Duplicate request and address changes | P.O. Box 4021, Iowa City, IA 52243. |

## IV. Submissions to the Secretary of Institutional Payment Summary and Student Aid Reports (Part 3 Payment Vouchers)

Each institution that participates in the Federal Pell Grant Program is required by 34 CFR 690.83(b) to submit to the Secretary reports and information in connection with the Federal Pell Grant funds the Department makes available to the institution for payment to students during an award year. One of the required reports is the Institutional Payment Summary (IPS). The IPS accompanies an institution's submission of Federal Pell Grant Payment Vouchers and summarizes the information contained on the individual Payment Vouchers.

The Secretary provides a paper IPS form to the institution for completion and return to the Department.

The institution may also meet this reporting requirement by submitting the IPS and Payment Voucher information to the Department on a floppy disk, on a magnetic tape, or by an electronic transmission through a modem from a personal computer, minicomputer, or mainframe computer. These submissions are referred to, respectively, as the Federal Pell Grant Program Floppy Disk Data Exchange, the Federal Pell Grant Program Recipient Data Exchange (RDE), and Electronic Payments service under EDE. An institution that wishes to use one of these automated reporting methods must enter into a written agreement with the Department and must agree to (1) comply with the Department's prescribed manner of formatting and presenting the submitted information, (2) restrict access to the records from which the IPS and Payment Voucher information is derived, and (3) ensure that only authorized officials or agents of the institution may enter the data sent in the IPS submission to the Department.

The Department credits an institution's Federal Pell Grant account on the basis of acceptable Federal Pell Grant payment data submitted through the system described in this notice. Such information must be submitted to the Department in a timely, certified, and acceptable form. A submission is timely if received by the Department by the deadlines prescribed in Tables II and III in part IV.C. of this notice; certified if its accuracy is attested to by the institution in the manner described in part IV.D. of this notice; and acceptable if submitted in accordance with the directions provided by the Department for the particular medium of submission used by the institution.

Failure to meet these reporting requirements may result in administrative action by the Department under Subpart G of 34 CFR Part 668 under which the Department may fine the institution or limit or terminate its participation in the Federal Pell Grant Program. In addition, failure to report accurately a student's award amount by the reporting deadline may render the student ineligible for all or part of his or her Federal Pell Grant payment.

### *A. Data and Records To Be Submitted*

In each IPS submission, the institution must submit: (1) On the IPS form, or in the IPS record format, information described in section II of the IPS, including the number and amount of each Federal Pell Grant award adjustment that the institution made, and the institution's total payments to all Federal Pell Grant recipients for the award year up to the date of the submission; and

(2) An SAR Payment Voucher (part 3 of the SAR), or its equivalent as defined by the Secretary, that discloses—

(i) Any new Federal Pell Grant recipients identified by the institution during the reporting period for which the IPS is submitted; or

(ii) Any change in enrollment status, cost of attendance, or other event that occurred during either the reporting period for which the IPS is submitted or the reporting period immediately preceding that reporting period, if that event causes a change in the amount of the Federal Pell Grant that a student has received or qualifies to receive for the award year.

The institution may submit the IPS without SAR Payment Vouchers (or the equivalent) if (1) The institution had no Federal Pell Grant recipients in attendance or identified no new Federal Pell Grant recipients during the reporting period for which the IPS is submitted and (2) did not identify any changes to the awards of previously reported recipients during the reporting period immediately preceding the period for which the IPS is submitted. If an institution that submits IPS information under RDE exercises this option, it must use the paper IPS document. If an institution that submits IPS information via a floppy disk or electronic transmission exercises this option, it may use its usual submission medium or the paper IPS document.

(Approved by the Office of Management and Budget under OMB Control Numbers 1840–0132 (SAR) and 1840–0540 (IPS))

### *B. Addresses for Delivery*

The institution must submit the IPS and any accompanying SAR Payment Vouchers, or the floppy disk or the RDE magnetic tape containing this information, as follows: If by regular mail: U.S. Department of Education, Pell Grant Systems Division, PSS, P.O. Box 10800, Herndon, Virginia 22070–7009. If delivered by a courier other than the U.S. Postal Service: U.S. Department of Education, Pell Grant Systems Division, PSS, ATTN: G–4.06 PGRFMS/DMS, c/o PRC, Inc., 12001 Sunrise Valley Drive, Reston, Virginia 22091–3423.

### *C. Frequency and Schedules for IPS Submissions*

An institution must make an IPS submission or its equivalent at least once during each of the reporting periods established in Tables II and III. The table that is applicable to a particular institution depends on the amount of the institution's 1992–93 award year Federal Pell Grant authorization. An institution may make IPS submissions more frequently, up to but not exceeding 60 times during the entire reporting cycle (July 1, 1993 through September 30, 1994). For purposes of complying with the reporting requirements of part IV.A. of this notice, an institution must ensure that the IPS and SAR Payment Vouchers (or their equivalent) are received by the Department no later than the applicable closing date for each reporting period as specified in the appropriate table below. Proof of mailing, such as a date on a U.S. Postal Service postmark, is not considered confirmation of receipt by the Department. If an institution submits the IPS and SAR Payment Voucher information electronically, the transmission must be received at the Department's central processor prior to midnight (Central Time or, if applicable, Central Daylight Savings Time) of the applicable closing date for the reporting periods indicated in Tables II and III.

TABLE II.—INSTITUTIONS WITH A 1992–93 AWARD YEAR PELL GRANT AUTHORIZATION OF AT LEAST $750,000

| Reporting periods | Closing date for receipt |
|---|---|
| July 1, 1993 through Oct. 15, 1993. | Oct. 15, 1993. |
| Oct. 16, 1993 through Dec. 15, 1993. | Dec. 15, 1993. |
| Dec. 16, 1993 through Feb. 15, 1994. | Feb. 15, 1994. |
| Feb. 16, 1994 through Apr. 15, 1994. | Apr. 15, 1994. |
| Apr. 16, 1994 through June 15, 1994. | June 15, 1994. |
| June 16, 1994 through Aug. 15, 1994. | Aug. 15, 1994. |

TABLE III.—INSTITUTIONS WITH A 1992–93 PELL GRANT AUTHORIZATION OF LESS THAN $750,000

| Reporting periods | Closing date for receipt |
|---|---|
| July 1, 1993 through Dec. 15, 1993. | Dec. 15, 1993. |
| Dec. 16, 1993 through Apr. 15, 1994. | Apr. 15, 1994. |
| Apr. 16, 1994 through Aug. 15, 1994. | Aug. 15, 1994. |

If any closing date for receipt falls on a Saturday, Sunday, or Federal holiday, submissions received on the next Federal business day will be considered as being submitted on time.

*D. Certification of Accuracy*

Institutions participating in the Federal Pell Grant Program must certify the accuracy of the data with each IPS submission. An institution submitting an IPS form certifies the accuracy of the data by including on the form an original signature by the official of the institution accountable for the accuracy of the data submitted. An institution submitting IPS information by floppy disk or electronic transmission certifies the accuracy of the data by including in that transmission a code or signature flag prescribed by the Department for that certification. By including the prescribed code or signature flag, an institution certifies that the submitted data has been provided from a file or record to which only officials with appropriate security clearance have access and that the data contained in the submission are accurate. In the case of an institution submitting IPS information by magnetic tape, the institution signs the tape transmittal form assuring the accuracy of the data.

*V. Annual Deadline for Submission of SAR Payment Vouchers and Requests for Adjustments of Federal Pell Grant Accounts*

An institution obtains an adjustment to its Federal Pell Grant account, and the amount of Federal Pell Grant funds for which it is accountable, by submitting supporting SAR Payment Vouchers, or their equivalent, under the procedures described in this notice and the reporting system described in the regulations. An institution is required by 34 CFR 690.83(a) to submit all SAR Payment Vouchers for an award year by a specified date following that award year; for 1993–94 that date is September 30, 1994. An institution, therefore, must submit any Payment Vouchers not previously submitted during the required reporting periods established in this notice by September 30, 1994 to receive an adjustment to its Federal Pell Grant account on the basis of these Payment Vouchers.

Except as provided in part V.B. of this notice, after September 30, 1994, the Secretary closes the institution's Federal Pell Grant account for the 1993–94 award year. The institution's account is closed on the basis of the information reported by the institution in its submissions of IPS and supporting SAR Payment Voucher information (or the equivalent) through September 30, 1994, and the data reported on the Federal Cash Transaction Report (PMS 272A). The final IPS information submitted by the institution must accurately report the institution's total payments to all Federal Pell Grant recipients for the 1993–94 award year (IPS Item 15 or its equivalent).

*A. Timely Delivery For Final Submissions of SAR Payment Vouchers and Requests for Adjustments of Federal Pell Grant Accounts: Proof of Delivery*

The Department may require an institution to prove that it mailed or otherwise submitted its IPS and SAR Payment Vouchers (or the equivalent) by the September 30, 1994 deadline date. The Department accepts as proof, if the documents were submitted by mail or by non-U.S. Postal Service courier, one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly-dated U.S. Postal Service postmark.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method of proof of mailing, an institution should check with the post office at which it mails its submission. An institution is strongly encouraged to use First Class Mail.

(3) A dated shipping label, invoice, or receipt from a commercial courier.

(4) Other proof of mailing or delivery acceptable to the Secretary.

The Department accepts hand deliveries at the address stated in part IV.B. between 8 a.m. and 4:30 p.m. Eastern Time on days other than Saturday, Sunday, or Federal holidays.

An institution that transmits IPS and SAR Payment Voucher information via the EDE Electronic Payments service must ensure that its transmission is completed before midnight (local time) on September 30, 1994.

*B. Postdeadline Adjustments to Federal Pell Grant Accounts*

In accordance with § 690.83(a) and § 690.83(c), the Secretary permits a post-September 30, 1994 adjustment to the Federal Pell Grant account of an institution for the 1993–94 award year or any prior award year in the following circumstances: (1) *Underpayment of previously reported awards.* An institution may receive a payment or credit for the full amount of an award made to a student if—(i) The institution submitted in a timely manner an SAR Payment Voucher or its equivalent for a student in accordance with the requirements of this notice and § 690.83(a);

(ii) The institution did not submit in a timely manner or in an acceptable form an SAR Payment Voucher necessary to document the full amount of the award for which that student was eligible;

(iii) The underpayment for that award is or would be at least $100; and

(iv) A program review or an audit report produced in accordance with the standards prescribed in 34 CFR 668.23(c) demonstrates to the satisfaction of the Secretary that the student was eligible to receive an amount greater than that reported on the SAR Payment Voucher submitted in a timely fashion to, and accepted by, the Department.

(2) *Decreasing previously reported awards.* An institution must report a reduction in a student's Federal Pell Grant award (1) if the institution determines that the student's Federal Pell Grant award amount, as reported on either the Student Payment Summary that the Department provides to the institution or any subsequent adjustment to the student's award amount on file with the Department, is greater than the amount the student actually received; or (2) if the institution determines that a student was not qualified for the amount reported on either the Student Payment Summary or any subsequent adjustment to the student's award amount on file with the Department. The institution should not make such a report, however, for an overaward for which it is not liable under § 690.79(a) unless the student never received the funds or has repaid all or a portion of the overaward. If a student is repaying an overaward for which the institution is not liable on an installment plan, the institution may report periodically the amount repaid. The institution does NOT submit such postdeadline award reduction data through SAR Payment Voucher (or its equivalents). The institution reports postdeadline reductions through a letter or report sent to the address stated in part IV.B.

(3) The Secretary, in addition, makes adjustments where the institution satisfactorily demonstrates that its failure to submit Payment Vouchers on

a timely basis and have them accepted by the Department was caused by a processing or administrative error made by the Department or one of its contractors, or was due to unusual circumstances beyond the control of the institution.

Except as provided under section 487(c)(7) of the HEA, and any implementing regulations, the Secretary adjusts an institution's Federal Pell Grant account on the basis of student award data submissions made after September 30 following the award year only in these specified circumstances. Thus, if an institution submits SAR Payment Vouchers (or its equivalents) for the 1993–94 award year to the Department after the September 30, 1994 deadline, the institution will not receive additional Federal Pell Grant funds from the Department unless the institution can demonstrate to the satisfaction of the Secretary that one of the prescribed conditions exists. The institution also will be liable for Federal Pell Grant funds that were used to pay grants that were not reported in a timely manner.

If an institution made Federal Pell Grant overpayments for which it is liable under § 690.79(a) of the Federal Pell Grant program regulations, the Secretary will subtract from any funds the institution may be entitled to receive under the first exception described in Part V–B of this notice the amount of the institution's unpaid liability.

If an institution believes that an adjustment is warranted on the basis of the above-described conditions, it should contact the Pell Grant Financial Management Division at (202) 708–9807. If the institution seeks administrative relief on the basis of an administrative error by the Department or its contractors, the institution's request must provide a complete description of all relevant facts, including each student's identifying data and full Federal Pell Grant payment history. The request must be received by the Department no later than January 31, 1995. The request must be delivered to: U.S. Department of Education, Pell Grant Systems Division, PSS, P.O. Box 23791, Washington, DC 20026–0791.

*C. Request for Duplicate Payment Vouchers or Related Information*

To receive a duplicate Payment Voucher, Processed Payment Voucher, or processed payment data, an institution must contact the Federal Pell Grant Program by fax at (202) 708–9700 or by mail to: U.S. Department of Education, Pell Grant Systems Division, PSS, P.O. Box 23791, Washington, DC 20026–0791.

To receive a duplicate Payment Voucher, an institution must include with its request a photocopy of either Part 1 or Part 2 of that student's SAR or a photocopy of that student's ESAR or ISIR. All requests must be received no later than August 1, 1994.

**Applicable Regulations**

The regulations applicable to this program are the Federal Pell Grant Program regulations in 34 CFR part 690 and the Student Assistance General Provisions regulations in 34 CFR part 668.

**FOR FURTHER INFORMATION CONTACT:** Michael Oliver, Program Specialist, Pell and State Grants Section, Grants Branch, Division of Policy Development, Policy, Training, and Analysis Service, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW. (ROB–3, Room 4018), Washington, DC 20202–5447. Telephone: (202) 708–4607. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**Authority:** (20 U.S.C. 1070a).

(Catalog of Federal Domestic Assistance No. 84.063, Federal Pell Grant Program)

Dated: March 16, 1994.

**David A. Longanecker,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 94–6751 Filed 3–22–94; 8:45 am]

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Wednesday
March 23, 1994

Part IX

# Department of Justice

Bureau of Prisons

28 CFR Part 512

Research Regulations on Protection of Human Subjects; Interim Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 512

[BOP–1008–I]

RIN 1120–AA14

## Research

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this document, the Bureau of Prisons is revising its rule on Research in order to conform to Departmental regulations on the Protection of Human Subjects requiring, among other provisions, the establishment of an institutional review board. Additional procedural changes have also been made in order to simplify the application process or to clarify policy.

DATES: Effective March 23, 1994; comments must be received by May 23, 1994.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Research. A final rule on this subject was published in the Federal Register October 1, 1981 (46 FR 48577).

Department of Justice regulations pertaining to the Protection of Human Subjects are contained in 28 CFR part 46. The Bureau's regulations on the conduct of research are consequently being revised in order to conform to Departmental requirements. In compliance with Departmental regulations, the Bureau Research Review Board (BRRB) is identified as the Bureau's institutional review board. Processing procedures are revised in order to stipulate the duties of the BRRB and supporting staff at institutions in its oversight of research projects. As a clarification, the Bureau notes that implementation of programmatic or operational initiatives made through pilot projects are not considered to be research.

In addition to these conforming amendments, the Bureau is also making other procedural changes intended to simplify the research application process. For example, procedures on the submission of research proposals are revised to remove reference to distinctions between routine and non-routine requests. Revised procedures in § 512.14 instead direct that requests be submitted either to the institution, if only one institution is involved, or to the Office of Research if more than one institution is involved.

Section 512.15 restates provisions contained in former § 512.17 on access to Bureau of Prisons records. As revised, this section now includes reference to disclosure provisions of the Privacy Act.

In addition, provisions on incentives in newly revised § 512.11(e) have been clarified to allow for reasonable recompense for time and effort to be offered to research subjects no longer in Bureau custody. The intent of restrictions on incentives within the institution is to ensure that participation of current inmates is voluntary. The Bureau believes that there is no compelling need to extend such precautionary restriction to subjects who are not in the Bureau's custody.

As revised, the regulations no longer contain a separate section on definitions. The terms contained in former § 512.11 are now either defined in 28 CFR 46.102 or are explained in the regulations where necessary.

Because these amendments are either administrative or conforming in nature and pose no additional restraints on inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and delay in effective date. While the Bureau believes it is necessary to implement these changes immediately, the Bureau is publishing the procedures as an interim rule in order to invite public comment. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered before the rule is finalized.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget pursuant to E.O. 12866. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

### List of Subjects in 28 CFR Part 512

Prisoners.

**Kathleen M. Hawk,**

*Director, Bureau of Prisons.*

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 512 in subchapter A of 28 CFR, chapter V is amended as set forth below.

### SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

## PART 512—RESEARCH

1. The authority citation for 28 CFR part 512 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Subpart B, consisting of §§ 512.10 through 512.22, is revised to consist of §§ 512.10 through 512.21 as follows:

### Subpart B—Research

Sec.

512.10 Purpose and scope.
512.11 Requirements for research projects and researchers.
512.12 Content of research proposal.
512.13 Institutional Review Board.
512.14 Submission and processing of proposal.
512.15 Access to Bureau of Prisons records.
512.16 Informed consent.
512.17 Monitoring approved research projects.
512.18 Termination or suspension.
512.19 Reports.
512.20 Publication of results of research project.
512.21 Copyright provisions.

### Subpart B—Research

#### § 512.10 Purpose and scope.

General provisions for the protection of human subjects during the conduct of research are contained in 28 CFR part 46. The provisions of this subpart B specify additional requirements for prospective researchers (both employees and non-employees) to obtain approval to conduct research within the Bureau of Prisons (Bureau) and responsibilities of Bureau staff in processing proposals and monitoring research projects. Although some research may be exempt from 28 CFR part 46 under § 46.101(b)(5), as determined by the Office of Research and Evaluation (ORE) of the Bureau, no research is exempt from 28 CFR part 512. For the purpose of this rule, implementation of Bureau programmatic or operational initiatives made through pilot projects is not considered to be research.

#### § 512.11 Requirements for research projects and researchers.

The Bureau requires the following:

(a) In all research projects the rights, health, and human dignity of individuals involved must be respected.

(b) The project must have an adequate research design and contribute to the advancement of knowledge about corrections.

(c) The project must not involve medical experimentation, cosmetic research, or pharmaceutical testing.

(d) The project must minimize risk to subjects; risks to subjects must be reasonable in relation to anticipated benefits. The selection of subjects within any one institution must be equitable. When applicable, informed consent must be sought and documented (see §§ 512.15 and 512.16).

(e) Incentives may not be offered to help persuade inmate subjects to participate. However, soft drinks and snacks to be consumed at the test setting may be offered. Reasonable accommodations such as nominal monetary recompense for time and effort may be offered to non-confined research subjects who are both:

(1) No longer in Bureau of Prisons custody, and

(2) Participating in authorized research being conducted by Bureau employees or contractors.

(f) The researcher must have academic preparation or experience in the area of study of the proposed research.

(g) The researcher must assume responsibility for actions of any person engaged to participate in the research project as an associate, assistant, or subcontractor to the researcher.

(h) Except as noted in the informed consent statement to the subject, the researcher must not provide research information which identifies a subject to any person without that subject's prior written consent to release the information. For example, research information identifiable to a particular individual cannot be admitted as evidence or used for any purpose in any action, suit or other judicial, administrative, or legislative proceeding without the written consent of the individual to whom the data pertains.

(i) The researcher must adhere to applicable provisions of the Privacy Act of 1974 and regulations pursuant to this Act.

(j) The research design must be compatible with both the operation of prison facilities and protection of human subjects. The researcher must observe the rules of the institution or office in which the research is conducted.

(k) Any researcher who is a non-employee of the Bureau must sign a statement in which the researcher agrees to adhere to the provisions of this rule.

(l) Except for computerized data records maintained at an official Department of Justice site, records which contain nondisclosable information directly traceable to a specific person may not be stored in, or introduced into, an electronic retrieval system.

(m) If the researcher is conducting a study of special interest to the Office of Research and Evaluation (ORE), but the study is not a joint project involving ORE, the researcher may be asked to provide ORE with the computerized research data, not identifiable to individual subjects, accompanied by detailed documentation. These arrangements must be negotiated prior to the beginning of the data collection phase of the project.

(n) The researcher must submit planned methodological changes in a research project to the IRB for approval, and may be required to revise study procedures in accordance with the new methodology.

**§ 512.12 Content of research proposal.**

When submitting a research proposal, the applicant shall provide the following information:

(a) A summary statement which includes:

(1) Name(s) and current affiliation(s) of the researcher(s);

(2) Title of the study;

(3) Purpose of the project;

(4) Location of the project;

(5) Methods to be employed;

(6) Anticipated results;

(7) Duration of the study;

(8) Number of subjects (staff/inmates) required and amount of time required from each; and

(9) Indication of risk or discomfort involved as a result of participation.

(b) A comprehensive statement which includes:

(1) Review of related literature;

(2) Detailed description of the research method;

(3) Significance of anticipated results and their contribution to the advancement of knowledge;

(4) Specific resources required from the Bureau;

(5) Description of all possible risks, discomforts, and benefits to individual subjects or a class of subjects, and a discussion of the likelihood that the risks and discomforts will actually occur;

(6) Description of steps taken to minimize any risks described in (b)(5) of this section.

(7) Description of physical and/or administrative procedures to be followed to:

(i) Ensure the security of any individually identifiable data that are being collected for the project, and

(ii) Destroy research records or remove individual identifiers from those records when the research has been completed.

(8) Description of any anticipated effects of the research project on institutional programs and operations; and

(9) Relevant research materials such as vitae, endorsements, sample informed consent statements, questionnaires, and interview schedules.

(c) A statement regarding assurances and certification required by 28 CFR part 46, if applicable.

**§ 512.13 Institutional Review Board.**

(a) The Bureau of Prisons' central institutional review board shall be called the Bureau Research Review Board (BRRB). It shall consist of the Chief, ORE, at least four other members, and one alternate, appointed by the Director, and shall meet a sufficient number of times to insure that each project covered by 28 CFR part 46 receives an annual review. A majority of members shall not be Bureau employees. The BRRB shall include an individual with legal expertise and a representative for inmates whom the Director determines is able to identify with inmate concerns and evaluate objectively a research proposal's impact on, and relevance to, inmates and to the correctional process.

(b) The Chief, ORE, shall serve as chairperson of the BRRB. If a potential conflict of interest exists for the BRRB chairperson on a particular research proposal, the Assistant Director, Information, Policy, and Public Affairs Division, shall appoint another individual to serve as chairperson on matters pertaining to that project.

**§ 512.14 Submission and processing of proposal.**

(a) An applicant may submit a preliminary research proposal for review by the Office of Research and Evaluation, Federal Bureau of Prisons, 320 First Street, NW., 202 NALC Building, Washington, DC 20534. Staff response to the preliminary proposal does not constitute a final decision.

(b) If the study is to be conducted at only one institution, the applicant shall submit a formal proposal to the warden of that institution. Proposal processing will be as follows:

(1) The warden shall appoint a local research review board to consult with operational staff, to evaluate the proposal for compliance with research

policy, and to make recommendations to the warden. The local research review board is encouraged, but not required, to meet the membership requirements of an IRB, as specified in 28 CFR part 46.

(2) The warden shall review the comments of the board, make a recommendation regarding the proposal, and forward the proposal package to the Regional Director, with a copy to the Chief, ORE.

(3) The Regional Director shall review the proposal and forward recommendations to the Chief, ORE.

(c) If the study is to be conducted at more than one institution or at any other Bureau location, the applicant shall submit the research proposal to the Chief, Office of Research and Evaluation, Federal Bureau of Prisons, 320 First Street, NW., 202 NALC Building, Washington, DC 20534. The Chief, ORE, shall determine an appropriate review process.

(d) All formal proposals will be reviewed by the BRRB.

(e) The BRRB chairperson may exercise the authority of the full BRRB under an expedited review process when, in his/her judgment, the research proposal meets the minimal risk standard and involves only the following:

(1) The study of existing data, documents, or records; and/or

(2) The study of individual or group behavior or characteristics of individuals, where the investigator does not manipulate subjects' behavior and the research will not involve stress to subjects. Such research would include test development and studies of perception, cognition, or game theory. If a proposal is processed under expedited review, the BRRB chairperson must document in writing the reason for that determination.

(f) The Chief, ORE, shall review all recommendations made and shall submit them in writing to the Director, Bureau of Prisons.

(g) The Director, Bureau of Prisons, has final authority to approve or disapprove all research proposals. The Director may delegate this authority to the Assistant Director, Information, Policy, and Public Affairs Division.

(h) The approving authority shall notify in writing the involved region(s), institution(s), and the prospective researcher of the final decision on a research proposal.

**§ 512.15 Access to Bureau of Prisons records.**

(a) Employees, including consultants, of the Bureau who are conducting authorized research projects shall have access to those records relating to the subject which are necessary to the purpose of the research project without having to obtain the subject's consent.

(b) A non-employee of the Bureau is limited in access to information available under the Freedom of Information Act (5 U.S.C. 552).

(c) A non-employee of the Bureau may receive records in a form not individually identifiable when advance adequate written assurance that the record will be used solely as a statistical research or reporting record is provided to the agency (5 U.S.C. 552a(b)(5)).

**§ 512.16 Informed consent.**

(a) Before commencing a research project requiring participation by staff or inmates, the researcher shall give each participant a written informed consent statement containing the following information:

(1) Identification of the principal investigator(s);

(2) Objectives of the research project;

(3) Procedures to be followed in the conduct of research;

(4) Purpose of each procedure;

(5) Anticipated uses of the results of the research;

(6) A statement of benefits reasonably to be expected;

(7) A declaration concerning discomfort and risk, including a description of anticipated discomfort and risk;

(8) A statement that participation is completely voluntary and that the participant may withdraw consent and end participation in the project at any time without penalty or prejudice (the inmate will be returned to regular assignment or activity by staff as soon as practicable);

(9) A statement regarding the confidentiality of the research information and exceptions to any guarantees of confidentiality required by federal or state law. For example, a researcher may not guarantee confidentiality when the subject indicates an intent to commit future criminal conduct or harm himself/herself or someone else, or, if the subject is an inmate, indicates an intent to leave the facility without authorization.

(10) A statement that participation in the research project will have no effect on the inmate participant's release date or parole eligibility;

(11) An offer to answer questions about the research project; and

(12) Appropriate additional information as needed to describe adequately the nature and risks of the research.

(b) A researcher who is an employee of the Bureau shall include in the informed consent statement a declaration of the authority under which the research is conducted.

(c) A researcher who is an employee of the Bureau, in addition to presenting the statement of informed consent to the subject, shall also obtain the subject's signature on the statement of informed consent, when:

(1) The subject's activity requires something other than response to a questionnaire or interview; or

(2) The Chief, ORE, determines the research project or data-collection instrument is of a sensitive nature.

(d) A researcher who is a non-employee of the Bureau, in addition to presenting the statement of informed consent to the subject, shall also obtain the subject's signature on the statement of informed consent prior to initiating the research activity. The researcher may not be required to obtain the signature if the researcher can demonstrate that the only link to the subject's identity is the signed statement of informed consent or that there is significantly more risk to the subject if the statement is signed. The signed statement shall be submitted to the chairperson of the appropriate local research review board.

**§ 512.17 Monitoring approved research projects.**

The BRRB shall monitor all research projects for compliance with Bureau policies. At a minimum, yearly reviews will be conducted.

**§ 512.18 Termination or suspension.**

The Director, Bureau of Prisons, may suspend or terminate a research project if it is believed that the project violates research policy or that its continuation may prove detrimental to the inmate population, the staff, or the orderly operation of the institution.

**§ 512.19 Reports.**

The researcher shall prepare reports of progress on the research and at least one report of findings.

(a) At least once a year, the researcher shall provide the Chief, ORE, with a report on the progress of the research.

(b) At least 12 working days before any report of findings is to be released, the researcher shall distribute one copy of the report to each of the following: the chairperson of the BRRB, the regional director, and the warden of each institution which provided data or assistance. The researcher shall include an abstract in the report of findings.

**§ 512.20 Publication of results of research project.**

(a) A researcher may publish in book form and professional journals the

results of any research project conducted under this rule.

(1) In any publication of results, the researcher shall acknowledge the Bureau's participation in the research project.

(2) The researcher shall expressly disclaim approval or endorsement of the published material as an expression of the policies or views of the Bureau.

(b) Prior to submitting for publication the results of a research project conducted under this rule, the researcher shall provide two copies of the material, for informational purposes only, to the Chief, Office of Research and Evaluation, Central Office, Bureau of Prisons.

**§ 512.21 Copyright provisions.**

(a) An employee of the Bureau may not copyright any work prepared as part of his/her official duties.

(b) As a precondition to the conduct of research under this rule, a non-employee shall grant in writing to the Bureau a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, translate, and otherwise use and authorize others to publish and use original materials developed as a result of research conducted under this rule.

(c) Subject to a royalty-free, non-exclusive and irrevocable license, which the Bureau of Prisons reserves, to reproduce, publish, translate, and otherwise use and authorize others to publish and use such materials, a non-employee may copyright original materials developed as a result of research conducted under this rule.

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# Reader Aids

Federal Register

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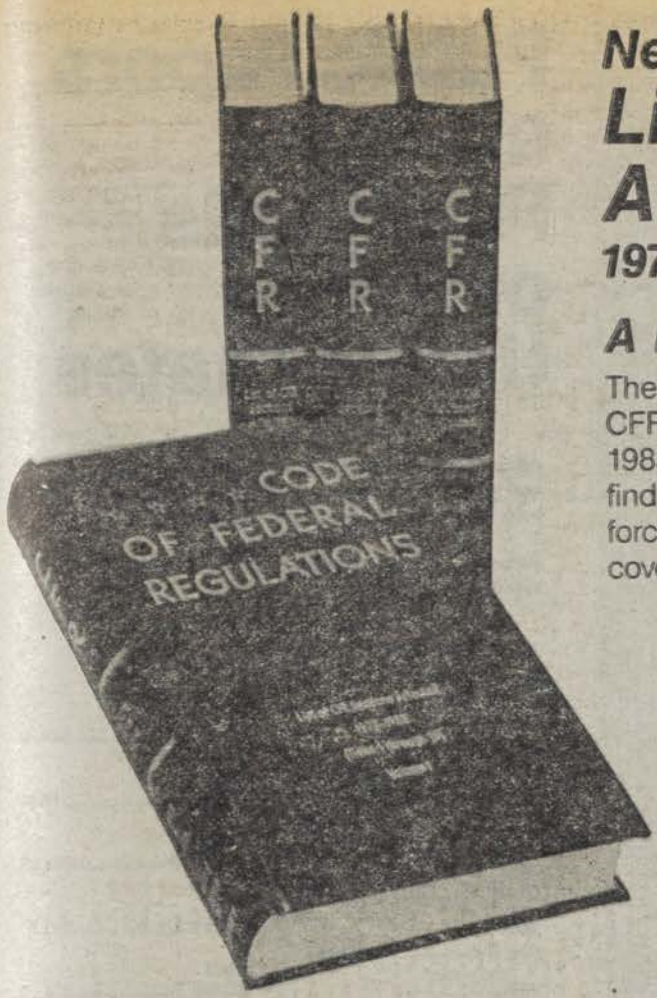
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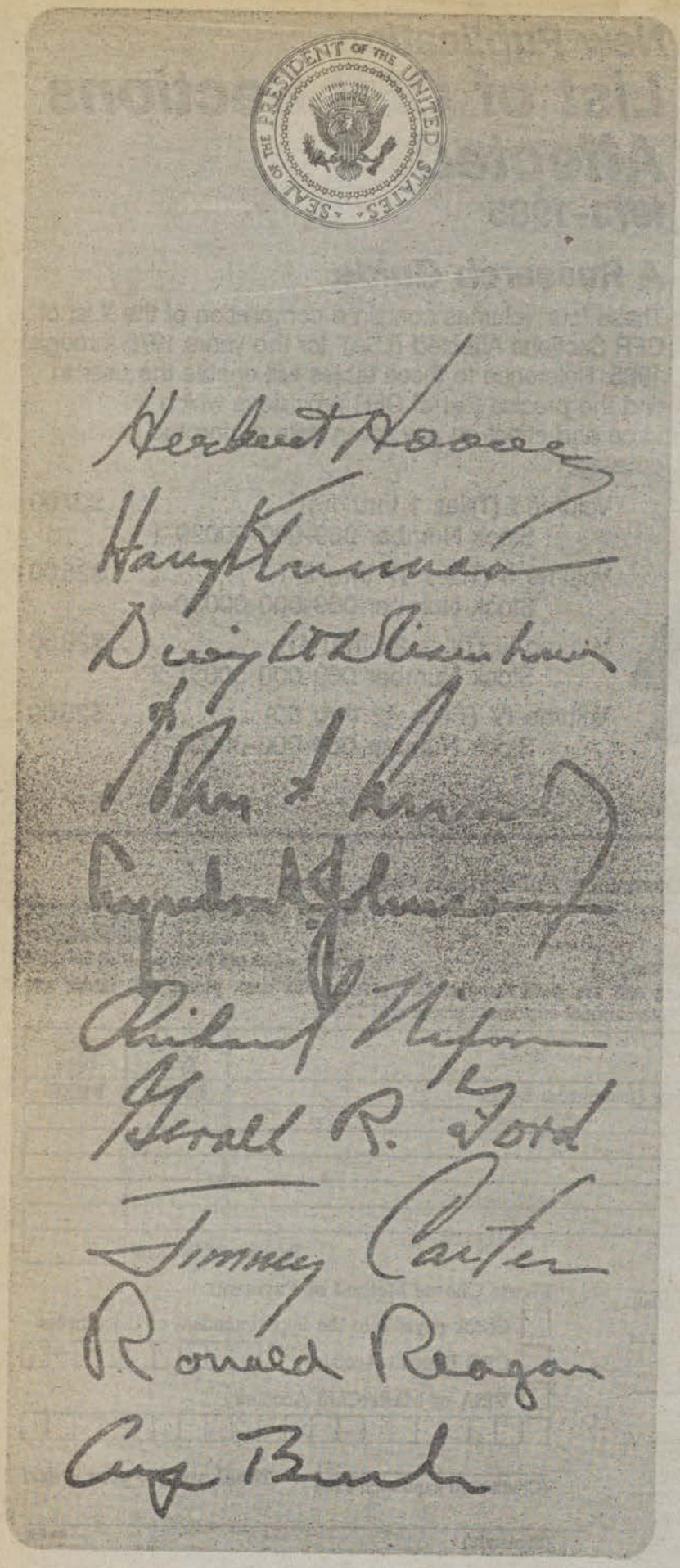
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