

Sunshine Act Meetings

Federal Register

Vol. 49, No. 165

Thursday, August 23, 1984

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).

CONTENTS

	Item
Federal Deposit Insurance Corporation.....	1
Federal Home Loan Bank Board.....	2
Federal Maritime Commission.....	3
Federal Mine Safety and Health Review Commission.....	4

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 12:50 p.m. on Sunday, August 19, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Girod Trust Company, San Juan, Puerto Rico, which was closed by the Puerto Rico Secretary of the Treasury on Thursday, August 16, 1984; (2) accept the bid for the transaction submitted by Citibank, N.A., New York (Manhattan), New York; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did

not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: August 20, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-22568 Filed 8-21-84; 3:57 pm]

BILLING CODE 6714-01-M

2

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 49, page 32836, Date of publication—August 16, 1984.

PLACE: Board Room, 6th Floor, 1700 G St., NW., Washington D.C.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE

INFORMATION: Ms. Gravlee (202-377-6677).

CHANGES IN THE MEETING: The meeting previously scheduled for Thursday, August 23, 1984, at 10:00 a.m., has been changed to Monday, August 27, 1984, at 9:00 a.m.

John F. Ghizzoni,

Assistant Secretary.

No. 94, August 21, 1984.

[FR Doc. 84-22571 Filed 8-21-84; 4:00 pm]

BILLING CODE 6720-01-M

3

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m.—August 29, 1984.

PLACE: Hearing Room One—1100 L Street, NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Docket No. 84-2: Amendment of Certain Regulations Governing Common Carriers by Water in the Domestic Offshore Commerce of the United States—Consideration of the record.

2. Proposed Interim Rule and Request for Comments Concerning Open-Ended Authority in Agreements.

Portions Closed to the public:

1. Agreements Nos. 202-005600-050, 202-003103-075, 202-008190-015, and 202-000014-053: Modification of Various Conference Agreements Concerning Independent Action on Rates.

2. Agreement No. 207-010618: Stolt Tankers Limited Joint Service.

CONTACT PERSON FOR MORE

INFORMATION: Francis C. Hurney, Secretary, (202) 523-5725.

Francis C. Hurney,

Secretary.

[FR Doc. 84-22553 Filed 8-21-84; 2:25 pm]

BILLING CODE 6730-01-M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, August 22, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Part Open, Part Closed (Pursuant to 5 U.S.C. § 552(b)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. In open meeting, Secretary of Labor MSHA, on behalf of Paul S. Sedgmer, Jr., et al. v. Consolidation Coal Company, Docket No. LAKE 82-105-D. (Petition for Discretionary Review.)

2. In closed meeting, Disciplinary Proceeding (Getz Coal Sales, Inc.), Docket No. D-84-1.

It was determined by a majority vote of Commissioners that a portion of the above mentioned meeting be closed.

CONTACT PERSON FOR MORE

INFORMATION: Jean Ellen, (202) 653-5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 84-22529 Filed 8-21-84; 12:16 pm]

BILLING CODE 6735-01-M

Estimated Federal Register

Thursday
August 23, 1984

Part II

Department of Health and Human Services

Office of Human Development Services

FY 1985 Coordinated Discretionary Funds
Program; Availability of Funds and
Request for Preapplications; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. HDS-85-1]

FY 1985 Coordinated Discretionary Funds Program; Availability of Funds and Request for Preapplications

AGENCY: Office of Human Development Services, HHS.

ACTION: Announcement of availability of funds and request for preapplications under the Office of Human Development Services' Coordinated Discretionary Funds Program.

SUMMARY: The Office of Human Development Services (HDS) announces the beginning of its Coordinated Discretionary Funds Program for Fiscal Year 1985.

Funding for grants and cooperative agreements is authorized by legislation governing the HDS discretionary program and programs of its constituent administrations—the Administration for Children, Youth and Families (ACYF), the Administration on Developmental Disabilities (ADD), the Administration on Aging (AoA), the Administration for Native Americans (ANA), the Office of Program Development (OPD), the Office of Policy and Legislation (OPL), and the President's Committee on Mental Retardation (PCMR).

Please note that a separate program announcement will be published for *Indian child welfare programs*. This coordinated announcement on grant funds available from the Bureau of Indian Affairs (BIA) and HDS is to address child welfare, youth without homes and runaway projects. Preapplications may be submitted under either announcement.

This program announcement consists of four parts. Part I provides background information, discusses the purpose of the HDS discretionary program, lists funding authorities, and briefly describes the application process. Part II describes the programmatic priorities under which projects of the type described above will be funded. Part III describes in detail the application process. Part IV provides guidance on how to prepare and submit a preapplication. The one form necessary to submit a preapplication is published as part of this announcement.

For Fiscal year 1985, preapplications must describe projects which involve one of the following activities:

1. *Demonstrations of National Relevance*—Projects to test and demonstrate new mechanisms or

systems for planning, managing and delivering human services promptly, effectively and efficiently. Such mechanisms and systems must have the clear potential for reshaping a specific element of social service delivery or policy at the national, regional, or Tribal level. HDS will not consider under this priority area applications for projects which replicate previous demonstrations, which provide services already available in other parts of the country, or for demonstrations of merely local significance.

2. *Basic Knowledge and Data Development*—Projects which expand the boundaries of current knowledge in the field of human services for specific HDS target groups, or which analyze existing data to provide new insights into solving human problems. This includes basic research.

3. *Evaluation and Management Systems*—Projects of practical impact to improve the planning and management of human services agencies or to determine whether human services programs are being operated efficiently and effectively by nonprofit service providers, community organizations, State, local, or Tribal human services agencies.

4. *Knowledge Transfer*—Projects which implement the use of new knowledge and techniques in the human services by agencies or organizations. Such projects may involve training to facilitate the transfer of innovative techniques from one area of the country to another or one tribe to another. Projects proposed under this priority area must propose the effective implementation in the applicant's area of techniques of methods that have been demonstrated somewhere else. It is the intent of HDS in this priority area to provide seed funds to human service organizations that wish to implement a recently tested service delivery or management technology.

5. *Gerontological Training*—Projects to increase the quality and quantity of gerontological education.

6. *Child Welfare Services Training*—Projects to expand and improve education and training for the delivery and management of child welfare services programs.

7. *Small Business Innovation Research (SBIR)*—The purpose of this priority area is to invite applications from small businesses for projects which involve the administration of human services programs.

DATE. The closing date for receipt of preapplications is October 17, 1984.

FOR FURTHER INFORMATION CONTACT: HDS/Division of Research and

Demonstration, 200 Independence Avenue, SW., Washington, D.C. 20201, telephone: (800) 372-3344.

Part I: Background Information

A. Scope of This Announcement

By this announcement, the Office of Human Development Services solicits preapplications for research, demonstration, training (including child welfare and gerontology) and evaluation projects to be funded in the third and fourth quarters of FY 1985 and the first and second quarters of FY 1986. To receive consideration for funding, all preapplications must describe projects that contribute to meeting the priorities of HDS programs for the elderly; Native Americans; the developmentally disabled; and children, youth and families, as described in this announcement. Except for the specified areas for which applications may also be submitted to the forthcoming coordinated BIA/HDS announcement on Indian child welfare, this is the only HDS announcement to be issued for these priority areas. HDS may publish additional program specific announcements in FY 1985 that incorporate individual program priorities. A subsequent announcement may be published amending priorities in Priority Areas 1.4, 2.5, and 2.10 (Child Abuse and Neglect) if changes are required as a result of additional comments received during the comment period stated in the *Federal Register* on July 20, 1984 (49 FR 29463).

B. Discretionary Program Purpose

The HDS Coordinated Discretionary Fund Program is based on the principle that the well-being of the public is the responsibility of individuals, families and the communities in which they live. Social service needs are best defined and addressed through institutions and organizations at the level closest to the problem—State, Tribal and local governments, public agencies, businesses, private voluntary organizations, and families. The role of the Federal government in addressing social problems is:

- To adopt and implement national policies or programs aimed at promoting economic growth and prosperity, thereby strengthening the capacity of individuals to achieve or maintain self-sufficiency and the capacity of the family to care for all its members;
- To address those social service needs that require inter-State or national attention for effective resolution;
- To provide national leadership in:

(a) The development of effective methods of addressing social service needs; and,

(b) The development of State, Tribal and local capacity to appropriately address social needs;

- To foster the efficient and effective use of available resources through improved social service management; and

- To target Federal budgetary support for services to that portion of the population in the greatest need of assistance and protection.

The purpose of the Coordinated Discretionary Funds Program is to provide funding for projects that implement this principle.

HDS is primarily interested in providing short-term funds for projects of immediate impact or which can become self sustaining in a short period of time. The HDS Coordinated Discretionary Funds Program is not intended to provide funds for ongoing social services or to serve as a supplemental source of funds for local activities which need operating subsidies.

Therefore, consideration will be given to preapplications that describe projects of finite duration which measurably improve the social, economic or physical well-being of HDS populations, or enhance the resources or techniques available to service providers. HDS will support projects which extend the current boundaries of knowledge but which are easily replicable in other parts of the country. Every preapplication must include a dissemination plan to provide for the effective transfer of findings to appropriate audiences on a national scale.

C. Statutory Authorities

The individual statutory authorities under which grants and cooperative agreements will be awarded through the HDS Coordinated Discretionary Funds Program are as follows:

- Head Start: Head Start Act, Subchapter B of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35 (42 U.S.C. 2921 et seq.);
- Child Welfare Services: Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96-272 (42 U.S.C. 626); Section 426 of the Social Security Act, as amended, including the Child Welfare Services Training Grants Program;
- Runaway Youth Program: Runaway and Homeless Youth Act, as amended, Pub. L. 96-509 (42 U.S.C. 5701);
- Child Abuse: Child Abuse Prevention and Treatment Act, as amended, Pub. L. 93-247, as amended (42 U.S.C. 5101 et seq.);

- Adoption Opportunities: Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, as amended, Pub. L. 95-266 (42 U.S.C. 5111);

- Native Americans: Native American Programs Act of 1974, as amended, Pub. L. 93-644 (42 U.S.C. 2991 et seq.);

- Small Business Innovation Development Act of 1982, Pub. L. 97-219, amended Section 9 of the Small Business Act, 15 U.S.C. 638;

- Development Disabilities Special Projects: Section 145 of the Developmental Disabilities Assistance and Bill of Rights Act, as amended, Pub. L. 95-602 (42 U.S.C. 6000 et seq.);

- Social Services Research and Demonstrations: Section 1110 of the Social Security Act, as amended; and

- Training, Research and Discretionary Projects and Programs: Title IV of the Older Americans Act, as amended, Pub. L. 89-73 (42 U.S.C. 3031-3036).

D. FY 1985 Process

As in previous years, the FY 1985 Coordinated Discretionary Funds Program will be administered through a two-stage preapplication and full proposal process.

HDS has chosen to accept preapplications, rather than require full applications at the beginning of the process, because this allows a wider range of organizations to apply. Full applications must meet more stringent requirements, and therefore represent a significant investment of resources on the part of the applicant organization.

A preapplication, on the other hand, consists of a ten-page, double-spaced narrative describing the project the applicant proposes to conduct. This permits applicants with relatively few resources to compete for HDS funds with much larger organizations. Through this approach, HDS has provided funds for innovative projects which otherwise might not have been able to compete successfully.

Detailed screening requirements for preapplications are listed and explained below in Part III, Section F.1. Only preapplications that meet ALL screening requirements will be given further consideration. *Organizations which submit nonconforming preapplications will not be afforded the opportunity to correct deficiencies or to resubmit.*

Upon receipt for preapplications by HDS, the preapplications will be screened to assure that all requirements have been met. Preapplications which pass this screening will be reviewed jointly by Federal staff and non-Federal experts against the criteria established for review of preapplications, listed in

Part III, Section G.2. Based on the results of this review and on other factors, HDS Executive Staff will choose approximately 500 preapplications to begin stage 2 of the Coordinated Discretionary process.

These 500 preapplicants will be invited to submit full applications for a further review and possible funding. These full applications will be reviewed against the more stringent criteria listed in Part III, Section G.3. HDS anticipates that, subject to the availability of funds, approximately 150 to 200 grants and cooperative agreements will be made in the third and fourth quarters of FY 1985 and the first and second quarters of FY 1986.

Part II: Program Priorities

In setting the priorities contained in this announcement, HDS made provisions for State, local and community participation. National organizations, States, local agencies and experts in the field proposed research, demonstration, and evaluation issues which should be addressed by the HDS Coordinated Discretionary Funds Program. As a result of those recommendations, as well as a review of recent discretionary program activities and consideration of HDS goals, HDS has established the following priority areas for funding in FY 1985 and the first two quarters of FY 1986

Priority Area 1: Demonstrations of National Relevance

- 1.01 Community Based Care and Services
 - 1.01.A Consumer Directed Preventive Services
 - 1.01.B Community Based Living Arrangements for the Developmentally Disabled
 - 1.01.C Transition from School Life to Community Living for the Developmentally Disabled
 - 1.01.D Support for Families Providing Care to the Developmentally Disabled at Home
- 1.02 Employee Support
 - 1.02.A Employee Assistance Programs
 - 1.02.B Support for Dependent Care and Caregivers
- 1.03 Permanency Planning
 - 1.03.A Interagency Recruitment of Specialized Foster Family Homes
 - 1.03.B Service Systems Response to the Needs of Emancipated or Near Emancipated Youth
 - 1.03.C Parent Aide and Respite Care Programs
- 1.04 Child Abuse and Neglect
 - 1.04.A Coordination and Handling of Reported Cases of Child Sexual Abuse by Child Protective Services, Law Enforcement Agencies and the Justice System
 - 1.04.B Physical and Sexual Abuse Diagnosis and Treatment for Runaway Youth and Youth without Homes

- 1.04.C Recruitment of Volunteers to Serve as Court Appointed Special Advocates to Work within the Court System
 - 1.04.D Use of Clinicians for Child Abuse and Neglect Treatment
 - 1.05 Runaway Youth
 - 1.05.A Programs for Chronic Runaway Youth
 - 1.05.B Runaway and Homeless Youth Shelters and Crisis Hotline Linkages to Programs of Missing Children
 - 1.05.C Community Alternative for Youth without Homes
 - 1.06 Recruiting Private Sector Volunteers
 - 1.07 Indian Families
 - 1.07.A Intergenerational Pilot Programs for Indian Elders/Indian Children
 - 1.07.B Adapting Approaches for Resolving Chemical Dependency Problems in Native American Environments
 - 1.08 Head Start
 - 1.08.A Handicapped Children
 - 1.08.B Private and Voluntary Health Sector Network
 - 1.08.C Mental Health Services
 - 1.09 Strengthening the Family by Promoting Continued Parental Responsibility after Divorce
 - 1.10 Alzheimer's Disease Support Network
- Priority Area 2: Basic Knowledge and Data Development**
- 2.01 Special Populations
 - 2.01.A Information on Minority Elderly
 - 2.01.B Strengthening Tribal Governments to Foster Self-government and Economic Development
 - 2.02 Future Housing Needs of the Elderly
 - 2.03 Implementation of the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96-272)
 - 2.04 Analysis of Factors Contributing to the Failure of Family Based Child Welfare Services
 - 2.05 Suicide Prevention in Runaway Youth Centers
- Priority Area 3: Evaluation and Management Systems**
- 3.01 Evaluation as a Management Tool
 - 3.02 Management Systems
 - 3.03 Employment: Job Match and Job Placement Systems
- Priority Area 4: Knowledge Transfer**
- 4.01 Implementation of Voucher Systems
 - 4.02 Social and Economic Development
 - 4.03 Primary Caregiving
 - 4.04 Legal Services for the Elderly
 - 4.04.A Elderly Abuse
 - 4.04.B Capacity Building in Legal Services for the Elderly
 - 4.05 Special Aging Populations
 - 4.05.A Resource Materials for Indian Tribes
 - 4.05.B Needs of Minority Elderly
 - 4.06 Housing for the Elderly
 - 4.06.A Collaborative Community Planning and Housing for the Elderly
 - 4.06.B Outreach and Supportive Services for the Elderly
 - 4.06.C Housing Options for the Elderly
 - 4.07 Management Improvements
 - 4.07.A State Licensing Programs for Child Welfare
 - 4.07.B Preplacement Preventive Services
 - 4.08 Employment

- 4.08.A Youth Employment
- 4.08.B Employment and the Elderly
- 4.09 Special Needs Adoption
 - 4.09.A Training for Community Services in Special Needs Adoption
 - 4.09.B Grants to States to Increase the Number of Adoptive Placements of Special Needs Children
- 5.09.C Increasing Special Needs Adoption through the Media
- 4.10 Strengthening Families
- 4.11 Child Abuse and Neglect
 - 4.11.A Education of School-Aged Children To Prevent Child Sexual Abuse
 - 4.11.B Public Awareness Materials on Child Sexual Abuse for Parents and Service Providers
 - 4.11.C Training to Enhance Multidisciplinary Support in Services for Abused and Neglected Children
- 4.12 Minority Volunteer Network for Child Welfare Services
- 4.13 Technologies in Nutrition

Priority Area 5: Gerontological Training

- 5.01 Career Preparation for Employment in Aging
- 5.02 Continuing Education and Training in Aging
 - 5.03 Allied Professions in Aging
 - 5.03.A Allied Professions Gerontology Fellows Program
 - 5.03.B Continuing Education for Allied Professions
- 5.04 Minority Training and Development in Gerontology
 - 5.04.A Faculty Development and Exchange Program in Gerontology
 - 5.04.B Multidisciplinary Development in Gerontological Training

Priority Area 6: Child Welfare Services Training

- 6.01 Child Welfare Practitioner Training
- 6.02 Leadership Training for Child Welfare Executives
- 6.03 State Training Assistance
- 6.04 Child Welfare Traineeship Projects
- 6.05 Indian Child Welfare Training Projects
 - 6.05.A Indian Practitioner Training for Child Welfare
 - 6.05.B Indian Leadership Training for Child Welfare Executives
 - 6.05.C Indian Tribal-State Training Assistance Projects
 - 6.05.D Indian Child Welfare Traineeship Projects

Priority Area 7: Small Business Innovation Research (SBIR)

A description of HDS's specific interests under each of these priority areas is contained below.

Priority Area 1: Demonstrations of National Relevance

Demonstration projects with national relevance enhance the scope and quality of services provided by human service agencies by testing and demonstrating new mechanisms or systems for planning, providing and delivering services promptly, effectively and efficiently. The demonstrations must be based upon prior research or significant

experience related directly to the needs of the Nation at large, although perhaps tested at community-wide, Tribal-wide or State-wide sites.

A demonstration project should develop an example of a practice or procedure upon which continuing activities or programs can be built. A project must show a new solution to a problem that other organizations or agencies can adapt to their own use. HDS will not consider as a demonstration a project which simply replicates an ongoing activity.

1.01 Community Based Care and Services

The development and promotion of community living alternatives has been a major policy issue for HHS during the last decade. While community based care is preferable to institutionalized care—and should be facilitated for all affected populations—there has been a marked increase in the use of nursing homes, ICFs—MR and other residential services. HDS program offices have developed many approaches to community services which are now in operation across the country. However, recent studies show that institutional care is often used unnecessarily, reducing individual independence and often leading to guardianship.

Community services, if used constructively in conjunction with a person's own resources, and with sufficient forethought in planning for future needs, can assure the aging, disabled, or handicapped individual a range of protective, health and social services that will prevent premature institutional placement or inappropriate guardianship. However, services have historically been concentrated on those living in the community and on the severely dependent in institutions or living under legal guardianship. At present, there are few middle options when totally independent living is no longer possible and the prospect of institutionalization and/or adjudication of legal rights approaches. Because the present transition between relative independence and institutionalization is too often abrupt and traumatic, a middle range of consumer-directed services that can prolong relative independence in the community, postpone institutionalization and prevent guardianship needs to be developed.

1.01.A Consumer-Directed Preventive Services. HDS seeks to reduce inappropriate care by encouraging consumers or their representative groups to develop life service plans that assure consumer choice in future arrangements for

delivery and financing of social and protective services. *The focus of consumer-directed service plans should be preventive by encouraging the elderly or families with developmentally disabled dependents to specify future protective care needs well in advance of life changes.* These models would assure that institutional care or adjudicated guardianship is used only as a last resort and that effective use is made of both public and the individual's resources to ensure the availability of community services when needed. The results of this priority should be models of consumer-directed life service plans.

Projects which develop ways to coordinate consumer life planning for social services with private financing mechanisms (such as asset or home equity conversion) are encouraged. These models should operate within existing structures rather than within structures created solely for this purpose. HDS recognizes that service organizations usually avoid the handling of a client's financial activities. However, this reluctance must be balanced against a concern for the prevention of adjudication. Organizations with a strong community base, such as church affiliates, fraternal groups, foundations or other nonprofit service agencies are encouraged to apply.

Proposed demonstrations of consumer-directed services should:

1. Identify alternative methods for developing and promoting consumer-directed service plans. Materials and information need to be developed to motivate individuals and organizations to participate in consumer-directed service plans, and to support planning for future service needs and for the financing of those services through several resources, including the individual's assets;
2. Identify the characteristics of organizations capable of promoting and implementing service plans;
3. Describe consumer attitudes concerning life-term services and financial planning;
4. Identify alternative personal financial arrangements available to support a consumer services plan including pre-paid membership, long-term care insurance, home equity conversion, or monthly service fees;
5. Explore the role of organizations responsible for implementing the plan when the client becomes incapable of directing the plan alone; and
6. Describe how relationships with existing community services organizations and parent groups can help to secure services under the plan.

HDS will also support models which demonstrate *self-supporting alternatives to public protective services and guardianship.* Entrepreneurial projects which involve private corporations are strongly encouraged, in particular those with the potential for commercial applications similar to insurance.

1.01.B Community Based Living Arrangements for the Developmentally Disabled. The movement of developmentally disabled individuals from institutions to living in the community has led to a variety of concerns, one of which is the increased demand for a variety of community based living arrangements.

Current trends in deinstitutionalization and preferences of the developmentally disabled and their families have increased demand for a variety of *community based living arrangements.* Experience indicates that a number of factors, such as staff attitudes, policies, characteristics of the residents, and matching of clients with facilities, affect resident adjustment, level of activity, and integration into the community.

HDS will support projects which provide documentation of and more information about *effective approaches to the management and operation of the range of community based living arrangements for the developmentally disabled* such as family care, group homes, intermediate care facilities and natural family settings. Research on the management of community residential facilities has shown problems involving staffing patterns, live-in and shift-staff, funding, resident training and adaptation, cost, type and quality of services, etc. States and localities, public and private agencies, and organizations concerned with the developmentally disabled need reliable evidence about the problems and about creative approaches to establishing and operating successful alternative living arrangements.

1.01.C Transition from School Life to Community Living for the Developmentally Disabled.

Approximately 1,120,000 developmentally disabled children and young adults are enrolled in special education programs in the public schools where special education services are made available to them by law. In the next few years, about 90,000 of these developmentally disabled students will be leaving school annually and seeking adult services. In many States and local communities these developmentally disabled persons will confront limited services and a complex, diffuse and uncoordinated service delivery system.

According to the HHS Inspector General's 1984 report on the transition of developmentally disabled young adults from school to adult services, most States have only recently recognized the issue. Some program models are available that describe *specific methods to improve the link between high school and adult services.* However, there is a need to replicate and disseminate information about those programs that have proved promising and to develop alternative approaches to the problems that undermine a successful transition from school to adult life. HDS will support demonstrations which promote a successful transition, as well as dissemination of information about established effective programs.

1.01.D Support for Families Providing Care to the Developmentally Disabled at Home. The natural family is the primary care provider for developmentally disabled individuals in the community. In spite of the value and cost effectiveness of the natural support system of the family, Federal and State policies and practices continue to discriminate in services and funding available to families to support their developmentally disabled members at home. For example, funding policies discriminate against natural families by making services available in greater measure to those who are either institutionalized or who are living in supervised residential settings subsidized by public monies. This policy may cause some families to prematurely or inappropriately institutionalize their developmentally disabled family member.

HDS will support demonstrations of *ways in which policies can be formulated and/or services made available to strengthen the capacity of families to care for their developmentally disabled relative at home* and thereby encourage integration into the community. This can include projects that demonstrate the use of both cash and in-kind family support services which typically include information and referral, diagnosis and evaluation, respite care (including voluntary respite care in the home), parent training, recreation and transportation. The expected result is a series of models by which States may implement systems to support home care.

1.02 Employee Support

1.02.A Employee Assistance Programs. When developmentally disabled persons are working, they face many difficult adjustment problems

related to basic coping as well as employment skills. Inadequate resolution of such problems can often mean the end of the employment for the individual. This outcome negates all of the efforts at training and placement that preceded employment.

Employee Assistance Programs (EAP) have proven very effective in helping employees with substance abuse and other psychological difficulties. Often, participating in an EAP is made a condition of employment for the troubled employee and is thus a significant motivator. HDS will support demonstrations which utilize, in an employment setting, trained EAP-type staff who provide guidance and other assistance to developmentally disabled employees to promote favorable job adjustment, retention, change, and mobility.

1.02.B Support for Dependent Care and Caregivers. The Federal tax code provides a number of benefits to companies that contribute to dependent care programs for their employees. In practice, most corporations that offer this benefit to their employees have focused their programs on child care. There is a need to explore how the provisions of the tax code can be used to extend corporate programs of employee benefits for dependent care to the care of other dependents such as elderly parents or adult handicapped children. HDS will support applications that apply these tax code provisions to a system of flexible benefits for employees that covers dependent care not only for children, but also for the aged and the handicapped.

Expected results of projects include the development of models for both large corporations and small businesses to initiate and maintain systems to support dependent care as a fringe benefit. Tax code provisions to be explored include accelerated cost recovery and investment tax credits for capital expenses; amortization of "start-up" and "investigator" expenses; targeted jobs tax credits; and tax deductions for charitable expenses and business expenses.

HDS is particularly interested in projects which demonstrate the viability of providing dependent care for children, the aged and the handicapped as a fringe benefit. Applications should propose cost-benefit analyses which compare the expenses of such programs to the benefits they provide in terms of increased worker productivity and reduced absenteeism. Project funds are not intended to replace existing programs or fringe benefits. Significant employer cooperation and contributions will be expected.

HDS will also support demonstrations by employers to test and evaluate the use of innovative approaches, such as flexible leave and work schedules, shared work, home-based work, extended leave for caregivers, or flexible benefit plans, for caregivers. Projects should assist caregivers who, because of responsibilities within the home, can not work full time or traditional schedules. The expected results are new approaches for employers to enable primary caregivers to discharge their caregiving responsibilities and still be able to sustain their financial independence by gaining or maintaining employment. It is expected that the preapplication demonstrate significant management and financial support from the private sector.

1.03 Permanency Planning *

The Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96-272) places primary emphasis on reduction of unnecessary use of foster care, reunification of children in foster care with their own families (in those cases where it is possible) and provisions for adoption of children who cannot be returned to their own families. A continuing need exists to provide permanency for children who are separated from their families, to increase the adoption of special needs children (particularly minority and handicapped children), and to reduce the length of time children are in temporary out-of-home placements.

1.03.A Interagency Recruitment of Specialized Foster Family Homes. The purpose of this priority is to demonstrate the efficacy of joint activities by child welfare and developmental disabilities (DD) or mental retardation (MR) agencies in the recruitment of specialized foster parents for special needs and developmentally disabled children. There is a need to develop coordinated approaches between child welfare and DD/MR agencies to maximize available resources at the State and local levels.

The characteristics of children in need of foster family care have changed. The current service population is composed of older children, sibling groups, children with handicapping conditions and ethnic minorities. Because the placement resources for these children are limited, most State child welfare agencies find it difficult to launch and maintain ongoing foster parent recruitment programs specifically to serve special needs children.

* Also see the forthcoming BIA/HDS coordinated Indian Child Welfare announcement.

The results should be model recruitment approaches; materials designed to meet the needs of a broader service population; and, model cooperative agreements between departments of social services and mental health agencies at State and local levels.

1.03.B Service Systems Response to the Needs of Emancipated or Near Emancipated Youth. Youth without homes, both those who have been formally emancipated and those who have not, have a number of needs that might go unmet because their age sometimes makes it difficult to qualify for services through various service systems. For example, many youth without homes are unemployed but do not qualify for unemployment because they are too young. Child welfare agencies will often not respond to youth without homes in their late teens because they are too old. There is a need to design model systems to reach these youth with counseling about early emancipation papers, available job programs, how to finish high school, how to get assistance in finding housing, transitional living arrangements, appropriate interim placement and guardianship and independent living. HDS will support demonstration projects which address these issues.

1.03.C Parent Aide and Respite Care Programs. HDS intends to support efforts to increase the use of volunteers and paraprofessionals as supplemental support for families who are child protective clients and thus help prevent unnecessary placement of children in foster care. The parent aide and respite care programs can also serve to reduce worker burnout and staff turnover in child protective service agencies; to increase the capacity of child protective service workers by allowing them to apply their skills to treatment and case management; and to increase community awareness and involvement with child protective services.

1.04 Child Abuse and Neglect *

Child abuse and neglect continues to be a serious national problem. It is projected that over 1.5 million children will be subjects of reports of abuse and neglect in 1985. Awareness of child maltreatment has vastly increased the number of reports and has turned the attention of human service planners to the necessity for improved prevention, protection and treatment. HDS will support a wide range of research, demonstration and service

* Also see the forthcoming BIA/HDS coordinated Indian Child Welfare announcement.

improvements in this area. Emphasis will be placed on assisting public and private agencies to incorporate service improvements for preventing and treating child abuse and neglect and for assuring protections for children who have been endangered either in their own homes or in out-of-home placements. HDS will support projects which address specific issues in the areas of prevention, protection and treatment.

1.04.A Coordination and Handling of Reported Cases of Child Sexual Abuse by Child Protective Services, Law Enforcement Agencies and the Justice System. Reports of child sexual abuse are made to child protective service agencies, law enforcement agencies, prosecutors and courts. Responsibility for acting on these reports varies among communities and among the agencies involved. Criteria for decisions, including disposition of cases, varies extensively.

As a result there is an imperative need to coordinate the involvement of the various agencies, clarify roles and responsibilities and develop guidelines for decisions.

The purpose of this activity is to develop ways to coordinate child protective services, law enforcement agencies and the justice system, and apply knowledge gained from previous demonstration projects in managing and treating child sexual abuse cases. Products of the projects, such as guidelines for interagency agreements, agency roles, and decision making, must be useful to the field of practice.

1.04.B Physical and Sexual Abuse Diagnosis and Treatment for Runaway Youth and Youth Without Homes. The purpose of this priority is to improve the capability of runaway and homeless youth shelters to identify and treat or appropriately refer for treatment adolescents who have been physically or sexually abused. Runaway youth shelter data reflect an increase in the number of adolescents who run away to escape maltreatment. Runaway shelter staff need to develop counseling/diagnostic skills so that they may adequately identify maltreatment and assume appropriate responsibility for crisis intervention and for referrals to child protective services, law enforcement, mental health and medical services.

HDS will support program development in shelters to achieve this. In collaboration with these efforts, HDS will support related research which will collect, analyze and document data from those developmental projects and thus achieve a secondary objective of increasing understanding of the types of

adolescent maltreatment identified by runaway shelters. The research effort will also profile victims and their families and identify the crisis intervention and referral services which appear to best address their needs.

The information developed will be used to educate youth service providers and shelter staff on identification and effective treatment of maltreated runaway and youth without homes. The new information may also offer better insights into reasons for teen prostitution and lead to the planning and implementation of more effective intervention efforts.

1.04.C Recruitment of Volunteers to Serve as Court Appointed Special Advocates to Work within the Court System. HDS will support projects through seed grants in new locations to assist local, voluntary community organizations or coalitions of organizations to recruit, train and use volunteers as Court Appointed Special Advocates (CASAs) or Guardians ad litem to determine and recommend to juvenile court judges which course of action is in the best interest of the child, based on the volunteer's independent investigation. A CASA volunteer insures that every child has a permanent placement plan at the time of the judicial disposition and monitors the plan to make sure that it is adhered to. CASAs serve as independent advocates for abused, neglected or dependent children, as well as children who are in legal custody of a public agency and who have been placed in foster care.

Preapplicants must show that the court desires to support the project and must also demonstrate the capacity to develop and implement appropriate training and to coordinate the program under the auspices of the court. Preapplicants must show that efforts will be made to enlist volunteers who represent the racial or ethnic characteristics of the child population being served. Preapplicants must also show their willingness to work in partnership with the National CASA Association and the state task forces on permanency for children set up by the National Council of Juvenile and Family Court Judges with funding from the Office of Juvenile Justice and Delinquency Prevention. These grants will not exceed \$20,000.

1.04.D Use of Clinicians for Child Abuse and Neglect Treatment. The purpose of this priority is to demonstrate the use of performance-based contracting to procure clinical services for the victims of child abuse and neglect.

Currently, standard purchase of Service (POS) contracts with nonprofit

organizations are the predominant method of procuring clinical services. Earlier research studies have identified several problems related to POS contracting, such as the lack of public agency control, inadequate monitoring of the contract agency, overly-broad discretion for the contract agency to select the type of client they will serve, and conflict of goals between the public agency and the contract agency.

HDS will support demonstrations to increase productivity and efficiency in use of POS resources by use of performance contracting with individual private practitioners rather than with other public or nonprofit agencies. The individual practitioner would be assigned specific cases, various forms of incentives could be designed for effective outcomes and greater quality control could be maintained.

Models must address preplacement prevention, reunification or related therapy as part of a larger treatment plan within a public child protective agency. Incentive provisions and quality control methods could include innovative fee plus incentive features, special monitoring and progress review activities for quality control, analysis of expected outcomes relative to costs and duration, etc. Evaluation of project effectiveness would include comparing clients not served by private clinicians against costs and outcomes with fully loaded costs of public provision of services or alternative POS arrangements against outcomes. The results should be able to provide local agencies with alternative approaches they could use for types of cases for which private clinicians are the preferred approach, the quality control and management approaches most effective and the type of fiscal incentive methods that seem most able to assure desired outcomes at the preferred level of quality.

1.05 Runaway Youth*

Serious difficulties are often encountered by adolescents and their families which lead to runaway behavior and family instability. Data on runaway youth and youth without homes indicate that younger runaways evidence problems focused primarily on child-parent conflict, while older youth (aged 16 to 18) present a range of more severe problems, such as substance abuse, juvenile delinquency, lack of health care, unemployment, prostitution, and lack of independent living skills. Community organizations and governmental agencies—including runaway shelters—which attempt to help these youth are often constrained

by existing structures and procedures into a fragmented approach which limits their effectiveness and the scope of problems they can manage.

To address these problems, HDS will fund projects intended to coordinate services for dealing with chronic runaway behavior, create linkages between homeless youth shelters and missing children programs, and create new alternatives for dealing with youths without homes. The intent of this priority area is not to fund basic shelter programs. It is to fund projects—proposed by organizations providing shelters or other youth services—that demonstrate decisive community support for the effective linkage or integration of the various programs dealing with runaway, homeless or missing children at the local level. This includes the coordination of efforts among geographically separate localities.

1.05.A Programs for Chronic Runaway Youth. The purpose of this priority area is to develop and test coordinated programs, involving runaway youth shelters, juvenile courts and social service agencies, for dealing with chronic runaway behavior in youth in foster care, institutional placements or their own homes. Youth who repeatedly run away pose special problems for these agencies. More information is needed about the cause of this behavior so that shelters, courts and agencies can collaborate in developing effective responses. In the process of planning for and testing new program approaches, internal project evaluations should provide new knowledge about these youth, their needs, and their environments. Where possible, applicants should work with such existing networks as runaway and homeless youth centers and national, State and local hotlines. Applications with private sector involvement will receive priority consideration.

1.05.B Runaway and Homeless Youth Shelters and Crisis Hotline Linkages to Programs of Missing Children. The problem of missing children is related to that of runaway youth. With the establishment of the Department of Justice's Missing Children's Center in the Office of Juvenile Justice and Delinquency Prevention and its national hotline, a new information, investigation and referral system is being established at both the national and community level. HDS will fund demonstration projects that provide new and innovative approaches to planning and implementing community based linkages and cooperative effort between

youth service providers, local law enforcement, and juvenile court systems in response to the issue of missing children in their community. Where possible, applicants should work with such existing networks as runaway and homeless youth centers and national, State and local hotlines. Private sector involvement will receive priority consideration.

1.05.C Community Alternatives for Youth Without Homes. An ever increasing number of youth have left home, been forced out by their families or run away. Some show up at runaway houses, in the child welfare system or the juvenile justice system, but many do not. These youth without homes are likely to need food, shelter, guidance and protection, which some receive through the efforts of police, churches, or other community based organizations. However, those who do not receive help may fall victim to persons and groups who exploit them.

Local agencies often lack the authority to enforce protective custody. Securing adequate resources to return troubled youth to their families is difficult, even when appropriate. Proper care of the youth requires assurances that the family is willing and capable of providing care or that the community has suitable alternatives to family care when needed.

HDS will support projects that demonstrate the use of volunteers to work with local youth shelters, child welfare agencies, and the police to facilitate family reunification or other appropriate living arrangements for youth without homes. Coordinating mechanisms, joint planning and communications networking should be demonstrated to assist existing community organizations to develop volunteers in serving as youth mentors, family counselors and to exchange information needed by family reunification of alternative care when needed. A major component of these demonstrations should be the development of a national communications network to coordinate existing voluntary agency capability with the public and private organizations that work with youth without homes. Projects should demonstrate the efficacy of volunteers in assuring protection for youth without homes during periods of transition to permanent care arrangements.

The network should provide for dealing with both interstate and intrastate problems of these youth. This volunteer youth network would work in cooperation with youth-related voluntary activities, including the newly

established volunteer network of court appointed special advocates (CASA) for troubled youth under court supervision. Projects will demonstrate and develop self-sufficient models for replication.

The San Diego State University Foundation is providing funds for this demonstration. Other foundations are invited to participate.

1.06 Recruiting Private-Sector Volunteers

Social services agencies often turn to corporations for resources to address a variety of service related needs. Proposals are solicited which demonstrate models that can be used by social service agencies to maximize the impact of corporate contributions. Models should include new approaches to public/private collaboration using volunteers to improve the delivery of social services. It has been demonstrated that planned and systematic use of business expertise can be more effective than a financial contribution only. Increasingly, corporate contributions are in the form of human resources such as loaned personnel, paid released time for employees, corporate retiree volunteer programs, group projects and community involvement teams. Finally, as corporations begin to refine their contribution policies and objectives, social service agency practices should include initiatives which inform and educate the corporate sector about the needs of HDS populations.

1.07 Indian Families

1.07.A Intergenerational Pilot Programs for Indian Elders/Indian Children. Proposals are solicited which demonstrate the advantages of utilizing an intergenerational approach in programs and activities which, in turn, promote good health and cultural enrichment for Indian Elders and Indian children.

The elders in American Indian societies have traditionally held a respected place in the extended family and the entire community, responsible for decision-making and the transmission of history, language and cultural values.

Today, in spite of the socio-economic changes, acculturation of the young and changing lifestyles which have resulted in the physical and psychological isolation of the elders within their own communities, elders continue to play an important role in the Indian community as conveyers of knowledge, wisdom and cultural values. This continuing role is evident by the participation of elders in current programs and activities, such as:

serving as foster grandparents, volunteers, and classroom aides; and visiting schools and Head Start centers to provide cultural enrichment.

In addition to those HDS programs where these activities are already occurring, HDS encourages the development and demonstration of intergenerational programs of national significance, such as demonstrating the potential and effectiveness of having elders work with younger tribal members on the prevention of health problems such as alcohol abuse, including fetal alcohol syndrome and adolescent suicide.

1.07.B Adapting Approaches for Resolving Chemical Dependency Problems in Native American Environments. Families within Native American communities have a widespread problem of chemical dependency. Whether alcohol related, or other drug abuse, these social problems have the effect of disruption and dislocation of Native Americans' family life.

HDS will support projects to demonstrate that, utilizing known anti-drug dependency techniques through coordinated services to Native American families, substantial improvements may be achieved for the individuals within the family setting. Areas to be addressed include parenting, child abuse and neglect, runaways, school drop-outs, and battered family members. Consequent problems of shelter, placement, training and employment may be included. Applicants must describe both the techniques to be adapted and the basis upon which problems identified are specified.

1.08 Head Start

An expanded challenge for Head Start is developing a working relationship with other human services agencies as facilitator, catalyst and mobilizer of resources within the communities which Head Start now serves. Under this priority area, HDS will focus on using the Head Start experience to enrich and strengthen families with handicapped preschool children who have not had the benefits of Head Start enrollment and the enhancement of health and mental health services under Head Start.

1.08.A Handicapped Children. Head Start programs are required to reserve ten percent of their enrollment capacity to serve handicapped preschool children. Although national statistics demonstrate that a slightly larger percentage of current enrollment is defined as handicapped, HDS is concerned that assistance be given to the families of developmentally disabled

children to identify programs which will serve their families, and that Head Start services be made available to handicapped children who can use them as part of the Head Start recruitment and enrollment of children with developmental disabilities (DD). HDA intends to support demonstrations of Head Start linkage and coordination with programs for families with handicapped infants and preschool children, with the objective of extending Head Start services to more handicapped children and developing joint planning and coordinated program resources for better meeting their needs. Proposed projects should conclusively demonstrate community support for the proposed linkages or integration.

1.08.B Private and Voluntary Health Sector Networks. Head Start health services advocacy activities have focused on networking with private and voluntary health sector organizations in support of health services for Head Start children. Over the last two years, these activities have led to increased participation by private and voluntary sector health professionals in such activities as:

1. Participation on local Head Start program Health Advisory Committees;
2. Development of health education programs for Head Start children, staff and parents; and
3. Provision of needed direct health services to Head Start children.

HDS is soliciting preapplications which propose to demonstrate how private and voluntary health sector networks can be used to increase the delivery of required Head Start health services at the local grantee level. Where possible, demonstration projects should produce outcome measures which will be reflected in the Head Start Bureau Program Information Report (PIR). The projects should also provide models which can be replicated through existing private and voluntary health sector networks.

1.08.C Mental Health Services. The objective of mental health services in the Head Start program is to improve the emotional, cognitive and social development of the children participating in the Head Start program. HDS is soliciting preapplications for demonstration projects, with strong dissemination components, that enhance mental health services to children in Head Start programs. Particular attention will be given to preapplications that address the planning and implementation activities in mental health programs, the training of staff and the utilization of other community mental health resources. These proposed projects should include

new and innovative activities or approaches, such as family therapy, which can be replicated by other Head Start programs.

1.09 Strengthening Families by Promoting Continued Parental Responsibility After Divorce

HDS is interested in demonstration efforts concerning the support of children of families of divorce and the support of children who have been abandoned as a result of divorce. Projects should demonstrate new ways to assure that parents resume the responsibility for support of their children in cases where that support has demonstrably broken down.

Many factors influence the ability and willingness of parents to care for their children after divorce, including the employment (or lack thereof) of both the custodial and non-custodial parent; the terms of the divorce decree; the interpersonal relationships between the divorced parents and between the parents and the children; and the level of involvement of both parents with the children. The willingness of the non-custodial parent to pay child support may be influenced by that parent's ability to exercise visitation rights and by the influence of that parent on decisions affecting the welfare of the children.

HDS envisions a project or series of projects that would rely on data supplied by the Social Security Administration's Office of Child Support Enforcement (OCSE). The data would be used to identify those situations where intervention is necessary to assure that responsibilities for support are met.

Upon identification, the family situation in toto would be reviewed by an interdisciplinary team, perhaps composed of counselors, employment and training specialists, psychologists, and officers of family and civil courts. Once the problems affecting the ability and willingness of the parents to support their children have been identified, a program of services—mediation or arbitration of visitation and custody issues, personal and financial counseling, or other appropriate services would be developed and delivered.

HDS will give favorable consideration to applications which show commitment on the part of family courts to back the recommendations and decisions of the interdisciplinary team, and to applications which receive the support of State agencies involved in child support enforcement.

In cases of abuse, neglect or abandonment, children are often placed in foster care until permanent care is

available. HDS seeks approaches to locating and requiring able parents to make support payments to child welfare agencies while arrangements are being made for permanent care of the children. HDS is particularly interested in the impact of child support on permanency planning for children in foster care. Reunification of the child with one parent or the other is the preferred outcome.

Applicants may propose separate projects involving children of divorce who still live with one of their parents or children living in foster care, or they may combine these as a general child support project.

1.10 Alzheimer's Disease Support Network

Projects are requested that provide *new approaches for strengthening community supports to older persons with Alzheimer's disease or related neurological disorders*. The purpose of projects under this section is to expand the knowledge and understanding of persons who provide services directly to older persons suffering from this disease and their families and to increase the availability and commitment of qualified persons to provide quality care to older persons with Alzheimer's or related disorders. These projects may demonstrate new service delivery models, create public awareness programs, provide assistance to family caregivers, or evaluate the effectiveness of various service delivery systems which provide services to older persons with Alzheimer's disease and related disorders.

Applicants may propose projects that develop professional, non-professional, and volunteer skills in comprehensive screening, counseling, treatment, or dissemination of information about this disease. Projects should focus on preparing new personnel or improving the skills of personnel already working with older persons with Alzheimer's or related diseases in hospitals, nursing homes, day care or respite services, or providing in-home services. Persons may be trained to assume a leadership role in the development of family support groups or emphasis may be placed upon educating family caregivers, or other informal resources.

Priority Area 2: Basic Knowledge and Data Development

There are still areas for which additional information is needed on the major problems addressed by HDS programs. The knowledge base needs to be expanded to answer basic questions before demonstrations or further action can be taken to address specific

problems or to make improvements in the service delivery system.

There is also a need for secondary analysis of existing data to produce new insights to add to the basic knowledge pool in human services.

2.01—Special Populations

2.01.A Information on Minority Elderly. New information on the status and problems encountered by minority elderly persons is needed to support State and local program planning.

Proposals are solicited to acquire and develop nationally relevant, empirical information on the *needs of older minority persons, particularly in such areas as health, housing and employment*. Special attention should be given to the needs of Black, Hispanics, Native Americans and Pacific Asians and other ethnic groups whose cultural characteristics and difficulty with English language are barriers to receiving needed services. Information is needed particularly on access to services by minority elderly in rural areas.

Projects must propose to develop and disseminate useful information to National, State, Tribal and local organizations to improve policy development and service delivery for the aging population.

2.01.B Strengthening Tribal Governments To Foster Self-Government and Economic Development. Preapplications are requested *focusing on the knowledge base needed to implement the President's policy of fostering and encouraging self-government of Indian Tribes and enhancing the opportunities for economic development on Indian Reservations*. The preapplications should be linked to the report that will be made in the near future by the Presidential Commission on Indian Reservation Economies to permit Indian Tribes to act on the recommendations of the report. The underlying principles for the work of the Presidential Commission on Indian Reservation Economies are the government-to-government relationship, the Federal policy of self-determination and the Federal trust responsibility. The goals of the Commission's work are to remove obstacles to self-government and to create a favorable environment for the development of reservation economies.

The role of Indian Tribal governments will be to act on those recommendations that assure greater flexibility and improved opportunities for self-government, utilizing the relevant knowledge base for implementation.

2.02 Future Housing Needs of the Elderly

A major activity of the Administration on Aging is the development of a plan to address the needs of older persons beyond the year 2000. The plan will include housing and issue areas surrounding housing for the elderly.

Because persons 65 years or older are most likely to live in older homes whether they rent or own and because 80% of the 13 million older Americans who own their homes own them free and clear, long-range housing requirements need to be explored. Elderly who are in homes too large to maintain, and those who want a financial cushion to cover emergencies could benefit from programs such as Home Equity Conversions. Homeowners who do not want to move out of their homes, but are financially unable to stay, could also benefit from such programs and could potentially use these funds toward long term care.

Applications are being solicited which propose to *collect, analyze and disseminate data on potential future housing needs and living conditions of older persons in both urban and rural areas*. Projects will also be funded to package and disseminate available materials on housing for the elderly to local officials on a nationwide basis. Proposals must be designed to improve planning, resource allocation and management by local officials based on strategies and approaches which reflect the housing and supportive service needs of older persons. This knowledge must be made available through the communication networks of national organizations representing local officials concerned with housing and living arrangements for the elderly.

2.03 Implementation of the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96-272)

A central child welfare goal of the Nation is to reduce the number of children who are inappropriately placed in foster care. The Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96-272), and reimbursement policies under the Social Security Act, require that a public agency make "reasonable efforts" to avoid out-of-home placement for children consistent with each child's safety. Similar language is used relative to Indian children and the Indian Child Welfare Act. * The purpose of this priority area is to provide public social service agencies and State/local juvenile and family court judges with guidelines or criteria for determining what constitutes *reasonable efforts*.

The law requires that a court review and certify that reasonable efforts have been made before a child can be placed in foster care. This requires each court to define "reasonable efforts" in the local context. In areas with a large American Indian population special emphasis should be placed on reasonable efforts for the American Indian population. Effective/exemplary processes of determining and defining this pattern of services are urgently needed to assist States and courts in this determination.

Through this study, *HDS expects a better understanding of best practices in defining what is meant by "reasonable efforts."*

2.04 Analysis of Factors Contributing to the Failure of Family Based Child Welfare Services

Family-based child welfare services have often proved effective in preventing the need for placement of the child or children or in reunifying the family. However, there have been some failures. A study is needed to provide information on these failures, which could then be used to improve planning and support policy and management decisions.

The purpose of this priority is to analyze cases where family-based child welfare services failed to prevent the need for placement or to reunify families. By identifying the causes of such failures, better criteria for decision making, case management, planning and policy development can result.

New techniques in providing intensive, family-based child welfare services are effective in more than 80 percent of the cases. Without such innovative, intensive services, foster care placement and reentry rates can be as high as 48 percent. Nevertheless, every agency accumulates a number of failed cases. These failures require continuing social services, possibly extending to the next generation of family members. It is not clear whether these failures are due to such agency factors as poor decisions, inappropriate classifications, inappropriate or poor quality services, or to intrinsic qualities of the families involved. More information is needed to support policy and service decisions.

2.05 Suicide Prevention in Runaway Youth Centers

The purpose of this priority area is to identify or develop effective techniques for intervention and providing emergency services to seriously depressed and suicidal youth who use shelter facilities, and to disseminate

these techniques to runaway and homeless youth shelters.

Suicide is the third highest cause of death for adolescents; the number of teen suicides has doubled since 1960. The possibility of suicide is particularly a possibility to runaway youth and youth without homes, who are often depressed and isolated.

Shelters are concerned about recognizing suicidal clients and taking appropriate steps to prevent their deaths. To meet this need, HDS encourages joint efforts of shelters and community mental health agencies to develop and test crisis intervention and treatment approaches. A variety of products should be produced by this effort, including refined suicide intervention training materials, guidelines for early identification, and emergency procedures. When possible, existing materials, guidelines, and procedures on suicides should be adapted for use in shelter settings.

Priority Area 3: Evaluation and Management Systems

More effective and efficient administration and planning of programs is a major goal of HDS discretionary activities. Extensive research and development activity has already been undertaken on evaluation techniques, financial management systems, management information systems, fee for service systems, and other management techniques. HDS will support efforts to increase the use of the techniques and the approaches that have resulted from previous efforts. This should result in an enhanced capacity to plan, develop and administer service programs responsive to local needs and priorities.

3.01 Evaluation as a Management Tool

Nonprofit service and community organizations as well as State, Tribal government, and local human service agencies need to conduct and use existing program evaluation systems to manage their human service programs more efficiently and effectively.

A significant amount of funding has been invested in research and demonstrations in all HDS program areas at the State, Tribal government, local and service provider level. The role of program evaluation now needs to be integrated within the management process.

For the last several years, HDS has defined evaluation as follows: evaluation is the measurement of program performance (efficiency, effectiveness, responsiveness), the making of comparisons based on those measurements, and use of the resulting

information in policy-making and program management. HDS will fund nonprofit organizations, States and consortiums of States, Tribes or local governments who propose to *integrate these components of evaluation in their ongoing management programs.*

HDS will support evaluations of State, tribal and local programs on available national, state or local data. Evaluations should include innovative approaches for analyzing aggregate data, making valid cross-program comparisons and developing performance indicators and optimization techniques for measuring client outcomes.

Consideration will be given to those projects that propose short-term evaluations that will directly assist and motivate human service managers to improve performance across multiple HDS programs.

For example, HDS will support innovative projects that will enable State, Tribal and local governments and grantees to compare performance of their respective organizations with like institutions or with internally established goals and objectives. Evaluations should focus on the issues of cost, benefits, and productivity of human services and human services organizations. Applicants may select priority topics for evaluation studies; however, there must be a demonstrated commitment to implement study findings. Proposals should address:

- (1) Priority concerns of the agency;
- (2) Evaluative questions related to the priority concerns;
- (3) Sources of information for the study;
- (4) Expected results in terms of cost in relationship to efficiency, effectiveness, or impact; and
- (5) Descriptions of the agency process for implementing study findings.

3.02 Management Systems

Effective use of management and services information systems remains a high priority in this year's announcement. Social service managers need direct access to information designed to allow services to be monitored and problems to be addressed. Local service providers need a working knowledge of information systems, computers, analytic software and computer hardware capabilities. Policymakers must be able to plan and target resources on the basis of accurate, timely and appropriate aggregate data.

Resources must be mobilized to diffuse information management systems throughout human services agencies. In order to promote this, HDS

will fund projects that *facilitate the uses of automated data processing technology to improve the management of human service programs*. Special emphasis will be given to microcomputer systems applications that develop software applications and decision support systems for HDS programs. Additional emphasis will be given to those applications that will develop self-supporting telecommunications networks among human service agencies.

3.03 Employment: Job Match and Job Placement Systems a23au3.088

Many methods of arranging for or "brokering" jobs for the elderly and developmentally disabled persons are being tried by projects and agencies across the country. This aspect of job placement is crucial since it involves the linkage between the work-ready individual and his or her potential employer. In addition, there are a number of scattered, loosely documented "systems for job matching" for the elderly and developmentally disabled persons. These systems link available workers with available jobs and have great potential to increase employment opportunities.

Human services agencies and other organizations concerned with the employment of the *elderly and developmentally disabled need to know which methods of job development, placement, and job matching are most effective* and how best to relate to the private sector. Past projects (such as Job Path in New York) have shown that the approach to job development can determine success or failure. This accumulated experience *needs to be evaluated to provide information for future planning and program decisions*.

Furthermore, experience suggests that there is a need to examine the state-of-the-art in terms of the range of "job matching" systems now operational. The relative success of these systems and the factors that contribute to their success need to be documented. Other factors such as parental attitudes as well as which methods and motivational techniques can best encourage good performance by developmentally disabled persons in competitive employment need to be addressed.

Priority Area 4: Knowledge Transfer

There exists in the human services a vast amount of research, demonstrations and experience that has yet to be successfully transferred to the practitioner and policymaker and utilized for the benefit of HDS target populations. The wide gap between knowledge and practice in human

services continues to grow. New knowledge from research, demonstrations, evaluation, training and technical assistance is unevenly applied. From the local to the national level, inadequate knowledge transfer, utilization and application activities are increasingly recognized as major problem areas.

The effective transfer of knowledge and utilization of practices and techniques developed through previous HDS funded projects and/or with proven value under actual service conditions in a particular locality or State lessens the gap between knowledge and practice in human services. Knowledge transfer efforts focus on the use of State, Tribal, community or private organizations as trainers or transfer agents of the techniques or models. Inherent in the knowledge transfer is the understanding of the need to utilize marketing techniques as a means of spreading the current knowledge base.

HDS will consider innovative uses of clearinghouses; however, funds will not be available to establish new clearinghouses.

4.01 Implementation of Voucher Systems

As part of an effort to more effectively meet the needs of disadvantaged populations, HDS has funded several research and demonstration projects that test the use of vouchers for delivering human services. Vouchers are simply coupons, issued by an agency to an eligible client, which guarantee payment for services rendered to the client; often, there is a ceiling on the amount of the voucher. Although most voucher systems restrict the type of services that can be purchased with the voucher, clients are responsible for selecting the best service providers to meet their needs and for weighing such factors as convenience, quality, and costs. Theoretically, there can be an unlimited number of providers who, by complying with state regulations, are eligible to redeem vouchers.

Voucher systems emphasize consumer sovereignty. One major characteristic that they have in common is the attempt to use or enhance the role of the private market system in the provision of services. Thus, three major reasons for implementing voucher mechanisms are (1) allowing the consumer greater control in defining and selecting appropriate services; (2) fostering adequate supply, cost, and quality of services through competition among service providers; and (3) reducing operational costs through increased administrative efficiency.

The HDS-funded demonstrations have generally focused on target populations of children, the elderly and the disabled. The child-oriented projects deal with the provision of day care services while those involving the elderly or disabled are usually oriented toward providing services in a private home or community setting with the intent of delaying or avoiding institutionalization.

The experience of the HDS funded projects, as well as other similar efforts indicate that voucher systems offer several benefits. The increase in client choice enables selection of the most appropriate mix of services through access to a wide variety of providers; at the same time, cost consciousness of the client is encouraged through a ceiling on the subsidy. Replacement of contract/billing procedure with a voucher redemption process and a decrease in government control over service providers can simplify the process for both parties. These factors act to encourage a larger supply of providers who offer a variety of services at market determined prices; in the long term, the stimulation of supply will help contain the costs of the services. In addition, targeting of vouchers to clients who need the services is relatively easy.

In spite of the fact that the advantages seem to outweigh the possible difficulties, implementation of voucher programs in human services has been very limited. To address this problem, HDS will award grants totaling \$3,000,000 to state, county and local governments to *assist in the implementation of operational voucher programs in social service delivery*. HDS expects to award grants to a broad range of jurisdictions so that governmental human service agencies of all sizes and geographical areas are encouraged to apply. Applicants should note that grants will only be awarded for projects with the specific purpose of implementing a permanent or long range voucher program. Short term projects to demonstrate or test the use of vouchers in a particular jurisdiction will not be funded.

Applicants should, in developing their proposal, consider the following issues:

- There are obvious tradeoffs inherent in selecting voucher mechanisms over traditional method of providing services. What are the long range ramifications of these tradeoffs? What type of information does a locality need to make decisions regarding the acceptability of vouchers? What other factors will influence the feasibility of implementing a voucher system?
- What minimal monitoring mechanisms need to be implemented

that will have not reduce the efficiency of the system and will not interfere with consumer choice?

- If supply of service providers remains unaffected by market forces (i.e., does not increase to an adequate level), how can supply be stimulated? How can barriers to entry into the market be recognized and corrected? What impact would such corrective action have on the overall cost of the system?

- Is it appropriate for voucher systems to be the only source of service in a given geographical area or does it make more sense to have such systems as adjunct to traditional methods of providing services?

- Are voucher payments considered as income for the clients?

4.02 Social and Economic Development

A major concept underlying HDS policies is that the Federal government should promote economic growth, thereby strengthening the ability of families and individuals to care for each other. This concept was articulated in the program announcement for the Fiscal Year 1983 Coordinated Discretionary Program (Federal Register, Vol. 47, No. 235, December 7, 1982) under Priority Area I, "Strategies for Increasing Social and Economic Self-Sufficiency."

Under this announcement and others (notably the Small Business Innovation Research program) the Office of Human Development Services has provided funds for over 50 research and demonstration projects in the area of Social and Economic Development. Many of these projects made important advances in such areas as generating employment and income, targeting resources, and promoting community and family-based care. However, to date, there has been no specific effort to evaluate the projects, identify new techniques and ideas, and effectively transfer them to areas and organizations that will immediately benefit from their use. The purpose of this priority is to launch such an effort.

HDS is particularly interested in *national dissemination of knowledge and practice that promotes the self-sufficiency and employability of its populations*—the aging, the developmentally disabled, adult AFDC recipients, Native Americans, and youth. Our primary interest is to *increase the private sector employment of these populations*. Therefore, eligibility to apply under this priority is limited to private, profit-making organizations, including businesses and corporations, and to such nonprofit organizations as local Chambers of Commerce or

associations of small businesses and local or national trade organizations. Preapplications must also concentrate on the dissemination of ideas and techniques that would gain wide acceptance in the business world; i.e., those that would provide immediate gains in productivity and profit. Limitations of space prevent a listing of the projects funded under HDS's social and economic development research and demonstration efforts over the last two years, but a listing will be supplied to potential applicants upon request.

4.03 Primary Caregiving

Within the informal caregiving network, the primary caregiver is the person most likely to assume responsibility for the support needed in an emergency situation or over the long-term. HDS has funded a number of projects on the skills required of and supports required by primary caregivers, including respite care. These materials on caregiving need to be made available to service providers and the general public.

A number of community groups are now providing support to family members who give long-term care services to older impaired relatives. Information about the establishment and operation of these support groups needs to be disseminated nationally to community leaders in aging who are interested in enhancing support systems for family caregivers.

Proposals are solicited that would *identify and analyze data and disseminate information about model support groups for family caregivers*. Proposals should provide communities with data and information about staffing, recruitment, composition, outreach and other factors involved in the start-up of such groups. Preapplicants should propose to disseminate this data and information nationally to agencies and organizations for their use in planning and establishing family caregiver support groups.

4.04 Legal Services for the Elderly

The aging network and State executives responsible for the care and protection of older persons need to become more familiar with state-of-the-art legal services approaches, materials and techniques designed to improve services for the elderly.

A variety of materials have been developed on legal and protective services to the elderly which need to be analyzed, synthesized, and disseminated to the network on aging. Applicants should include well-

developed information on state-of-the-art practices and materials.

4.04.A Elderly Abuse. The results of studies, demonstrations and other information concerning elder abuse should be disseminated nation-wide. This project should identify actions which States have taken to establish laws on elder abuse, reporting on incidents of elder abuse, as well as remedial actions to reduce the incidence of elder abuse.

4.04.B Capacity Building in Legal Services for the Elderly. There is need to *disseminate information on legal services for older persons to enhance the capacity of the network on aging*. Preapplications are solicited which address two or more of the following topics:

- Dissemination of assessment tools of legal needs;
- Dissemination of procedures for the evaluation of legal services;
- Identification and dissemination of best practices models for the delivery of legal services; and
- Provision of assistance on substantive legal issues to the network on aging.

4.05 Special Aging Populations

Materials have been developed to address the specific and specialized need of minority and frail elderly. The Aging network needs this information in order to assure that frail and minority elderly receive the care, services, and treatment they need. The proposed activities should analyze, synthesize, and distribute these materials.

4.05.A Resource Materials for Indian Tribes. Indian Tribes have a need for "best practice" materials and financial resources to develop comprehensive and coordinated aging services for their elderly tribal members. Preapplications are solicited which propose to develop exemplary materials and conduct training for administrators of programs that serve elderly Native Americans. Preapplications should propose Nationwide or HHS Regionwide programs which result in improved access to Federal, State and local resources by Indian Tribes.

4.05.B Needs of Minority Elderly. AoA is concerned about differing needs and responses to services within varied groups of the general aging population. Life styles, employment patterns, income, housing and health status among Blacks, Hispanics, Native Americans and Pacific Asians are demonstrably different from those of the majority population. Special efforts are needed to assure adequate access to and utilization of services by the major

ethnic minority groups. Applications are solicited which propose such efforts as *national advocacy, technical assistance, dissemination of educational materials and training to insure recognition and appropriate responses to the needs of the minority elderly by the network on aging.*

4.06 Housing for the Elderly

A wide range of housing programs are available to elderly consumers but they need access to the information. Local housing officials and aging program representatives also require more information in order to assure quality living arrangements for older people. Applications are requested for proposals which transfer existing knowledge to local officials responsible for housing policies and programs as well as the Network on Aging. Specific areas are outlined below.

4.06.A Collaborative Community Planning and Housing for the Elderly. Personnel of the Network on Aging, public social service agencies, local officials responsible for community planning and housing, representatives of voluntary and business organizations, and representatives of consumer organizations need to work together to address the housing and living arrangements of older persons. Collaborative efforts by these three groups could more effectively utilize the knowledge available from research and demonstration projects. Preapplications are solicited which would provide opportunities for the transfer of knowledge between public and private groups concerned with the housing and living arrangements of older persons in urban and rural areas. Proposals should result in *HHS Regional or Statewide programs which would develop and implement a strategy of knowledge transfer among officials concerned with the housing and living arrangements of the elderly.*

4.06.B Outreach and Supportive Services for the Elderly. Private developers, mayors, community planners, public and private housing managers and Network on Aging Personnel need information about best practice models of outreach and supportive services for older persons living in congregate housing, single room occupancy hotels and rooming houses.

Proposals are solicited for efforts which would assist in *disseminating the findings, models and techniques developed through the Administration on Aging and the Farmers Home Administration National Congregate Housing Demonstration Program and other relevant knowledge sources dealing with supportive services in*

congregate housing, with particular emphasis on rural areas, as well as Single Room Occupancy (SRO) and rooming houses. Proposals must adapt available materials to the needs of local officials and disseminate the materials Nationwide.

4.06C Housing Options for the Elderly. Demonstrations of effective techniques for *distribution of information on housing options* for older persons are requested. Many older Americans are faced with difficult decisions regarding their choice of housing. Factors such as retirement, economic hardship, changing neighborhoods, illness or death of a spouse, and loss of family ties often influence choices. Although there are a variety of housing options available, older people frequently lack the knowledge and skills for making intelligent, informed decisions.

There is a need to make information available which will allow older persons to make informed decisions about housing options which are in their best interest. Preapplications are solicited which will provide comprehensive *Statewide or community-wide programs in large metropolitan areas which demonstrate effective techniques for making information available to older persons* for use in their housing choices. These efforts should also strengthen the capacity of local and State agencies to provide information on housing options for older persons. Emphasis should be placed on innovative or new techniques for making such information available. This could include the use of television, information and referral services, specialized financial or housing counselors, etc. Programs will be evaluated on the basis of their ability to reach great numbers of older persons and their effect on understanding of housing options.

4.07 Management Improvements

Improved management of human services programs is a goal of the Office of Human Development Services. This priority is designed to encourage approaches to improving planning and management skills, modifying State administrative procedures and providing training and reorganizing.

4.07.A State Licensing Programs for Child Welfare. The purpose of this priority area is to support projects designed to *assist States in implementing effective child welfare licensing policies and procedures.* Currently, protection of children through licensing of child placement and child care facilities varies widely from State to State. States have requested assistance in designing effective

licensing policies and procedures for child placing agencies, family foster homes and child care institutions. Recently developed national resource materials on licensing provide information on exemplary approaches which can enable States to enhance the skills of licensing staff and to upgrade licensing practice.

Licensing requirements in various States differ according to administrative structures, operating policies, enforcement procedures, training of licensing staff, and differing statutory jurisdictions which in some States exclude many services from licensure. In addition, many State licensing requirements do not mandate specific activities which are conducive to permanency planning and other model elements of social work practice.

In FY 1984, eleven States applied for grants to address problem areas related to child welfare licensing. Many other States expressed an interest in applying for grants, but were unable to do so because of insufficient time to develop proposals. HHS intends to support an additional group of State agencies in addressing improvements in their child welfare licensing programs. Grants will range between \$25,000 and \$60,000 each. States receiving similar grants in FY 1984 will not be considered as eligible applicants in FY 1985 and FY 1986.

4.07.B Preplacement Preventive Services. The purpose of this priority area is to assist 10 to 20 State, county or metropolitan public child welfare agencies to *implement or improve delivery of preplacement preventive services, particularly through the provision of these services by non-profit organizations.* Priority will be given to those States with a significant over representation of minority children in placement, and to those States whose programs are in a beginning phase.

The requirement for provision of appropriate preplacement preventive services became effective October 1, 1983 with the passage of Pub. L. 96-272. Many State agencies have already developed very successful programs as indicated in the *Annotated Directory of Selected Family Based Service Programs*, a description of 139 programs which is available from the National Resource Center for Family Based Services, University of Iowa.

Nevertheless, the implementation of such programs requires reallocation of resources, specialized training and other changes which may be difficult in public agencies in spite of the known effectiveness of the programs. Currently no more than 10 States have implemented these programs statewide.

Seed grants for reorganization and training will materially assist the other States to institute preplacement preventive services.

4.08 Employment

4.08.A Youth Employment. Youth employment, leadership development and peer counseling techniques used in innovative approaches to prevent or reduce the negative consequences of youth problems such as teenage pregnancy, runaway behavior and juvenile delinquency have been demonstrated recently. These problems are significant because the occurrence of any of these problems in the life of a youth all too often is aggravated by the lack of a coherent response by the State, Tribal or local system of agencies dealing with youth. These projects have made creative use of youth employment, leadership development and peer counseling techniques to assist teenage mothers and fathers, runaway and other youth without homes, juvenile offenders and other youth at risk to take control of their economic life.

Preapplications are submitted which will provide information and "best practice" materials for both the public and private sector, including for-profit employers, on recent developments in the area of youth employment. The proposed efforts should have a regional or nationwide impact on reducing or preventing the problems which can affect the employment of youth.

4.08.B Employment and the Elderly. Officials of the Network on Aging need increased knowledge of factors affecting the retention of older workers in the labor force. These factors include forced retirement and unwarranted layoff policies affecting pension rights. Applications are solicited which will increase awareness by aging program administrators of statutory requirements affecting retirement and layoffs on a Nationwide or HHS Regionwide basis. These programs must be designed to expand capacity of Network on Aging officials to advocate for voluntary compliance with laws affecting pension coverage and retention of older workers in the labor force. Projects will also be funded which establish collaborative efforts between the network on aging and the private sector resulting in higher employment for the elderly.

4.09 Special Needs Adoption

During the past four years, the Adoption Opportunities Program has developed extensive resources, training materials and program models to address critical barriers to the adoption of special needs children. The two priorities to be addressed are training to

use community services and developing ways to increase the number of Adoptive placements.

4.09.A Training for Community Services in Special Needs Adoption. Supportive services can ease some of the adjustment problems and stress accompanying special needs adoption. While the supportive services are usually available, some agency staff lack understanding and specific knowledge of how to serve these children and their adoptive families.

In 1984, HDS funded a small successful project in Western Pennsylvania to provide training to Mental Health Clinics in the area. There is interest and need in the field to further develop and disseminate materials to support such service programs across the country.

The purpose of this priority is to assist in training the staff of agencies related to developmental disabilities, mental health, mental retardation, and children and family services to serve adoptive families of children with special needs. Expanded and newly developed material will be tested and disseminated to the field.

4.09.B Grants to States to Increase the Number of Adoptive Placements of Special Needs Children. The purpose of this priority is to assist States to (1) increase the number of adoptive placements of special needs children; and, (2) incorporate improvements in the State adoption programs which will result in sustained increased levels of adoption.

Between 10 and 15 grants will be awarded to State social services agencies in the following eligible States (i.e. those States not receiving similar grants in FY 1984) and for a range of funding:

New Jersey, Pennsylvania, Maryland, Virginia, Minnesota, Texas, Oregon: \$74,000-\$125,000; Maine, New Hampshire, Vermont, Delaware, District of Columbia, West Virginia, Georgia, Mississippi, South Carolina, Tennessee, Arkansas, Louisiana, New Mexico, Iowa, Montana, North Dakota, Wyoming, Hawaii, Nevada, Alaska: \$25,000-\$65,000.

During the past five years, the Adoption Opportunities Program has developed extensive resources, training materials and program models to address critical barriers to the adoption of special needs children. An important issue at this point is the use by States and communities of these resources and information to increase measurably their capacity to place special needs children in adoptive homes.

There continues to be a significant number of special needs children not appropriately placed, as a result of

inadequate recruitment, insufficient adoptive family preparation, or faulty relationships between foster care and adoption social service components.

Grants will be made to selected States which will identify their own barriers to placement and implement their own programmatic resolutions, utilizing various training materials and program models.

Applicants should work closely with State Developmental Disabilities Councils, University Affiliated Facilities, voluntary agencies, parent groups, minority organizations and other interested agencies and organizations.

Proposals must address the following requirements:

1. The applicant must propose a specific interest in the number of children to be adopted as a result of the effort, above those adopted in the most recent complete year for which statistics are available.

2. The applicant must document how it will institutionalize any improvement in the system which results from the grant, either at the State level or in a group of counties or a metropolitan area which encompasses a significant number of waiting children.

3. The applicant must certify that it can receive the grant and begin operation promptly, without unnecessary delays because of internal requirements for receiving funds.

4. The applicant should consider, as one element in the project, negotiating with the State's Head Start Program as volunteers in adoption, for recruiting, screening, preparing and training prospective adoptive families (a technique already developed and tested by the North Carolina project, "Friends of Black Children").

5. In addition to the discretionary matching requirement of 25%, the applicant must identify additional Title IV-B funds, beyond those spent in the previous year, to add to the State contribution for the effort. Federal funds should be viewed as seed money to help the State undertake a needed improvement, rather than as funds to run a complete project.

A 17 month project period will be permitted.

4.09.C Increasing Special Needs Adoption through the Media. One of the most effective means of securing permanent homes for special needs children is the highlighting of that child through the media. Presently there are over one hundred television stations and newspapers and at least one radio station running a "Child Is Waiting" program or feature story. The success

rate of placement for these children who are featured is 85%.

The purpose of this priority is to assist local adoption agencies and exchanges to increase the number of adoptive placements of special needs children by working with local media in the community to encourage the television station, newspaper and/or radio station to run this type of feature.

HDS will support projects in two different categories: (1) Awards will be made to agencies who facilitate communication between the local adoption exchange and/or agency and the local media. The project will focus on design, implementation and bringing to fruition a media strategy to highlight special needs children.

The second category is that of the "Mini Adoption Telethon." The telethon serves three purposes: (1) Highlighting of special needs children available for adoption; (2) recruiting of volunteers to work with the local exchanges; and, (3) raising private funds for the local exchanges.

Awards will be made for "How-To" programs to package the concept for nationwide or regional distribution. Programs would need to include stock video footage for generic use, budget requirements, logistics, problems, etc. The program would explain to the adoption exchange and the local media everything they would need to know to put on a mini adoption telethon. Joint projects by adoption agencies and media organizations are strongly encouraged.

4.10 Strengthening Families

The family is an essential factor for most human service activities. The family has primary responsibility for the care of all its members. Therefore, the preservation of strong family bonds and support should be one of the primary objectives of any human service program.

The purpose of this priority area is to develop effective and broad based dissemination and utilization systems to support and strengthen families in need. The proposed systems will disseminate and document use of information concerning positive characteristics that produce strong families and responsible parental guidance in matters such as health, education, career preparation, and social and emotional growth of children and youth. No new research is envisaged; information to be disseminated will be based on findings of recent and current studies of self-help groups, of volunteer agencies and public, private, and home-based support groups. An emphasis on prevention, wellness, and positive strengths of healthy

families will be maintained. This activity will offer useful information about *application and acceptance of family research data in the provision of services.*

4.11 Child Abuse and Neglect

HDS has funded a number of demonstrations to address providing and delivering child abuse and neglect services more promptly, effectively and efficiently. This priority is intended to promote the utilization of the models and techniques from the demonstrations.

4.11.A Education of School-Aged Children to Prevent Child Sexual Abuse. HDS intends to support projects to provide teachers and other staff in kindergartens and elementary schools, junior high and high schools with training on child sexual abuse and child molestation prevention, using existing materials developed and tested by the National Center on Child Abuse and Neglect and other agencies, organizations and theater groups. HDS will provide assistance for this training to State Departments of Education, local school districts, State or local school-related organizations, or local child abuse prevention organizations that demonstrate support from school systems.

Through these projects, HDS seeks to extend the use of previously-developed prevention approaches and enhance the awareness of parents and educators about sexual abuse/exploitation prevention.

4.11.B Public Awareness Materials on Child Sexual Abuse for Parents and Service Providers. The current spotlight on child sexual abuse has emphasized the need for appropriate materials on the topic which can be used to enhance the awareness of parents and service providers about child sexual abuse.

Preapplications are solicited which propose activities to increase public awareness of and to educate the public and service providers about child sexual abuse. The activities may include, public service announcements, posters or repackaging existing materials on child sexual abuse as guidebooks for parents and service providers. The proposed projects should include dissemination of the materials through appropriate networks and organizations.

4.11.C Training to Enhance Multidisciplinary Support in Services for Abused and Neglected Children. The purpose of this priority is to provide adequate advanced training for personnel other than child protective services (CPS) workers to assist those workers in the identification,

prevention, and/or the treatment of child abuse, including sexual abuse.

Many local and State jurisdictions use the multidisciplinary team approach to assist CPS workers. However, little advanced training has been accomplished to provide personnel in the school, policy, medical health, legal and mental health fields to successfully deal with the problems associated with child abuse or to coordinate services to this population. Applicants are limited to relevant State public agencies, using and adopting existing curricula.

From these projects, HDS expects results to include improved community coordination, support for CPS workers, ongoing training programs to educate the professional and lay community, the development of comprehensive service plans, and increased availability of multidisciplinary expertise.

4.12 Minority Volunteer Network for Child Welfare Services.

A review of all major child welfare programs indicates that minority children, particularly Black and Hispanic, are overrepresented. Black children are the largest minority group in State foster care systems. Black children also leave the foster care system at a lower rate than white children resulting in an increase in the proportion of Black children in the foster care system with longer average duration of time in placement. Efforts are needed which will expand existing community networks among organized minority groups to work together with States in improving the plight of minority children and families.

The purpose of this priority is to use existing networks to increase the development of minority leadership and involvement in child welfare delivery systems. Previously funded demonstration projects have demonstrated that local organizations, social and fraternal groups, clubs and businesses are untapped resources available to assist agencies in facilitating the movement of minority children out of the child welfare system.

HDS will fund projects that result in establishment of linkages between minority networks, child welfare agencies and the development of a model for capacity building and leadership training in minority communities.

4.13 Technologies in Nutrition

Preapplications are solicited for projects to promote the use of the most effective new food technologies for providing home-delivered meals and meals in congregate settings, in terms of

food safety, nutrient preservation, food acceptability, and economy; and to disseminate this information to providers of nutrition services. It is expected that the applicant demonstrate program and financial support for the private sector.

Many logistical problems exist in getting congregate or home/delivered meals from raw food from the consumer. Distance and time decrease both the nutritional value and attractiveness of meals. Implementation of these new technologies would allow programs to deliver more nutritional meals to a greater number of people, including home-delivered meals on weekends and other circumstances. Applications should suggest methods to insure the dissemination and utilization of these technologies.

Priority Area 5: Gerontological Training

The quality of program development, management and services provided to meet the needs of older Americans depends heavily on professionals with gerontological training. Professionals essential to aging program services range from those whose careers focus exclusively on gerontology to those in allied professions. Allied professions are those occupations which may impact indirectly, but significantly, on older persons including such fields as architecture, city planning and management, pharmacology, podiatry and optometry. The Office of Human Development Services seeks to increase the quality and quantity of gerontological education and training available to gerontological or allied professions. Of special interest are the development and improvement of programs in institutions and geographic areas currently lacking gerontological education opportunities.

5.01 Career Preparation for Employment in Aging

There is a need to increase the number of persons with expertise and skills in working with the elderly by expanding the availability of gerontological training opportunities. Preapplications are solicited from those institutions of higher education not previously funded by AoA that are interested in establishing gerontological training programs. Proposals must emphasize the building of institutional capacity through faculty development activities. Applicants should note that the payment of stipends will be allowed in extremely few instances of demonstrated acute need.

Proposals are also solicited from institutions of higher education with established capacities in gerontological

training. Preapplications must be designed to facilitate *faculty development at other institutions* involved in establishing gerontological training programs. Proposals must be jointly developed and submitted by the two or more institutions involved in such efforts.

Preapplications are also invited for the *establishment and upgrading of gerontological training programs at graduate and four year institutions*. Preapplications which propose multidisciplinary certification, field practice in aging service organizations, and development of tenure-track positions are of special interest. Preapplications are also solicited from community colleges and vocational and technical institutions that propose a gerontological emphasis in programs that offer Associate Degrees in areas related to community planning, housing management, law enforcement, recreation and long-term care.

5.02 Continuing Education and Training in Aging

Opportunities must be provided to increase the capacity of Network on Aging personnel to administer programs and provide services to the elderly. Joint preapplications are solicited from institutions of higher education and State and Area Agencies on Aging to provide continuing education opportunities for Network on Aging personnel. Preapplications should propose innovative continuing education programs and knowledge transfer efforts designed to positively influence attitudes and develop the competencies in aging necessary for Network professionals to more effectively carry out their responsibilities. Activities proposed should be the result of collaborative planning on the part of institutions of higher education and appropriate agencies of the Network on Aging. Preapplications should propose activities at times and locations that are convenient to aging services personnel. Proposals should result in the development of model approaches to continuing education which have State and HHS region-wide impact.

5.03 Allied Professions in Aging

There is a continuing need to promote positive attitudes and develop aging competencies in professionals and paraprofessionals whose careers have a significant impact on the elderly. Efforts are needed to impact the training of professionals and paraprofessionals preparing for such careers as well as those already serving the elderly.

5.03A Allied Professions Gerontology Fellows Program.

Preapplications are solicited that propose training gerontology fellows in a number of allied professions. The intent of this effort is to train graduate and postgraduate students in gerontology to assume leadership roles in their professions. It is anticipated that this Gerontology Fellowship Program for Allied Professions will assist in the development of a cadre of professionals with the knowledge, attitudes and skills appropriate to ensure adequate attention to the needs of the elderly. Special consideration will be given to preapplications from graduate and professional schools of *engineering, architecture, business administration and public administration*. Activities that will be supported include faculty and curriculum development. Projects funded must result in models suitable for replication in other disciplines.

5.03B Continuing Education for Allied Professions. Preapplications will be considered which propose the inclusion of social gerontology in continuing education programs provided by the *national or regional associations representative of professions serving the elderly*. Consideration will be given to proposed continuing education programs in such areas as health and mental health care (with a special emphasis on physicians serving minority populations); architecture; business administration; public administration; nursing home administration law; recreation supervision; housing management; and those professions associated with issues related to home equity conversion—such as banking, lending, investment and real estate. Also, of special interest is the development and implementation of continuing education programs for engineers and scientists who wish to pursue the application of new technologies to the human service needs of older persons.

5.04 Minority Training and Development in Gerontology

Many of the institutions of higher education with predominantly minority enrollments, including the Historically Black Colleges and Universities (HBCUs), need assistance in developing and upgrading gerontological training programs. In particular, assistance is needed in the areas of *faculty and institutional development*. Assistance is also needed to increase the number of *Pacific Islanders* receiving gerontological training at institutions of higher education.

5.04A Faculty Development and Exchange Program in Gerontology.

Several efforts are needed to improve

faculty capacity at HBCUs and other institutions of higher education with a significant percentage of minority students. Preapplications are solicited that place an emphasis on faculty development in efforts to establish or upgrade gerontological training programs. In addition, preapplications are invited for the initiation of a *Nationwide or HHS region-wide Faculty Exchange Program*, between developing gerontology programs at HBCUs, other predominantly minority institutions, and more established gerontology career preparation programs. The Faculty Exchange Program is designed to afford faculty or minority and non-minority institutions opportunities to transfer knowledge and share experiences and information in their areas of expertise. Proposals also are invited for an effort designed to provide technical assistance to HBCUs and build gerontology program capacity.

5.04.B Multidisciplinary Development in Gerontological Training. Efforts are needed in the area of institutional development. Proposals are solicited from HBCUs and other predominantly minority institutions with demonstrated expertise in aging that wish to broaden their programs by *developing multidisciplinary approaches to gerontological training* at their institutions. Preapplications should include documented institutional support for proposal efforts to establish this multidisciplinary approach. Such preapplications must result in models that are applicable to other HBCUs that wish to establish a multidisciplinary approach to gerontological training. Preapplications also are requested that propose a nationwide effort to build linkages between the private sector and gerontology programs at HBCUs and other predominantly minority institutions. Such preapplications must be designed to secure private sector support for minority institutions in the form of financial assistance, materials, facilities, internships, student and faculty exchange programs, research fellowships, tuition support or other resources.

Priority Area 6: Child Welfare Services Training

The quality of child welfare services, program development and management required to address the needs of the child welfare system depends heavily on professionals and paraprofessionals with specialized training in child welfare practice. Professionals essential to child welfare services range from those whose careers focus exclusively on the study of child welfare practice to the local service provider and allied

professions. Allied professions are those occupations which may impact indirectly, but significantly, on children; they include such fields as law enforcement or the justice system, local educational systems, health care professions, and public officials at the State and local levels. The Office of Human Development Services seeks to increase the quality of child welfare services education and training available to professionals and paraprofessionals. Of special interest are the development and improvement of programs in institutions of higher education and the uses of telecommunication and new technologies in the delivery of training.

Prospective applicants should be aware of the following conditions and requirements which *apply only to this priority area*:

- Child Welfare Service Training grants are awarded only to public and private nonprofit colleges and universities accredited by an appropriate authority.

- Applicant institutions are required to demonstrate the organizational professional and educational capacity to provide education and training in child welfare.

- Each application must clearly identify and address a *single* priority area for which the application is to compete. If applicants want to compete for more than one priority area, separate applications must be submitted for each one. In all cases, the Priority Area in which the application is being submitted *must be identified in Block 7 of the Standard Form 424*.

- Each application must include a letter of support from the State Commissioner of Social Services, State Commissioner of Human Resources or his or her designee that its content specifically addresses the child welfare service needs of the State, and indicate how the State will work cooperatively as specified in the proposal to achieve the intended outcomes of the proposed project.

- Applications must not focus primarily on curriculum development or the development of new materials, where there is clear documentation that current materials already exist. Minor adaptations of existing materials will be permitted where the applicant documents that these activities will not exceed 20% of its level of effort.

Applications which include curriculum development must clearly indicate the level of effort for this activity.

- The limit on the length for preapplications under this priority area

is 15 pages, rather than the limit of 10 pages that applies to all other priority areas. There is no limit on addendum.

- Funding decisions under this priority area may, at the discretion of the Assistant Secretary for Human Development Services and the Commissioner for the Administration for Children Youth and Families, be based solely on the preapplication. In such cases a full application will not be requested.

Applicants are advised that applications will be reviewed for conformance to the following *requirements*. These requirements pertain *only* to the Child Welfare Training priority area.

1. Project objectives must address one of the specific program priorities. The applicant must identify the specific child welfare issues which the project plans to address and describe how it will improve the child welfare resources and training capability of the affiliated State child welfare agency.

2. The applicant must document the extent of consultations with State or local administrators of public social service agencies, including, where appropriate, voluntary agencies or organizations. These consultations must take into account the child welfare training needs of the State, in particular training requirements necessary for implementation of Pub. L. 96-272. The proposal must document that the State public agency will provide specific and substantive on-going support to the project through to its conclusion.

3. The application must include a work plan designed to achieve the program objectives, including the following: (a) Proposed methodology and target indicators for identifying and measuring proposed outcomes; and (b) timetables for accomplishing program goals and objectives.

4. The application should include a plan documenting the continued involvement of the affiliated State or local public agency. Agency plans should include information about courses to be offered, types of trainees or staff who will be eligible or required to participate, and the faculty or training staff who will conduct the training.

5. Project personnel must be well qualified to provide child welfare training and the applicant must have adequate resources to conduct the project.

6. The estimated cost must be reasonable considering the anticipated results, and include funds for travel to a Statewide or regional meeting on child welfare training issues, and to one

national meeting of all funded projects in Washington, D.C.

7. The application must provide assurance where appropriate that all requirements for eligibility of students and for student stipends, will be met.

8. Where appropriate, applications must include a plan to recruit minority candidates into traineeship programs, especially those who have limited financial resources. This plan must specify activities and timetables by which the school will seek out, identify, and when implemented, *focus* traineeship selection on minority candidates.

9. Where applicable, the application must describe and document how the field placement experience will relate to the provision of child welfare services; the schedule the field placement will follow and the number of hours a week, month, semester, etc., it entails; that the trainee will work under the direction of professionally trained supervisory staff; and the policies and procedures the applicant will follow in the supervision of the students' field placements.

10. In the case of students who are currently employed in the field of child welfare, the applicant must document that it has obtained a letter of intent or commitment from social service agency to release employees for the pursuit of training in child welfare, specifying the number of employees to be released and stating that the agency will continue to employ the trainee during the time of the traineeship or will make a reasonable effort to rehire the employee upon completion of the training, in a position related to child welfare.

6.01 Child Welfare Practitioner Training

HDS will support projects which implement training activities specifically designed to expand and *improve the knowledge and skills of child welfare service providers and allied professions* by demonstrating innovative training approaches for addressing contemporary issues and problems related to child welfare practice. Projects should focus on uses of new technologies and telecommunications, training techniques and methodologies which emphasize current modes of practice and which integrate information acquisition with the development of operational skills. Projects should identify specific content areas to be addressed through practitioner training, indicating how these areas relate to the training needs of selected State or local agencies and how the proposed training will improve delivery of services.

Projects may focus on specific prevention, intervention, and/or treatment techniques, or they may be designed to inform practitioners of current trends in child welfare services and their practice implications. The specific training provided should enable workers to work more effectively within the child welfare service delivery system.

Specific content areas to be addressed may include: Implementation of Pub. L. 96-272; Permanency Planning; Prevention; Reunification; In-home Services; Foster Care Services; Adoption Services; Child Abuse and Neglect; Sexual Abuse; Protective/Emergency Services; Youth Services; Assessment/Intervention/Placement Skills; Rural Child Welfare; Metropolitan/Urban Child Welfare; Services to Minorities; Legal Issues in Child Welfare; Case Review and Case Management; Parent Training; Supervisory Training; and other relevant issues identified by State and local agencies.

6.02 Leadership Training for Child Welfare Executives

HDS will support projects which provide *short-term training to assist child welfare executives* and other administrative staff in identifying and implementing strategies to improve the administration and management of child welfare systems. Training should be designed for heterogeneous groups of decision-makers and policy-level staff directly involved in the ongoing operation of State and local child welfare agencies, including directors of social services, directors of fiscal operations, program planners, program managers and other key administrative staff of child placing agencies and organizations that interface with the child welfare system. *Training should focus on information, strategies, and techniques to enable administrators and program managers* to assess and effectively utilize program information and numerical data for formulating child welfare policy and for planning and implementing more effective child welfare services. Training must be multidisciplinary in approach, reflecting state-of-the-art management practices as well as theory and principles drawn from public administration, business, finance, law, organizational behavior, and human development. Training should emphasize analytical techniques to facilitate understanding and interpretation of social service data, to assist with program planning and assessment, and to identify and evaluate policy implications. Training should concentrate on systems-related administrative issues specifically

relevant to child welfare. Specific needs and problems to be examined within the context of leadership training for child welfare may include permanency planning, planning for relocation, reunification, after-care, adoption, Pub. L. 96-272, fiscal operations, metropolitan child welfare problems vs statewide child welfare responsibility, preplacement prevention under Pub. L. 96-272, child abuse and neglect, treatment of sexual abuse, and other relevant issues identified by State and local agencies.

6.03 State Training Assistance

HDS will support projects which *strengthen or expand the capacity of State and local public agencies to provide ongoing training and staff development activities* for child welfare personnel. Projects should provide information and/or training on effective methods for utilizing existing training materials, uses of new technologies and other strategies for improving the capacity of public agencies to provide in-service training for child welfare staff. Projects should be structured to provide information and consultation directly to State and local agency officials specifically responsible for provision of training to local practitioners.

Projects may be designed to assist agencies in planning and implementing staff development training including certification programs for child welfare staff, individualized training plans, in-service or on-the-job training activities specifically designed for child welfare personnel, and other Federally approved or State-mandated child welfare training. Projects may also provide agencies with techniques for assessing workers' knowledge and skills, and strategies for developing and implementing standardized policies and protocols for service providers to reflect updated modes of practice and sound child welfare principles.

6.04 Child Welfare Traineeship Projects

HDS will support projects which provide financial support, education, and professional training for student and/or workers specializing in the field of child welfare practice. Projects should develop programs to provide specialized knowledge and skills related to child welfare services at the undergraduate or Masters level. Programs should be designed to integrate classroom instruction or special courses with work experiences, practicums, or other field work experiences in child welfare. Linkages between child welfare policy

and practice should be emphasized, and course work, in-service training, and related curriculum components should be designed to prepare trainees for current modes of social work/child welfare practice.

Traineeships may be developed for BSW or other senior level undergraduate students, for Masters level students or workers with little or no previous experience in child welfare services, or for experienced service providers currently employed in child welfare services, or seeking child welfare employment. Programs may be full-time or part-time, degree-oriented or non-degree. Programs should be structured to allow trainees to acquire information and expertise related to child welfare services, and to upgrade their practice skills working with children and families.

6.05 Indian Child Welfare Training Projects

The purpose of this Priority Area is to provide support for training projects specifically related to Indian Child Welfare Services. Training projects may be structured to conform to the guidelines for any of the four Priority Areas outlined above (Priority 6.1, 6.2, 6.3, or 6.4), allowing for the following programmatic emphases:

6.05.A Indian Practitioner Training for Child Welfare. Projects may be developed for training Indian paraprofessional service providers, as well as professional social work practitioners from State or local child welfare agencies, and other workers from Indian tribal organizations with significant child welfare responsibilities.

6.05.B Indian Leadership Training for Child Welfare Executives. Projects may be developed for training tribal councilmen, tribal court judges, Indian elders, and other executive level directors, planners, and program managers of tribal and community agencies directly involved in administration, management, and decisionmaking on projects and programs effecting child welfare services for Indian children and families.

6.05.C Indian Tribal-State Training Assistance Projects. Projects may be developed to assist Indian tribes in the development and implementation of tribal-State agreements delineating specific areas of jurisdiction vis-a-vis child welfare services and other critical issues related to Indian child welfare and to assist State and local agencies in planning and implementing staff development training for service providers working with Indian children and families.

6.05.D Indian Child Welfare Traineeship Projects. Projects may be developed to provide financial assistance, education, and training for Indian students, paraprofessionals, and other service providers specializing in the field of Indian child welfare.

Priority Area 7: Small Business Innovation Research (SBIR)

The Small Business Innovation Development Act of 1982 (Pub. L. 97-219, 15 U.S.C. 638) directs most Federal agencies, including the Office of Human Development Services, to reserve a certain amount from their research and demonstration budgets for a small business innovation research (SBIR) program. The purpose of this priority area is to invite preapplications from small businesses for projects which involve the administration of human services programs.

In earlier years, HDS has made funds available for its SBIR program under a separate announcement and identified specific research topics for small business application. This year, the SBIR program announcement is being included as part of this announcement for the Coordinated Discretionary Program. Consequently, this priority area authorizes funding under appropriate statutory authorities for small businesses under any of the priorities described in this announcement. In addition, there is one area under which only small businesses may apply, and that is the use of new technology to assist the developmentally disabled and the elderly perform tasks of daily living. These technologies can be used to develop new products ranging from simple assistive devices to the development of "high tech" instrumentation. Proposals are invited for projects that will identify products and adaptable technology, study the market potential for this technology, and develop a plan for production and sale.

Funding Information

Projects under this priority area may be funded through the following authorities: Section 1110 (Research and Demonstration) of the Social Security Act; the Head Start Act of 1981; the Native Americans Programs Act of 1974, as amended; and, Section 425 of the Older Americans Act, as amended. Projects will be funded through cooperative agreements.

Proposals submitted under this priority area will be reviewed separately. Small businesses which apply for SBIR funding agreements should therefore indicate clearly, on the cover sheet of their application, that

they are applying under "Priority Area 7: SBIR."

The SBIR program consists of the following three phases:

Phase I: To establish the technical merit and feasibility of R&D ideas which may ultimately lead to commercial products or services.

Phase II: To develop in-depth the Phase I ideas shown to be feasible. Special consideration will be given to projects demonstrating prospective private capital commitments for commercial applications. Only Phase I awardees will be eligible to apply for Phase II funding.

Phase III: To commercialize the results of R&D funded by a Federal agency using private capital, or for products intended for government use, using a different source of funds than SBIR.

HDS will provide funds for Phase I projects and will consider applications for Phase II projects from former Phase I grantees.

Eligibility to apply under this priority area is limited to organizations which meet the definition of a small business contained in this announcement. At least two-thirds of each SBIR project must be carried out in the small business firm, and the primary employment of the principal investigator (or project director) must be with the firm at the time of award and during the conduct of the proposed project. Primary employment means that more than one-half of the individual's working time is spent with the small business employer.

This announcement is intended for informational purposes and reflects current planning. If there is any inconsistency between the information contained herein and the terms of any resulting SBIR funding agreement, the terms of the funding agreement are controlling.

Prior to the award of an SBIR funding agreement, the government may request the applicant to submit certain additional information concerning the organization's management, personnel and finances to assure the responsibility of the applicant.

The government is not responsible for any expenditures by an applicant prior to the award of a funding agreement. The government is also under no obligation to fund any application or make any specific number of awards under this priority area. Significant Federal involvement is required for all cooperative agreements, and the type and level of involvement will be determined during pre-award negotiations.

A successful applicant under this program may be required to certify that project personnel have not previously been, nor are currently being, paid by the Federal government for essentially equivalent work.

Special Information for SBIR Applicants

Limited Rights Information and Data. Information contained in unsuccessful applications will remain the property of the applicant. The Federal government may, however, retain copies of all applications. Public release of information in any funded application will be subject to existing statutory and regulatory requirements. The government is not liable for disclosure required under the Freedom of Information Act (5 U.S.C. 552).

Proprietary information contained in applications will be treated in confidence to the extent permitted by law, provided that it is clearly identified as confidential and the following legend appears on the cover sheet of the application:

"For any purpose other than to evaluate the proposal, this data shall not be disclosed outside the government and shall not be duplicated, used or disclosed in whole or in part, provided that if a funding agreement is awarded, the government shall have the right to duplicate, use and disclose the data to the extent provided in the funding agreement. This restriction does not apply to the government's right to use information contained in this application if it is obtained from another source without restriction. The date subject to this restriction is contained on page(s) — of this proposal."

Title to Property. Title to real property, equipment and supplies acquired by a for-profit recipient under a financial assistance award or sub-award shall vest upon acquisition to the Federal government. The management, control and disposition of property in the hands of the recipient will be governed by rules applicable to grants and cooperative agreements to for-profit organizations under 45 CFR Part 74.

Rights in Data Developed under SBIR Funding Agreements. Rights in data, including software developed under a funding agreement in response to this announcement, shall remain with the developer for a two-year period. During that period the government shall have the limited right to use such data for internal purposes and shall not release such data outside the government without the permission of the developer. Effective at the conclusion of the two-year period, the government shall retain a royalty-free license for government use of any technical data delivered

under an SBIR funding agreement whether patented or not.

Copyrights and Patents. Small business firms may normally copyright and publish material developed with government support, and may retain the principal worldwide patent rights to any invention developed with government support. The government receives a royalty-free license to use of publications and inventions. Each publication must contain an acknowledgement of agency support and a disclaimer. Likewise, the government reserves the right to require a patent holder to license others under certain circumstances, and requires anyone exclusively licensed to sell an invention in the United States to manufacture it domestically. To the extent authorized by 35 U.S.C. 205, the government will not make public any information disclosing a government-supported invention until the developer has had reasonable time to file an initial application.

Cost sharing. The HHS Appropriations Act requires that recipients of funds share in the cost of activities supported by research grants and cooperative agreements. For-profit organizations must share costs by an individual agreement which specifies the level of cost-sharing for each project. Applicants should not submit cost-sharing proposals until notified by the agency that an application has been approved and that a cost-sharing agreement is required.

Profit or Fee. In accord with 45 CFR Part 74, no profit or fee will be provided to for-profit organizations through cooperative agreements. A profit is considered as any amount in excess of actual direct or indirect costs incurred in the conduct of a project.

Joint Ventures and Limited Partnerships. Joint ventures are permitted provided the entity created qualifies as a small business in accord with the definition included in this announcement.

Limit on Contracting. Contracting under a cooperative agreement, as defined in this announcement, may not exceed thirty-three percent of the total proposed direct and indirect costs unless otherwise approved in writing by the contracting officer.

Terms and Conditions of Award. Upon acceptance of a cooperative agreement, the recipient must comply with the terms and conditions contained or referenced in the notice of award document. These terms and conditions constitute legal requirements imposed on a recipient by statute, regulations, administrative policy or the award document itself.

Definitions. A "small business" is an organization, including its affiliates, which is independently owned and operated for profit, is not dominant in its field of operation, and can further qualify under the following size standard: not more than 500 employees (full-time, part-time, temporary, or other) during the previous 12-month period in all affiliated firms owned or controlled by a single parent firm. Included are women-owned and minority and disadvantaged small businesses at least 51 percent owned or operated and controlled by such individuals.

"Control" means exercising the power to make policy decisions.

"Operate" means active involvement in day-to-day management.

"Research" or "research and development" is defined as 1) a systematic study directed toward greater knowledge or understanding of the subject studied; 2) a systematic study directed specifically toward applying new knowledge to meet a recognized need; or 3) a systematic application of knowledge toward the production of useful materials, devices, and systems or methods including design, development and improvement of prototypes and new processes to meet specific requirements.

A "cooperative agreement" is a financial assistance mechanism whereby money and/or direct assistance is provided by the government to carry out non-Federal activities and where significant Federal programmatic involvement with the recipient during performance is anticipated by the funding agency.

Part III: Preapplication Process

A. Eligible Applicants

In general, any State, local, public, or nonprofit organization or agency may submit a preapplication under this announcement. Some of the specific priority areas or topics included in this announcement may have more restrictive eligibility requirements (for example, only State and Area Agencies on Aging may be eligible to apply). Where this is the case, the only eligible entities are specified in the priority area or topic description. Preapplications jointly developed by State, local and community-based social services agencies, foundations or universities are encouraged in order to promote comprehensive social services programs. "For-profit" organizations are eligible applicants for projects funded under authority of the Head Start Act, Native American Program Act and, in limited cases, the Older Americans Act.

They may also participate as contractors under a grant to eligible applicants on all projects. Small businesses, in particular are encouraged to apply.

B. Available Funds

The availability of funds for FY 1985 and FY 1986 is dependent on passage of appropriations by the Congress. Based on the level of funding for FY 1984, the Office of Human Development Services expects to award approximately \$33,300,000 during the second, third and fourth quarters of FY 1985 for new grants and cooperative agreements. Subject to Congressional action on the FY 1986 budget, HDS may also award a limited number of grants under this announcement in the first and second quarters of FY 1986. Appropriate HDS discretionary funding authorities will be used to fund projects, and more than one authority may be used to fund some projects.

The funding estimated to be available from each authority is summarized below. Applicants should take into account the proportion of funds available under each authority in designing their projects. The actual dollar amount from each authority will not be available until late in the first quarter of FY 1985. However, we would anticipate that the following figures are a good estimate.

FUNDING SUMMARY

Program	Estimated availability of fiscal year 1985 funds
Administration on Aging.....	\$5,500,000
ACYF/Child Abuse and Neglect.....	7,000,000
ACYF/Adoption Opportunities.....	1,500,000
ACYF/Child Welfare.....	5,000,000
ACYF/Runaway Youth.....	3,800,000
ACYF/Head Start.....	2,500,000
ACYF/Child Welfare Services Training.....	3,800,000
Administration on Developmental Disabilities.....	1,500,000
Administration for Native Americans.....	700,000
HDS/Social Services Research.....	2,000,000
Total.....	33,300,000

HDS expects to make approximately 200 new awards pursuant to this announcement. These awards are expected to range from \$50,000 to a maximum of \$200,000 per 12 month budget period, with the average award expected to be \$100,000. Maximum grant awards and project periods for projects under each priority area are as follows:

Priority area	Maximum award (per year)	Maximum project period (months)
1. Demonstrations.....	\$200,000	36
2. Basic knowledge.....	150,000	36
3. Evaluation and management.....	150,000	17
4. Knowledge transfer.....	150,000	17

Priority area	Maximum award (per year)	Maximum project period (months)
5. Gerontological training.....	100,000	17
6. Child welfare training.....	150,000	17
7. SBIR.....	50,000	12

Actual awards may vary widely and eligible applicants requiring smaller awards are encouraged to apply. Projects of less than 12 months may also be submitted.

As stated earlier, applicants should be aware that HDS receives 2,000 to 5,000 preapplications annually to its Coordinated Discretionary Funds Program. Of these, about 200 applicants receive grant awards.

C. Regional Workshops for Prospective Preapplicants

There will be workshops on this program announcement in Washington, D.C. and in each of the ten cities with HDS regional offices. The purpose of these workshops is to inform prospective preapplicants about the priority areas to be addressed and the process for preparing and submitting a preapplication.

Specific information on the workshops is as follows:

Washington, D.C., Friday, September 7, 10:00 A.M., Auditorium, Humphrey Building, 200 Independence Ave., S.W.
Boston, Massachusetts, Tuesday, October 2, 2:00 P.M., Room 2003, JFK Federal Bldg., Cambridge Street
New York, New York, Friday, October 5, 9:30 A.M., Room 305A-C, Federal Building, 26 Federal Plaza

Philadelphia, Pennsylvania, Thursday, October 4, 1:00 P.M., Auditorium, Mid Atlantic Program Center, Social Security Administration, 300 Spring Garden Street

Atlanta, Georgia, Thursday, October 4, 9:30 A.M., Main Auditorium, Richard B. Russell Federal Building, 75 Spring Street, S.W.

Chicago, Illinois, Wednesday, October 3, 9:00 A.M., 35th Floor Conference Room, 300 South Wacker Drive
Dallas, Texas, Wednesday, October 3, 9:00 A.M., Town Hall, Concourse Level, One Main Place Building, 1201 Main Street

Kansas City, Missouri, Thursday, October 4, 9:00 A.M., Mid-West Research Institute, Mag Conference Center, 425 Volker Boulevard

Denver, Colorado, Monday, September 17, 9:30 A.M., Room 239, Federal Office Bldg. 2, 1961 Stout Street

San Francisco, California, Monday, September 24, 9:00 A.M., Crystal Ballroom, San Franciscan Hotel, 1231 Market Street

Seattle, Washington, Wednesday, October 3, 9:30 A.M., North Auditorium, 4th floor, 2nd Avenue entrance, Jackson Federal Building, 915 2nd Avenue

D. Grantee Share of the Project

At least 25% of the total cost of proposed projects must come from a source other than the Federal government (one dollar match for every three requested from HDS) except: (1) In the case of projects funded under the Native Americans Act Authority, where the grantee match must be 20% of the total cost of the proposed project; and (2) universities which already have an institutional cost hearing agreement with HHS. The non-Federal share of project costs may be in the form of grantee-incurred costs or third party in-kind contributions. HDS strongly encourages preapplications where the grantee share is more than 25% of the project costs or where the applicant proposes to match HDS grants, partially or fully, with cash contributions from other non-Federal funding sources.

E. Preapplication Process

Organizations wishing to compete for grants under this announcement must submit a preapplication by October 17, 1984. Preapplications received in response to this announcement will be reviewed by HDS staff and non-Federal experts. It is expected that successful preapplicants will be invited to submit final applications during January and February to compete for funding scheduled for the second, third and fourth quarters of FY 1985 and the first and second quarters of FY 1986.

1. Availability of Forms

Preapplications for grants under the HDS Coordinated Discretionary Funds Program must be submitted on the Standard Form 424, page 1, as provided or on a copy made from this form. For your convenience, this form as well as detailed guidance materials for use in preparing the preapplication is included in Part IV of this announcement. *The only form required for submittal of the preapplication is included in this announcement.*

Additional copies of this announcement may be obtained by phoning or writing to: HDS/Division of Research and Demonstration, 200 Independence Avenue, S.W., Room 732E, Washington, D.C. 20201 Telephone: (800) 372-3344.

2. Preapplication Submission

One signed original and a minimum of two copies of the preapplication must be

submitted to: HDS/Division of Grants and Contracts Management, 200 Independence Avenue, S.W., Room 737F, Washington, D.C. 20201, Attention HDS-85.

Submittal of five additional copies will expedite processing. There is no penalty for not submitting these additional copies.

3. Notification Under Executive Order 12372

Some of the programs listed under this announcement are covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, Intergovernmental Review of Department of Health and Human Services Programs and Activities."

Each State has established a State Single Point of Contact (SPOC) to coordinate the State Process. For covered programs, in the preapplication phase, applicants do not have to contact their cognizant State Single Point of Contact for instructions regarding the State Process for E.O. 12372 review. *If preapplicants are invited to submit full applications, they must then submit required material to their SPOCs to obtain their comments for consideration by HDS as part of the full application review and award process.* Applications for programs to be administered directly by Federally-recognized tribes, as well as preapplications submitted under the SBIR program, are exempt from the requirements of E.O. 12372.

Applicants will be instructed to contact their SPOC or State Process as soon as possible to alert them of the prospective application and receive specific instructions regarding the process. Required material should be sent to the SPOC as early as possible. State Processes or directly affected State, areawide, regional, and local officials and entities will have 60 days starting from the full application deadline date to comment on applications for financial assistance under covered HDS programs.

SPOCs will submit their comments directly to the HDS Receiving Office specified in this announcement. HDS will notify the State of any full applications received which have no indication that the State Process has had an opportunity for review.

4. Preapplication Consideration

Complete preapplications that conform to the requirements of this program announcement will be reviewed competitively and evaluated by Federal officials and qualified persons outside of the Federal government. The results of the review

will assist the Assistant Secretary and Program Commissioners in considering competing preapplications. This consideration may also take into account comments from Federal Regional and Headquarters program staff offices and from the State Single Point of Contact. In addition, comments may be requested from appropriate specialists and constituents inside and outside of the Federal government.

The Assistant Secretary for Human Development Services, Program Commissioners and other members of the HDS Executive Staff will determine the action to be taken on each preapplication and will make the decision whether to request a full application. In addition, the Older Americans Act places certain responsibilities upon, and authority in, the Commissioner on Aging which affects the role of the Administration on Aging in implementing this program announcement. All such requirements will be met through actions which conform to the mandates of the Act.

HDS reserves the option of discussing preapplications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant.

5. Funding Limitations on Indirect Costs

Preapplicants should be aware that for projects funded under Gerontological Training (Priority 5) and Child Welfare Services Training (Priority 6) there is a limitation of eight percent on indirect costs.

F. Special Considerations for Funding

Within the limits of available Federal funds, HDS Executive Staff make financial assistance awards consistent with the purposes of the statutory authorities governing the HDS Discretionary Funds Program and this announcement. In making these decisions, *preference will be given to projects that propose the innovative use of volunteers or involve the private sector.* To the extent possible, final decisions will reflect the equitable distribution of assistance among the States, geographical areas of the nation, and rural and urban areas.

G. Criteria for Screening and Review

All preapplications that meet the deadline will be screened to determine completeness and conformity to the requirements of this announcement. Complete, conforming preapplications will then be reviewed and evaluated competitively.

1. Screening Requirements

In order for a preapplication to be in conformance, it must meet *all* of the following requirements:

(a) *Number of copies:* An original signed preapplication and two copies must be submitted.

(b) *Length:* The narrative portion of the preapplication *must not exceed ten double-spaced pages* (or five single-spaced pages) typewritten on one side of the paper only. The capability statement must not exceed two double-spaced or one single-spaced typewritten page.

(c) *Standard Form 424:* The preapplication must include an SF 424, page 1, completed according to instructions.

(d) *Multiple Submittals:* A project can only be proposed once under this announcement. Multiple submittals of the same—or essentially the same—project as preapplications under different priority areas will be deemed nonconforming.

(e) *Eligibility:* The applicant must be an eligible entity as defined in the announcement.

(f) *HDS' Priorities:* The concept or project embodied in the preapplication must specifically address a priority stated in the announcement.

(g) *HDS Populations:* The preapplication must clearly target one or more HDS populations: the elderly; children, youth and families; Native Americans; the poor; and the developmentally disabled.

(h) *Non-Federal Contribution:* A non-Federal contribution of at least 25% of the total project costs must be proposed, except in the case of projects funded under the Native Americans Act Authority where the non-Federal contribution must be at least 20 percent, or in the case of organizations like universities that have an existing cost sharing agreement with HHS.

(i) *Cost:* Proposed projects must conform to the chart under "B. Available Funds", in this Part.

PREAPPLICATIONS MUST MEET ALL OF THE ABOVE REQUIREMENTS TO BE CONSIDERED. NONCONFORMING PREAPPLICANTS WILL NOT BE ALLOWED TO CORRECT DEFICIENCIES OR RESUBMIT AMENDED PREAPPLICATIONS.

2. Review Criteria

Preapplications which are determined to be in conformance with this announcement will be reviewed by panels which may be composed of Federal staff, State/local staff,

university and other nongovernment experts. Stage one will use the following criteria for the priority areas of: Demonstrations of National Relevance, Basic Knowledge and Data Development, Gerontological Training, and Child Welfare Services Training.

(a) *Criterion I: Innovativeness* (40 points). The preapplication clearly proposes a *significant improvement upon, or important departure from, existing practices and previous related work* in the field of human services (not only in the local area of the proposed project). The proposed project constitutes new activity and not merely a continuation or expansion of existing activity.

(b) *Criterion II: Outcomes* (20 points). The proposed project will result in a measurable, concrete reduction of a significant problem (a project should result, for example, in the actual employment of a specific number of youth by a specific time, not just in counseling those youth on how to seek employment).

(c) *Criterion III: Project Design* (20 points). The problem to be addressed is clearly stated. The preapplication has a concise but clear statement of goals, measurable objectives and project design or methodology. Problems, issues and methods are clearly related.

(d) *Criterion IV: Potential for success* (10 points). The goals of the proposed project are realistic in terms of the methodology, staff and funds allocated to the activity. The applicant organization is capable of carrying out the project as proposed.

(e) *Criterion V: Cost/Benefit* (10 points). The cost of the proposed project is commensurate with the specific outcomes of the project; the cost per unit of outcome (e.g., youth employed) is low. The extent to which other organizations are contributing funds for the project is clearly indicated.

In the areas of Evaluation and Management Systems and Knowledge Transfer, the following criteria will be used for stage one:

(a) *Criterion I: Innovativeness* (20 points). The preapplication clearly proposes a significant improvement upon existing practices and previous related work in the field of human services. The proposed project constitutes a new activity and not merely a continuation or expansion of existing activity.

(b) *Criterion II: Beneficial Impact* (20 points). The knowledge, methods, dissemination, or technology to be developed can be expected to impact beneficially on human service programs and target populations. Knowledge transfer and evaluation activities should

address specific areas within this announcement.

(c) *Criterion III: Outcomes* (20 points). The proposed project results in improvement of planning management or delivery of services at State and local levels or the enlargement of the knowledge base in one or more of the areas for which proposals are solicited.

(d) *Criterion IV: Project Design* (20 points). The problem to be addressed is clearly stated. The preapplication has a concise but clear statement of goals, measurable objectives and project design or methodology. Problems, issues and methods are clearly related.

(e) *Criterion V: Potential for Success* (10 points). The goals of the proposed project are realistic in terms of the methodology, staff and funds allocated to the activity. The applicant organization is capable of carrying out the project as proposed.

(f) *Criterion VI: Cost/Benefit* (10 points). The cost of the proposed project is commensurate with the specific outcomes of the project; the cost per unit of outcome (e.g., youth employed) is low. The extent to which other organizations are contributing funds for the project is clearly indicated.

After the preapplications are rated by the review panels using these criteria, the HDS Executive Staff will select those which will be invited to submit final applications.

3. Evaluation Criteria

In stage two (the final application stage), those preapplicants selected by the Executive Staff will be asked to submit full applications. These applications will be either administratively reviewed by HDS staff (in the case of a limited number of preapplications of unique interest) or competitively reviewed by qualified groups of experts who are primarily from outside of the Federal government. Acceptable applications must be complete and meet the following criteria:

(a) *Criterion I: Technical Approach* (25 Points).

- The applicant proposes a well-defined and carefully worked out technical approach (including problem or issue definition) that is, if well executed, capable of achieving the objectives of the project. The approach may include: research methodology, demonstration plan, innovativeness of concept, design of training programs or other appropriate techniques.

- Where appropriate, the applicant describes evaluation components. Evaluation, data collection and analysis procedures are geared to assess (using quantitative measures as much as

possible) the degree to which intended objectives are achieved. The applicant clearly distinguishes the evaluation from management activities designed primarily to give project staff feedback on their progress toward meeting project objectives.

(b) *Criterion II: Beneficial Impact* (25 Points).

- The knowledge, methods, or technology to be developed can be expected to impact beneficially on human service programs and target populations beyond the site at which the project is conducted. This includes generalizability of results for research, demonstrations, and evaluation projects.

(c) *Criterion III: Project Implementation Plan* (20 Points).

- The preapplication specifies a sound plan for task accomplishment and staff loading by task.

- The preapplication contains a suitable plan for insuring the use of project results by appropriate users. The plan describes the kinds of reports and media to be used in transmitting final results to users and explains why this is expected to be an effective dissemination package that will reach and influence users.

(d) *Criterion IV: Staffing and Management* (15 Points).

- The proposed staff are well qualified to carry out the project.

- The division of responsibilities is appropriate to carry out project tasks, including sufficient time of senior staff to assure adequate management of the project.

- The applicant organization has adequate facilities, resources, and experience to conduct the project as proposed.

- The author(s) for both the preapplication and the application should be clearly identified together with their current relationship to the applicant organization and any future project role they may have if the application is funded.

(e) *Criterion V: Budget Appropriateness and Reasonableness* (15 points).

- The proposed budget is commensurate with the level of effort needed to accomplish the project objectives. The cost of the project is reasonable in relation to the value of the anticipated results.

- The contribution of any collaborative agencies or organizations is assured in writing and included with the application when it is submitted. The participation of an agency other than the applicant, if critical to the proposed project, is evidenced by a

letter indicating agreement to participate.

G. Closing Date for Receipt of Preapplications

The closing date for submittal of preapplications under priorities identified in this program announcement is October 17, 1984. Preapplications must be mailed or hand delivered to: HDS/ Division of Grants and Contracts Management, 200 Independence Avenue, SW., Room 737F, Washington, D.C. 20201, Attention HDS-85.

Mailed preapplications.

Preapplications mailed through the U.S. Postal Service shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or
2. Sent by first class mail postmarked on or before the deadline date, and received in time to be considered during the competitive review and evaluation process. (Applicants are cautioned to request a legible U.S. Postal Service postmark or to use express mail or certified or registered mail and obtain a legibly dated mailing receipt from the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

Preapplications submitted by other means. Preapplications submitted by any other means except through the U.S. Postal Service shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date.

Late Preapplications. Preapplications which do not meet these criteria are considered late preapplications and will not be considered in the current competition.

Hand delivered preapplications. Hand delivered preapplications are accepted during the normal working hours of 9:00 A.M. to 5:30 P.M., Monday through Friday.

Part IV: Instructions for Completing Preapplications

A. Preapplication Package

In order to expedite the processing of preapplications, we request that you follow these instructions explicitly. Each preapplication submission must include:

1. An original and a minimum of two additional copies of the preapplication (See Section B below). While an original and two copies are required, five additional copies will facilitate processing. No applicant will be penalized for submitting only the three required copies. Each copy should be stapled in the upper left corner. At least one copy (the original) must have an original signature on the Standard Form

424. Please *do not use covers, binders or tabs or include extraneous materials* such as agency promotion brochures, slides, tapes, film clips, etc. It is not feasible to use such items in the review process, and they will be discarded if included.

2. Three extra copies of Form 424 and three copies of the cover sheet with abstract stapled together apart from the copies of the preapplication.

3. Do not include a self-addressed, stamped acknowledgement card. All applicants will be automatically notified of receipt and of the Coordinated Discretionary Funds Program (CDP) identification number assigned to their preapplication. A post card will be addressed to the contact person named on line 4h at the address given on lines 4a-g of SF 424, page 1. This number and the priority area must be referred to in ALL subsequent communication with HDS concerning the preapplication. If acknowledgement is not received within six weeks after the deadline date, please notify HDS by telephone (202) 245-6233. Please refer to the identification number in subsequent communication with HDS.

B. Content of Preapplication

Each copy of the preapplication must contain, in the order listed, each of the following items:

1. Standard Form 424, page 1, completed according to the instructions listed below.
2. Cover sheet with abstract completed according to the instructions listed below.
3. Project narrative, *no more than ten pages long*, double-spaced and typewritten on one side only (or five pages single-spaced), completed according to the instructions listed below.
4. Organizational capability statement or materials, *no more than two double-spaced typewritten pages long*. Items 1, 2, 3 and 4 must not exceed a total of 15 pages, if double-spaced. The instructions for completing the organizational statement are listed below.

C. Preparing the Preapplication

The single form necessary to complete the preapplication, the Standard Form 424, page 1, is reprinted below for your convenience. We suggest that you reproduce it and type your preapplication on the copy.

Prepare your preapplication in accordance with the following instructions:

1. Instructions for Standard Form 424, page 1: Complete item numbers 1, 4, 5, 6b, 7, 8, 13, 14, 17, 22a and 23 only. Specific instructions are as follows:
Item 1. Mark "preapplication" box.

Items 4.a.-4.h. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of person who can provide further information about this request and to whom acknowledgement and notification of results will be sent.

Item 5. Employer identification number of applicant as assigned by Internal Revenue Service.

Item 6.b. Type "HDS FY 1985 Coordinated Discretionary Funds Program" and the four digit number (for example, 3.02.A) of the priority area under which the preapplication is being submitted. If more than one priority area is listed, HDS will disregard all but the first one listed.

Item 7. The title should briefly and clearly describe the focus of the proposed project and be selected with public understanding of the value of the project in mind. Do not use acronyms, abbreviations or jargon. Avoid unnecessary phrases such as "A Study of * * *," "Research to * * *," "A Project * * *," etc. Do not use more than 100 characters, including punctuation and spaces between words. Characters in excess of 100 will be lost during electronic data entry.

Item 8. Self-explanatory. "City" includes town, township, or other municipality.

Item 13.a. Enter the amount of Federal funds requested.

Item 13.b.-13.e. Enter the amount(s) of funds from other than Federal sources which will be contributed to the proposed project.

Item 14.a. Enter the number of the congressional district where the applicant's principal office is located.

Item 14.b. Enter the number of the congressional district(s) where the project will be located.

Item 17. Estimated number of months to complete project after Federal funds are available.

Item 22. Self-explanatory.

Item 23. Self-explanatory.

2. Instructions for the cover page with abstract:

On a single sheet of plain white bond, type (single-spaced):

- Title of preapplication (exactly as entered in item 7 on Form 424).
- Name and address of applicant organization (exactly as in item 4).
- Priority area under which the preapplication is submitted.
- Target population(s).
- Total project period and total amount requested.
- Proposed match which should be at least one dollar for every three

requested from HDS unless the applicant is an Indian Tribe or has an existing cost sharing agreement with HHS. If these two exceptions apply, state so clearly here.

• Project abstract summarizing, in 200 nontechnical words or less, the proposed project. The abstract should be so clearly written that the following questions could be answered by a member of the general public who reads it:

What is the specific purpose of the project?

How is the project to be conducted?

What will be its concrete outcomes?

What difference might the results make?

To whom will the results apply?

It is important that the abstract be an accurate reflection of the activities proposed in the preapplication.

• The name of the author(s), their current relationship to the applicant and the proposed project role.

3. Instructions for project narrative: Describe the project you propose in response to this announcement. Your narrative (10 pages typed double-spaced, or five pages typed single-spaced maximum, on 8½" x 11" plain white bond with 1" margins on both sides) should provide information on how the preapplication meets the review criteria. We strongly suggest that you follow these format and page limitations:

a. *Statement of Need for the Proposed Project* (2 pages typed double-spaced or 1 typed page single-spaced maximum). This portion of the preapplication should state the objectives of the project, including clear specification of the concrete outcome(s) expected of the project and the HDS populations targeted. In addition, this portion should document the need for and importance of the issues to be addressed beyond the local area of the project. It should also describe how the proposed project builds upon previous work and how it advances the state of knowledge from a national perspective.

b. *Results and Benefits Expected* (1 page double-spaced maximum) This portion of the program narrative should briefly summarize the anticipated results and delineate the benefits which are expected. Emphasis should be placed on outcomes as opposed to process measures. Projects should result, for example, in the employment of a specific number of people rather than just the training of people to increase employability.

c. *Approach Project Design* (5 doubled-spaced pages maximum) This portion of the program narrative should describe specific plans for conducting

the project. It should include relevant information about: (a) hypotheses to be tested (if appropriate); (b) data to be collected (including specification of data sources); (c) plan for data analysis; (d) what the project will do; and (e) who will do it.

d. *Utilization and Dissemination* (1 page doubled-spaced maximum) This section should describe ways in which the project will share its experiences and findings with the field of human services in general and, specifically, with agencies or organizations capable of developing improved service delivery and management.

e. *Level of Effort* (1 page doubled-spaced maximum) This part of the narrative should describe the staff, money, facilities and time that will be required to complete the project as envisioned; describe the resources needed to carry out the project; and state the total Federal funds required to complete the project as proposed. A "line-item" budget is not needed in the preapplication.

5. Organizational Capability Statement:

A brief (maximum 2 typed pages double-spaced or one typed page single-spaced) background description of how the applicant agency (or the particular division of a larger agency which will have responsibility for this project) is organized and the types and quantity of services it provides or research capabilities it possesses. Include descriptions of any current or previous relevant experience. Describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. The qualifications of key staff should be described in a few paragraphs rather than in formal vitae.

Indicate clearly whether written commitments have been obtained from organizations that will be directly involved in the proposed project.

D. Check List of Preapplication Requirements

The following check list is provided for your convenience:

- ☐ SF 424, page 1, has been completed according to instructions (see sample SF 424).
- ☐ SF 424 has been signed and dated by an authorized official.
- ☐ Each preapplication has been stapled (no folders or binders) with a copy of the SF 424, page 1, as the first page of each copy.

Included in your preapplication package are:

- ☐ One original signed preapplication plus seven copies. Each of the copies should include the following:
 - ☐ SF 424, page 1 (one page);
 - ☐ A cover page with abstract (one page);
 - ☐ A narrative (10 typewritten double-spaced pages, maximum);
 - ☐ Organizational capability statement (2 typed doubled-spaced pages, maximum)

Remember, preapplications must be postmarked or hand delivered (by 5:30 p.m.) no later than October 17, 1984 to: HDS/Division of Grants and Contracts Management 200 Independence Avenue, SW., Room 737F, Washington, D.C. 20201, Attention HDS-85.

E. Points to Remember

• You are required to send an original and two copies of a preapplication. We request that you send five additional copies to facilitate our review. However, there is no penalty for sending only three copies.

• Designate your preapplication for one priority area and one priority area only.

• Although multiple preapplications (of different concepts) from the same applicant are not prohibited, they are not encouraged.

• In computing the required match for all projects except those funded under the Native Americans Act Authority or with HHS cost sharing agreements, please note that 25% of the total (your share and the amount requested) project cost is equivalent to 1/3 of the amount requested from HDS. Thus for every three dollars you request from the Federal Government (HDS), you must match with one dollar from your applicant organization. *Miscomputation of the match is a common mistake that leads to disqualification.* In order to compute the required minimum match, divide the amount you are requesting from HDS by 3.

• *Preapplications containing narratives in excess of ten typewritten double-spaced pages (or five typewritten single-spaced pages) or capability statements of more than two double-spaced pages (or 1 single-spaced page) will not be given further consideration.*

• The distribution of topics related to specific HDS programs (e.g., AoA) is not necessarily commensurate with the distribution of discretionary funds among those programs.

• The cover page with the abstract of 200 words or less is an essential element of the preapplication. It is important that the abstract accurately reflect the nature and scope of the proposed project.

- Follow the recommended format as closely as possible in preparing the preapplication's narrative.

- The qualifications of key staff should be described in a few paragraphs rather than in formal vitae.

- Although letters of agreement (where appropriate) are required in final applications, it will suffice in the preapplication to state clearly that the necessary agreements have been obtained from those agencies whose participation is essential to the conduct of the proposed project. Letters of support you choose to submit as a part of the preapplication will be considered within the limited 10 typewritten double-spaced (or 5 typewritten single-spaced) pages of narrative.

- Indirect costs of Gerontological Training (Priority 5) and Child Welfare Services Training (Priority 6) grants may not exceed 8%.

- If selected to submit a full application, applicants should ensure that the Federal funds requested do not exceed what was requested in the preapplication. Disregard for this rule will result in an unfavorable review and may result in rejection of the application.

- Applicants are strongly encouraged to have someone other than the writer apply the screening requirements and review criteria to the preapplication prior to its submittal. In this way, applicants will gain a sense of their preapplication's quality and potential competitiveness.

F. Activities That Generally Will Not Meet the Purposes of This Announcement Include:

- Projects whose main activity is a conference or meeting.

- Projects whose major product is a manual.

- Proposals that request expansion or continuation of existing services or programs.

- Proposals what would establish clearinghouses.

- Projects of local significance only.

Dated: August 16, 1984.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Dodie Livingston,

Commissioner, Administration for Children, Youth and Families.

Jean K. Elder, Ph.D.,

Commissioner, Administration on Developmental Disabilities.

Lennie-Marie Tolliver, Ph.D.,

Commissioner, Administration on Aging.

William L. Engles,

Commissioner, Administration for Native Americans.

BILLING CODE 4130-01-M

OMB Approval No. 29-R0218

FEDERAL ASSISTANCE		2. APPLICANT'S APPLICATION	a. NUMBER	3. STATE APPLICATION IDENTIFIER	a. NUMBER
1. TYPE OF ACTION ☐ PREAPPLICATION ☐ APPLICATION (Mark appropriate box) ☐ NOTIFICATION OF INTENT (Opt.) ☐ REPORT OF FEDERAL ACTION		Leave Blank	b. DATE 19 Year month day		b. DATE ASSIGNED 19 Year month day
4. LEGAL APPLICANT/RECIPIENT			5. FEDERAL EMPLOYER IDENTIFICATION NO.		
a. Applicant Name : b. Organization Unit : c. Street/P.O. Box : d. City : e. County : f. State : g. ZIP Code : h. Contact Person (Name & telephone No.) :			6. PROGRAM (From Federal Catalog) a. NUMBER : b. TITLE :		
7. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT			8. TYPE OF APPLICANT/RECIPIENT A-State B-Interstate C-Substate District D-County E-City F-School District G-Special Purpose District H-Community Action Agency I-Higher Educational Institution J-Indian Tribe K-Other (Specify): Enter appropriate letter ☐		
9. TYPE OF ASSISTANCE A-Basic Grant B-Supplemental Grant C-Loan D-Insurance E-Other Enter appropriate letter(s) ☐			10. AREA OF PROJECT IMPACT (Names of cities, counties, States, etc.)		
11. ESTIMATED NUMBER OF PERSONS BENEFITING			12. TYPE OF APPLICATION A-New B-Renewal C-Revision D-Continuation E-Augmentation Enter appropriate letter ☐		
13. PROPOSED FUNDING			14. CONGRESSIONAL DISTRICTS OF:		
a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. TOTAL \$.00			a. APPLICANT b. PROJECT 16. PROJECT START DATE Year month day 19 17. PROJECT DURATION Months 18. ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY Year month day 19		
20. FEDERAL AGENCY TO RECEIVE REQUEST (Name, City, State, ZIP code)			21. REMARKS ADDED ☐ Yes ☐ No		
22. THE APPLICANT CERTIFIES THAT			a. To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved. b. If required by OMB Circular A-95 this application was submitted, pursuant to instructions therein, to appropriate clearinghouses and all responses are attached: (1) ☐ No response ☐ Response attached (2) ☐ ☐ (3) ☐ ☐		
23. CERTIFYING REPRESENTATIVE			24. AGENCY NAME		
25. APPLICANT'S TYPED NAME AND TITLE			26. ORGANIZATIONAL UNIT		
27. SIGNATURE			28. FEDERAL APPLICATION IDENTIFICATION		
29. ADDRESS			30. FEDERAL GRANT IDENTIFICATION		
31. ACTION TAKEN			32. FUNDING		
☐ a. AWARDED ☐ b. REJECTED ☐ c. RETURNED FOR AMENDMENT ☐ d. DEFERRED ☐ e. WITHDRAWN			a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. TOTAL \$.00		
33. ACTION DATE Year month day 19			34. STARTING DATE Year month day 19		
35. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)			36. ENDING DATE Year month day 19		
37. REMARKS ADDED ☐ Yes ☐ No			38. FEDERAL AGENCY A-95 ACTION		
a. In taking above action, any comments received from clearinghouses were considered. If agency response is due under provisions of Part 1, OMB Circular A-95, it has been or is being made.			b. FEDERAL AGENCY A-95 OFFICIAL (Name and telephone no.)		

STANDARD FORM 424 PAGE 1 (10-75)
Prescribed by GSA, Federal Management Circular 74-7

Executive Order 12372—State Single Point of Contact List**Alabama**

Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, P.O. Box 2939, Montgomery, Alabama 36105-0939

Arizona

Office of Economic Planning and Development, State of Arizona

Note.—Correspondence and questions concerning this state's E.O. 12372 process should be directed to: Director, Local Government Assistance, ATTN: Arizona State Clearinghouse, 1700 West Washington, Room 205, Phoenix, Arizona 85007, Tel. (602) 225-5004

Arkansas

State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371-2311

California

Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 445-0282

Colorado

State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Tel. (303) 866-2156

Connecticut

Under Secretary, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106-4459

Note.—Correspondence & questions concerning this state's E.O. 12372 process should be directed to: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106-4459 Tel. (203) 566-4298

Delaware

Executive Department, Thomas Collins Building, Dover, Delaware 19903, ATTN: Franchise Booth, Tel. (302) 736-4204

Florida

Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488-8114

Georgia

Administrator, Georgia State Clearinghouse, 270 Washington Street, S.W., Atlanta, Georgia 30334, Tel. (404) 656-3855

Hawaii

Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804

For Information Contact: Hawaii State Clearinghouse, Tel. (808) 548-3085.

Idaho

Senior Controller, Division of Financial Management, State House, Boise, Idaho 83720, Tel. (208) 334-2881

Illinois

Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782-8639

Indiana

State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232-5604

Iowa

Office of Planning and Programming, Capital Annex, 523 East 12th Street, Des Moines, Iowa 50319, Tel. (515) 281-6483

Kansas

Kansas Department of Human Resources, Office of the Secretary, ATTN: Judy Krueger, 401 Topeka Avenue, Topeka, Kansas 66603, Tel. (913) 296-5075

Kentucky

Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564-2382

Louisiana

Executive Director, Louisiana State Planning, Office of the Governor, P.O. Box 44426, Baton Rouge, Louisiana 70804, Tel. (504) 342-7410

Maine

State Planning Office, ATTN: Intergovernmental Review Process, State House Station #38, Augusta, Maine 04333, Tel. (207) 289-3261

Maryland

Director, Maryland State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Tel. (301) 383-7875

Massachusetts

Executive Office of Communities and Development, 100 Cambridge Street, Room 1401, Boston, Massachusetts 02202, Tel. (617) 727-3264

Michigan

Director, Office of Business and Community Development, Michigan Department of Commerce, P.O. Box 30004, Lansing, Michigan 48909, Tel. (517) 378-8363

Mississippi

Office of Federal State Programs, Department of Planning and Policy, 1504 Walnut Sillers Bldg., 500 High Street, Jackson, Mississippi 39202

For Information Contact: Department of Planning and Policy, Tel. (601) 359-3069.

Minnesota

Minnesota State Planning Agency, Capitol Square Building, Room 101, 550 Cedar Street, St. Paul, Minnesota 55101, Tel. (612) 296-3698

Missouri

Missouri Federal Assistance Clearinghouse, Office of Administration, Division of Budget and Planning, Room 129, Capitol Building, Jefferson City, Missouri 65102, Tel. (314) 751-4834 or 751-2345

Montana

Manager, Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Helena, Montana 59620, Tel. (406) 449-3111 x58,

Nebraska

Policy Research Office, P.O. Box 94601, Room 1321, State Capitol, Lincoln, Nebraska 68509, Tel. (402) 471-2414

Nevada

Director, Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885-4420

Note.—Correspondence and questions concerning this state's E.O. 12372 process should be directed to: Clearinghouse Coordinator, Tel. (702) 885-4420

New Hampshire

Acting Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271-2155

New Jersey

Director, Division of Local Government Services, Department of Community Affairs, CN 803, 363 West Street, Trenton, New Jersey 08625, Tel. (609) 292-6613

New Mexico

Department of Finance and Administration, State of New Mexico, 515 Don Gaspar, Santa Fe, New Mexico 87503, Tel. (505) 827-3885

New York

Director of the Budget, New York State

Note.—Correspondence and questions concerning the state's E.O. 12372 process should be directed to: New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474-1605.

North Carolina

Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Tel. (919) 733-4131

North Dakota

Office of Intergovernmental Assistance, Office of Management and Budget, 14th Floor—State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224-2094

Ohio

State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, Ohio 43215

For Information Contact: Deputy Director, Tel. (614) 466-0699

Oklahoma

Office of Federal Assistance Management, 4545 North Lincoln Blvd., Oklahoma City, Oklahoma 73105, Tel. (405) 528-8200

Oregon

Intergovernmental Relations Division, State Clearinghouse, Executive Building, 155 Cottage Street, N.E., Salem, Oregon 97310, Tel. (503) 373-1998

Pennsylvania

Pennsylvania Intergovernmental Council, P.O. Box 1288, Harrisburg, Pennsylvania 17108, ATTN: Charles Griffiths, Executive Director, Tel. (717) 783-3700

Rhode Island

Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277-2656

South Carolina

Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 298201, Tel. (803) 758-2417

South Dakota

Commissioner of the Bureau of Intergovernmental Relations, Second Floor, Capitol Building, Pierre, South Dakota 57501, Tel. (605) 773-3661

Tennessee

Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee, 37219, Tel. (615) 741-1676

Texas

State Planning Director, Office of the Governor, Austin, Texas 78711, Tel. (512) 475-6156

Utah

Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah, 84114, Tel. (801) 533-5245

Vermont

State Planning Office, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828-3326

Virginia

Intergovernmental Review Officer, Department of Planning and Budget, P.O. Box 1422, Richmond, Virginia 23211, Tel. (804) 786-1921

Washington

Washington Planning and Community Affairs Agency, North and Columbia Building, Olympia, Washington 98504, Tel. (206) 753-2200

West Virginia

Director, Community Development Division, Governor's Office of Economic and Community Development, Building #6, Room 553, Charleston, West Virginia 25305, Tel. (304) 348-4010

Wisconsin

Secretary, Wisconsin Department of Administration, 101 South Webster

Street—GEF 2, Madison, Wisconsin 53702, Tel. (608) 266-1212

Wyoming

Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777-7574

Virgin Islands

Federal Program Office, Office of the Governor, The Virgin Islands of the United States, Charlotte Amalie, St. Thomas 00801, Tel. (809) 774-0001

District of Columbia

Director, Office of Intergovernmental Relations, Room 416, District Building, Washington, D.C. 20004, Tel. (202) 727-6265

Puerto Rico

President, Puerto Rico Planning Board, P.O. Box 4119, Minilla Station, San Juan, Puerto Rico 00940, Tel. (809) 724-7900

Northern Mariana Islands

Planning and Budget Office, Office of the Governor, Saipan, CM 96950

Guam

Special Assistant for Federal Programs, Office of the Lt. Governor, Guam State Clearinghouse, P.O. Box 2950, Agana, Guam 96910, Tel. (671) 472-8930

[FR Doc. 84-22274 Filed 8-22-84; 8:45 am]

BILLING CODE 4130-01-M

United States Postal Service Federal Register

Thursday
August 23, 1984

Part III

Postal Service

39 CFR Part 111

Official Mail of the United States
Government; Final Rule

POSTAL SERVICE

39 CFR Part 111

Official Mail of the United States Government

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule extensively modifies postal regulations dealing with official mail, particularly penalty mail of executive and judicial officers of the United States Government, and rearranges, renumbers, and reprints the franking regulations. The following is a general description of the changes made:

The regulations pertaining to official mail of authorized individuals (President-Elect, Former President and Surviving Spouse of Former President, and Surviving Spouse of Member of Congress) have been positioned with the franking regulations, which are reprinted in full.

A general reorganization of the penalty mail regulations groups related matters under one heading, deletes duplicate material, removes instructions to postal employees and adds a definition of "agencies." Additional reorganization has been made to the regulations that appeared in the proposed rule, and regulations concerning ZIP+4 mailings and use of penalty mail stamps have also been added to the final rule. A more detailed description of the changes made appears in the Supplementary Information, below.

EFFECTIVE DATE: October 1, 1984, with the following exceptions:

A. February 1, 1985

1. For agencies to begin submitting second-class mailing statements (Forms 3541 or 3541-A) in duplicate.

2. For Government Printing Office (GPO) contractors to begin using Form 3602-G instead of GPO Form 712, *Certificate of Conformance*, as a statement of mailing with single piece rate permit imprint mailings.

B. July 1, 1985

1. For agencies that were authorized before October 1, 1984 to submit bulk third-class mailings prepared with standard penalty indicia at particular post offices to begin preparing such mailings with penalty permit imprints or penalty postage meters at those post offices.

2. For agencies having publications that were authorized second-class mail privileges before October 1, 1984 to begin preparing those publications in

accordance with the new penalty second-class imprint requirements.

C. Note: Agencies may comply with these procedures before the stated effective dates.

FOR FURTHER INFORMATION CONTACT: James S. Stanford, 245-5001.

SUPPLEMENTARY INFORMATION: On October 8, 1982, the Postal Service published for comment in the *Federal Register* (47 FR 44575) a revision of 137.2 of the Domestic Mail Manual (DMM), modifying regulations concerning mail of executive and judicial officers of the United States Government. The Postal Service received written comments from nine Federal agencies in response to the proposal.

Two commenters objected to the language in section 137.22, DMM, and recommended deletion of this portion of the regulations for three reasons. First, they said that the Postal Service lacks authority to direct the manner of reimbursement for the use of penalty mail. Section 3201 of Title 39, United States Code, requires agencies to "account for all penalty covers through the Postal Service." Section 3206(a) of Title 39, United States Code, requires agencies to "transfer to the Postal Service * * * the equivalent amount of postage due, as determined by the Postal Service." Section 3209 of Title 39, United States Code, requires agencies to "supply all information requested by the Postal Service" concerning their use of penalty mail as soon as practical after requested by the Postal Service. Section 401(2) of Title 39, United States Code, authorizes the Postal Service "to adopt, amend, and repeal such rules and regulations as it deems necessary to accomplish the objectives of this title." The clear meaning and the legislative history of these sections are that the manner and accounting of reimbursement for the use of penalty mail are to be established by Postal Service regulations. The Postal Service is, therefore, authorized to direct the manner of reimbursement for penalty mail by regulation. Section 137.22, DMM does this and, hence, is authorized by law. Accordingly, this suggested deletion was not made.

Second, these two commenters suggested we delete the language in section 137.22, DMM, that they read to permit the Postal Service to require an agency to submit information concerning measurement and budgeting without justifying the need and without concurrence of the agency. They said that the Postal Service is required to provide such justification. The language objected to in Section 137.22, DMM requires agencies to promptly furnish all

information that the Postal Service considers necessary to assure accurate measurement of penalty mail use and adequate budgeting for timely payment.

The prompt submission of such information by other agencies at the request of the Postal Service is authorized by 39 U.S.C. 3209. The law does not require the Postal Service to obtain the agency's concurrence. Therefore, the suggested change was not adopted.

Third, these two commenters recommended deletion of the provision in section 137.22, DMM, that states the Postal Service may require an agency to change its penalty mail procedures (e.g., require use of penalty postage meters). The commenters argued that the Postal Service lacks authority to require particular methods of accountability without the agency's consent, if the change would increase manpower requirements or appropriated fund costs. The legislative history and plain meaning of 39 U.S.C. 3206(a) show that agencies must account for and reimburse the Postal Service the equivalent amount of postage due for use of penalty mail, as provided by Postal Service regulations. The Postal Service is therefore authorized by law to establish improved methods of estimating or measuring penalty mail volume, or to require use of penalty postage meters or other forms of direct accountability to ensure proper reimbursement for postage, as set forth in section 137.22, DMM. All mailers, public and private, have procedures established under postal regulations which they must follow in order to send and pay for their mail. As an accommodation to federal agencies, section 137.22, DMM requires that agencies be consulted before any changes are made, and that the agency be given adequate advance notice of a change. Accordingly, we see no reason to change section 137.22 of the DMM.

One commenter noted that the terms "official mail" and "official penalty mail" appeared to be used interchangeably throughout the text of section 137.2, DMM. The commenter asked if these terms mean the same thing, and requested the Postal Service to define the differences if they do not. Official mail is all mail pertaining to the business of the government of the United States that is authorized to be and is actually mailed without prepayment of postage. The two major categories of official mail are franked mail and penalty mail. (The third category is absentee balloting materials described in 137.3 DMM.) Franked mail is used primarily by members of

Congress. Penalty mail is used primarily by officers of the executive and judicial branches of government. Section 137.2, DMM, relates exclusively to penalty mail. Accordingly, the language in section 137.2, DMM, has been revised to show only the term "penalty" wherever penalty mail, as opposed to franked mail, or absentee balloting materials, is being described.

One commenter suggested that the provisions of section 137.241, DMM concerning the mailing of retirement announcements, Christmas cards, job resumes, and similar materials as penalty mail be eliminated from the Domestic Mail Manual on the ground that the agencies themselves should issue and enforce such rules. We agree that agencies should issue employee guidelines and rules concerning what may be mailed as penalty mail, and note that where it identifies possible misuse of penalty mail privileges, the Postal Service generally refers the matter to the agency for corrective action. Section 137.241, DMM was not intended as a unilateral prohibition against retirement announcements, Christmas cards, etc., from being sent as penalty mail. Section 137.241, DMM, has therefore been modified to clarify this policy.

Two commenters suggested that the permit imprint numbers assigned to each agency in section 137.262 (renumbered 137.252), DMM, be preceded by the letter "G" and that zeros preceding a permit imprint number be deleted. The commenter believed this would avoid confusion between permit numbers for commercial mailers and those of government mailers at the local level, and would enable most agencies to continue use of existing stock bearing permit imprints. We agree and have modified section 137.252, DMM in accordance with this suggestion.

One commenter indicated that the elimination of the requirement for obtaining Postal Service Headquarters approval for contractor use of penalty mail would result in lack of control of contractor mailings by agency mail management officers. The deletion of Postal Service Headquarters involvement does not preclude agencies from developing their own controls for keeping track of contractor mailings.

One commenter requested that we add regulations to specify that contractors are not to make payment for government permit mail. We assume by "permit mail" the commenter is referring to penalty permit imprint mail. As penalty mail by definition is mail sent without prepayment, we do not feel such a clause is necessary. See section 137.21, DMM. Furthermore, in some cases GPO contractors will be required to prepay

postage for small quantities of government agency mail (see section 137.282(l), DMM). Addition of language specifying that contractors must not prepay postage could be misleading. Therefore, this suggestion is not adopted.

Two commenters suggested that we revise DMM 137.263b (renumbered 137.282) to make it clear that contractors can utilize bulk third-class mail. DMM 137.282 has been revised in accordance with this suggestion.

Two commenters suggested that standard penalty indicia continue to be permissible for use with bulk third-class mailings. First, these commenters indicated that printing contracts will have to be modified to reflect this change and expressed concern that adequate time would not be allowed for this process. We believe the effective dates set forth in this final rule should eliminate this concern.

Second, one of these commenters stated that since bulk rate mailings are allowed to bear a variety of indicia (permit imprints and meters) one more type of indicia should not pose a problem to the Postal Service, especially since a mailing statement is required. Use of standard penalty indicia for bulk third-class mailings necessitates maintaining special authorization procedures for use of this rate. Agencies are required to submit an application to Postal Service Headquarters to obtain a special authorization number that must appear on bulk third-class mailing statements. The Postal Service must process these applications and maintain separate accounting systems to accommodate use of standard penalty indicia with bulk third-class mailings. Eliminating use of standard penalty indicia with bulk third-class mail will therefore simplify use of bulk third-class rates for both agencies and the Postal Service. At the same time, this new requirement has the desired effect of bringing agency mailing requirements more in line with those of other mailers. In addition, prohibiting use of standard penalty indicia eliminates the possibility that bulk third-class mail will inadvertently be included in Revenue, Pieces, and Weight samples used to determine the amount of postage owed the Postal Service by the agency for use of single piece rate standard penalty indicia.

Third, this commenter suggested that use of standard penalty indicia be allowed for both single piece and bulk rate mailings. The commenter indicated that prohibiting use of standard penalty indicia with presorted mailings would restrict use of presort because offices would have to know beforehand which

pieces were going to be presorted in order to put them in an envelope with the proper indicia format. Prior to this rulemaking, the DMM provisions prohibited use of standard penalty indicia for Presort First-Class Mail and bulk rate forth-class mail. The DMM change implemented herein would merely extend this prohibition to bulk rate second-class and third-class mail. Due to the requirements of bulk second- and third-class mail, any mailer must know beforehand whether bulk rates will be utilized. We believe that the use of presort by commingling standard penalty indicia or permit imprint mail from different parts of an agency or different agencies after the mailing is placed in an envelope will increase the costs of conducting official business, will, if more than one agency is involved, make it impossible to determine which agency should be billed for the equivalent amount of postage due, and will increase Postal Service verification cost. Therefore, this suggestion is not adopted.

Two commenters asserted that 39 U.S.C. 3207 allows government mailers to mail any article exceeding four pounds in weight at fourth-class rates, even if that article contains pieces which might be sealed or include written matter. In our opinion, such a provision is not required by 39 U.S.C. 3207. That section, which is intended as a restriction on the use of penalty mail, 39 U.S.C. 3202(a), establishes size and weight limitations for penalty mail which are not necessarily identical to those generally established for each of the classes of mail, 39 U.S.C. 3207(a). Additionally Section 3207 prescribes the procedures which government mailers may use if the size and weight limitations do differ, and essentially provides that mail which exceeds the penalty mail limits and is over four pounds may be mailed at fourth-class rates, subject to 39 U.S.C. 3208, if the article does not exceed the general size and weight limits for mail matter and is otherwise mailable, 39 U.S.C. 3207(b). Since there is no disparity between the size and weight limits for Official Penalty Mail and other mail at this time, Section 3207(b) is not triggered and the mailing procedures it provides are no more available to government agencies than they are to any other mailer. See 39 U.S.C. 403(c). Of course, if a disparity is created in the future between the size and weight limits on Official Penalty Mail and other mail, the Postal Service will further consider whether implementation of the procedures provided in 39 U.S.C. 3207(b) is appropriate.

Two commenters objected to the continuation of the longstanding rule that official mail be separated by class before it is deposited into the postal system (sections 137.263a(6) and 137.42, DMM). This requirement allows the Postal Service to identify the class of each piece of official matter, and permits the Postal Service to give the mail appropriate treatment and to assess the proper amount of postage on it. See 39 U.S.C. 404(a)(1), (2), 3206, 3209. Accordingly, we believe the requirement to separate official mail by class should be continued.

One commenter suggested deletion of the section 137.263(a)(3), DMM requirement that the address and return address on all penalty mail include a ZIP Code. The commenter contended that there is no basis for this requirement and that it is discriminatory when applied to single piece rate mail. The commenter further asserted that a Presidential Memorandum issued June 18, 1965, concerning the use of ZIP Codes by agencies did not apply to all users of penalty mail, and that, by its language and identification as a Memorandum rather than an Executive Order, had a suggestive rather than binding effect. The commenter also pointed out that the proposed rule did not indicate that use of either the ZIP + 4 code or 5-digit ZIP Code was acceptable. The Postal Service does not believe that the regulation requiring government agencies to use the ZIP Code on single piece mail discriminates against them. These mailers still have more mailing options than other mailers since they may either prepay postage on this mail and be treated exactly like other mailers, or may mail it as penalty mail. We also do not believe the commenter was correct in its assertion that the Memorandum is not binding in nature, see e.g., *National Federation of Federal Employees, Local 1622 v. Brown*, 645 F.2d 1017, 1022 (D.C. Cir. 1981), or that the language of the Memorandum was merely suggestive in intent. In any event, the Memorandum directed the Post Office Department to issue regulations governing use of ZIP Codes. In response, the Post Office Department issued regulations requiring the use of ZIP Codes by penalty mailers. This longstanding rule, and its uniform applicability to all penalty mailers, improves service on agency mail and enables the Postal Service to handle the mail more efficiently. Accordingly, it is consistent with the Postal Service's statutory responsibility to provide an efficient delivery system, 39 U.S.C. 403(b)(1), 404(a)(1). For similar reasons, and since we do not believe including

the ZIP Code in return addresses will impose any significant hardship, we have also determined that the proposed revision requiring inclusion of a ZIP Code in return addresses should be retained. The language of the regulation has been revised to specify that either the ZIP + 4 code or the 5-digit ZIP Code may be used in addresses and return addresses.

Two agencies expressed concern that the verification procedures for bulk rate mailings could be costly and could discourage use of presort. One of the commenters expressed concern that agency mail managers will not know whether additional postage charges have been assessed for improperly prepared mailings until the end of the fiscal year. The other commenter believed an entire mailing would be assessed single piece rate postage when any (even minor) irregularities in presort are found. This commenter also indicated that First-Class Mail containing presort errors should not be automatically accepted at the higher single piece rate. However, a third commenter requested that improperly prepared Presorted First-Class mailings be automatically accepted and not held until responsible agency personnel are contacted concerning their disposition, because holding the mail could pose a hardship on the mail recipients when the mail consists of items such as social security checks, etc. It appears that two of these commenters are unaware of the Postal Service's National Bulk Rate Mail Verification Program. Under this program, the Postal Service will accept mailings with presort errors of less than 10 percent. If a mailing is found to have errors of 10 percent or more, the mailer is contacted and given the choice of reworking the mailing to correct the errors, or paying the single piece rate postage on the percentage of the mailing found to be in error. The agency receives written notification of the changes in postage when it opts to pay the higher rate for the errors.

Therefore, agencies will have notification of any additional postage assessments before the end of the fiscal year, and minor errors (less than 10%) will not require reworking or additional postage. Through these procedures the Postal Service is simply trying to assure that it is paid at the proper rate for mailings. If government mailings are prepared in accordance with the requirements for a particular presort rate, they will be accepted at that rate with no additional charges to the agency. A provision has been added to section 137.263b(6), DMM to specify that if a First-Class bulk rate mailing is found

to have errors in excess of the acceptable limit, and the agency personnel responsible for the mailing are not known or are not available for contract, the mailing will not be detained but will be entered into the mailstream and additional postage to cover the mailing at the single piece First-Class rates of postage for the percentage of the mailing estimated to be in error will be assessed the agency. This is in keeping with longstanding practice and, as stated by one agency commenter, necessary to preclude hardship to recipients that delay of such mail would incur. As this practice will occur only if attempts to contact the agency by telephone concerning disposition of the mailing have failed, it should not prove burdensome to agencies that do not wish such mailings to be accepted.

One commenter asserted that penalty meter stamps are prepaid postage and that federal agencies using penalty meter stamps should therefore be treated like other mailers with similar services, privileges and restrictions. The services requested by the commenter included certain delivery options to federal buildings, the option not to use ZIP Codes on single piece rated matter, and use of street collection boxes for single piece rate First-Class Mail. Penalty postage meters are set without prepayment of postage. While the amount of postage set in the meter is owned the Postal Service, and therefore collectible from the agency, the amount is not due until the agency receives its bill. Consequently, penalty meter stamps are not prepaid postage. Furthermore, the method of paying or indicating postage has no bearing on the type of delivery service afforded an agency. Therefore, the delivery service options requested by the commenter are beyond the scope of this rulemaking procedure. The use ZIP Codes on single piece rate penalty mail was discussed earlier. Language has been added to the regulations to indicate penalty postage meters are subject to the provisions of section 144, DMM, with certain modifications and exceptions. Section 144.51 and 144.52, DMM, provide that single piece rate metered mail may be deposited in street collection boxes under the jurisdiction of the post office at which the meter is licensed provided: (1) quantities of five or more pieces are bundled, boxed, or otherwise packaged with the addresses facing one direction, and (2) each class and denomination is bundled separately. Therefore, government agencies may deposit mail bearing penalty meter stamps in street collection boxes under the jurisdiction

of the post office at which the meter is licensed under the aforementioned conditions.

One commenter requested addition of a two-digit numerical suffix to permit imprint numbers to aid agencies in their accountability processes and in responding to inquiries and complaints. The Postal Service is modifying its accounting processes and will provide for the requested breakdown of agency bills, if desired, through the use of multiple permit imprint numbers rather than the suggested two-digit numerical suffix.

One commenter requested individual permit imprint numbers for subunits of an agency on an "as needed" basis. Procedures have been added to the final regulations for requesting additional permit imprint numbers from the Manager, Government Revenue and Examination Branch.

One commenter was concerned that mailings may be delayed if local post offices are not familiar with the new decentralized procedures. The Postal Service will issue a handbook to post offices that explains penalty mail procedures. Additional training of post office personnel is also planned. Accordingly, we expect post offices to be familiar with these procedures by the time they take effect.

Two commenters expressed concern that decentralization of permit imprint applications will delay preparation of fiscal reports, since post offices will be required to submit billing information to Postal Service Headquarters before agency can be billed. The Postal Service believes that publication of the handbook, the planned training sessions described above, and redesign of our accounting and reporting systems will result in timely preparation and submission of agency billing data.

Three commenters requested that language specifying that GPO Form 712 cannot be used as a statement of mailing be added to the regulations. Language to this effect has been added to section 137.263b(4), Domestic Mail Manual.

One commenter requested that conditions for use of new Form 3602-G, *Statement of Mailing with Penalty Permit Imprints*, be added to the regulations. Former section 137.284c, Domestic Mail Manual (renumbered 137.274c) has been revised to specify that Form 3602-G is for use only with mailings submitted by GPO contractors at single piece rates and to set forth other conditions for use of this form.

One commenter asked who will assign serial numbers to GPO Form 712. The Government Printing Office will be responsible for adding serial numbers to GPO Form 712.

One commenter requested that an Exhibit of Form 3602-G be made available to agencies. A copy of Form 3602-G has been included as an exhibit at the end of this final rule although such an exhibit will not be incorporated as part of the Domestic Mail Manual.

One commenter asked if the new procedures will be included in the standard GPO contract. The Postal Service has provided the Government Printing Office with a summary of Postal Service requirements for contractor mailings. This language can be used in GPO contracts or otherwise provided to GPO contractors.

One commenter asked where agencies and contractors will be able to obtain copies of their procedures and responsibilities and copies of Postal Service operating procedures. The Manager, Government Revenue and Examination Branch, provides instructions to agencies concerning mailing and postage reimbursement requirements each fiscal year. Agencies are responsible for advising contractors of their requirements. Additionally, agencies may wish to order copies of the Domestic Mail Manual, which sets forth the requirements concerning official mail and domestic mail services, from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-0001.

One commenter brought to our attention that Exhibits 137.285f(2)(d) and 137.286a, Domestic Mail Manual (renumbered Exhibits 137.276g(2)(d) and 137.277a(2), Domestic Mail Manual) indicated that the city and country rather than the city and state must be shown in the address on penalty business reply mail, and in the return address on penalty second-class mail. These Exhibits have been corrected.

Two commenters asked that regulations be added to specify that third-party penalty business reply mail arrangements may be used by government agencies. Use of third-party arrangements for penalty business reply mail would be unwieldy, as the holder of the permit number shown on the piece would not be the agency or individual to whom the piece is returned and from whom reimbursement would initially be expected. Such arrangements could cause difficulty in determining whom to bill for such mail, especially if the mail is returned to a non-government concern. Agencies desiring to use such arrangements may do so only by obtaining regular business reply permits in accordance with Section 917, Domestic Mail Manual.

One commenter requested that the exception allowing the Bureau of the Census to distribute reply mail bearing

the standard penalty indicia, be extended to other federal agencies. This exception was granted to avoid delays in conducting the Bureau's prime mission to count accurately the people in the households of the United States. The Postal Service is seeking to increase direct accountability practices of government agencies. Accordingly, the Postal Service does not plan to make other exceptions to use of the business reply mail format. The continued use of standard penalty indicia for reply mail by the Bureau of the Census is currently under review.

One commenter requested that American Consulates be added to the list of locations at which absentee balloting materials may be deposited without prepayment of postage. Section 137.312, Domestic Mail Manual has been modified in accordance with this request.

One commenter requested that a cutoff date be established at the end of the fiscal year for agency bills and that any postage charges received for the fiscal year after the cutoff date not be included in the subsequent year's bill. Section 3206 of Title 39 requires agencies to reimburse the Postal Service the amount of postage due for matter sent in the mails by them or to them as penalty mail. Failure to pay the full postage discovered to be owed for service provided would result in an improper subsidy to an agency's operations by other mailers.

One commenter asked that the discrepancy between the U.S. Postal Service fiscal year (13 accounting periods) and the federal budget fiscal year (12 accounting periods) be resolved to improve accounting procedures and to prevent disputes involving one-year O&M funds and three-year U.S. Postal Service transactions. This request is beyond the scope of this rulemaking process. However, the Postal Service is considering this request in its development of new information and billing systems for penalty mail.

Five commenters requested that the effective date for these regulations allow agencies adequate time to change their contracts and mailing operations. We believe the effective dates accommodate these requests.

After full consideration of each of the issues raised by the commenters, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (39 CFR 111.1).

The following is a brief explanation of the principal amendments being adopted:

(1) Use of Penalty Mail Indicia Formats

(a) All bulk rate mailings (other than second-class and nonpresorted ZIP + 4) must be prepared using penalty permit imprints or penalty meters. Use of the standard penalty indicia for bulk third-class mailings will be prohibited.

(b) A new format for the penalty second-class imprint is required.

(c) Use for reply mail purposes of standard penalty indicia envelopes and labels is prohibited for Naturalization Mail. (Standard penalty indicia may be used for reply mail purposes only for official penalty fourth-class reply mail, special service reply mail and mail of the Bureau of the Census that relates to a collection of statistics, survey, or census authorized by Title 13, United States Code.)

(d) The Postal Service will no longer provide post office penalty envelopes or labels for use in sending annual reports of government aided colleges through the mail (see Section 137.242a(4) DMM). Authorized government aided colleges must procure their own standard penalty indicia envelopes or obtain them from the Department of Agriculture.

(2) Authorizations

(a) Authorization from U.S. Postal Service Headquarters will no longer be required to mail at the bulk third-class rates.

(b) U.S. Postal Service Headquarters approval will no longer be required for permit imprint applications. All applications must be submitted to the post office or post offices where mailings will be submitted and will be approved by the local postmaster. The penalty permit imprint number to be used by agencies is listed in Column B of Section 137.252, DMM.

(c) Agencies are no longer required to obtain authorization from U.S. Postal Service Headquarters for contractor use of penalty mail services. However, agencies must promptly furnish, in the manner and form requested, all information concerning contractor use of penalty mail services that the Manager, Government Revenue and Examination Branch, may consider necessary to insure accurate reimbursement to the Postal Service.

(3) Mailing Statements

(a) A new Form 3602-G, *Statement of Mailing with Penalty Permit Imprints*, has been developed to accommodate permit imprint mailings of GPO contractors that, as permitted by DMM 137.274c(2), consist of nonidentical weight pieces or contain more than one class of mail. GPO Form 712, *Certificate*

of Performance, will no longer be accepted by the Postal Service as a statement of mailing. The Postal Service will not retain a copy of GPO Form 712 submitted with mailings.

(b) All second-class mailing statements must be submitted in duplicate. If the agency or contractor wishes a copy of the mailing statement, a triplicate copy must be submitted.

(4) Other Requirements

(a) Penalty permit imprint mailings will be required to meet the minimum quantity requirements prescribed for use of permit imprints in Section 145.61, DMM. This will have the greatest impact on GPO contractor mailings as it will require mailings not meeting the minimum quantity requirements to be paid by means of penalty postage meters or penalty mail stamps or require the contractor to prepay the postage and be reimbursed under the terms of the contract. Mail prepaid by contractors must not bear any elements of a penalty mail indicia format.

(b) The class of mail endorsement on penalty permit imprint mail pieces may appear immediately below or to the left of the permit imprint as well as within the permit imprint.

(c) The correct 5-digit ZIP Code or ZIP + 4 code must be included in the return address of all penalty mail. (This is in addition to the requirement that the correct 5-digit Zip Code or ZIP + 4 code of the addressee be included in the address.)

(d) Additional clarifying language has been added to some sections.

(e) Section 145.5, DMM, has been revised to show additional examples of penalty permit imprint formats.

List of Subjects in 39 CFR Part 111

Postal service.

PART 137—[AMENDED]

Part 137—Official Mail is revised as follows:

PART 137—OFFICIAL MAIL**137.1 Franked Mail****.11 Members of Congress**

.111 *Collection of Postage, Fees, and Charges.* Postage, fees, and charges on mail sent under the franking privilege by the Vice President, Members and Members-elect of Congress, Delegates or Delegates-elect, the Resident Commissioner or Resident Commissioner-elect from Puerto Rico, the Secretary of the Senate, Sergeant at Arms of the Senate, each of the elected officers of the House of Representatives (other than a Member of the House), Legislative Counsel of the House of

Representatives, and the Senate, and Senate Legal Counsel are paid quarterly by a lump sum to the Postal Service.

.112 *Description.* Official Mail of Members of Congress is sent without prepayment of postage and bears a written signature, printed facsimile signature or other required marking instead of a postage stamp. The types of mail matter accepted under frank, and the officials authorized to use franked mail are shown in Exhibit 137.112.

.12 Individuals

.121 *President-Elect.* All mail sent by any President-elect in connection with preparations for the assumption of official duties as President may be accepted without prepayment. The right to use official franked mail ceases immediately upon inauguration to the Presidency.

.122 *Former President and Surviving Spouse of Former President.* All nonpolitical mail of former United States Presidents, and of the surviving spouse of a former President, must be accepted without prepayment of postage if it bears the written signature of the sender, or a facsimile signature and the words POSTAGE AND FEES PAID in the upper right corner of the address side.

.123 *Surviving Spouse of Member of Congress.* Upon the death of a Member of Congress during the term of office, the surviving spouse of such member may send without prepayment of postage, for a period not to exceed one hundred and eighty days after the death of the Member, correspondence relating to the death of the Member, provided it bears the written signature of the sender, or a facsimile signature in the upper right corner of the address side. Where there is no surviving spouse, this privilege may be exercised by a member of the immediate family of a Member of Congress who dies in office. The member of the immediate family must be designated to send such mail by the Secretary of the Senate or the Clerk of the House of Representatives, as appropriate.

.13 Restrictions**.131 General Restrictions**

a. A person entitled to use franked mail may not loan this frank, or permit its use by any committee, organization, or association; or permit use by any person for the benefit or use of any committee, organization, or association. This restriction does not apply to any committee composed of Members of Congress.

b. Franked mail must meet the mailability criteria established in 123 and 124.

c. Franked mail is entitled to any special services for which it is properly endorsed.

d. Franked mail is handled as ordinary mail.

e. Franked mail is forwarded like any other mail, but when once delivered to the addressee it may not be remailed. A package of franked pieces may be sent by a person entitled to the franking privilege to one addressee, who, on receiving and opening the package, may on behalf of such person place addresses on the franked articles and mail them.

f. Franked mail must be addressed to the recipient by name, except as provided in 122.442.

.132 Restrictions for Members of Congress

a. Matter transmitted under frank of the Vice President, each Member of or Member-elect to Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, each of the elected officers of the House of Representatives (other than a Member of the House), each Delegate or Delegate-elect, the Resident Commissioner or Resident Commissioner-elect, each Legislative Counsel of the House and the Senate, and Senate Legal Counsel must relate to the official business, activities, and duties of the Congress of the United States.

b. Matter transmitted under frank of the former Vice President, each former Member of Congress, the former Secretary of the Senate, the former Sergeant at Arms of the Senate, each former elected officer of the House of

Representatives (other than a former Member of the House), and each former Delegate or Resident Commissioner must be on official business relating to the closing of each respective office.

.14 *Weight and Size Limits.* Franked mail must conform to the weight, size, and shape requirements for the class of mail being used.

.15 Forwarding Mailing Records for Franked Mail

.151 Post offices serving the district offices of Members of Congress and other Congressional officials entitled to use the franking privilege must record on Form 103, *Originating Franked Mail*, the number of pieces of originating franked mail, the dollar value of fees for originating special services, volume data on mailing lists corrected, the volume of incoming address corrections delivered to the Member's district office, and the dollar value of other incoming postage due items delivered during each accounting period.

.152 Do not report on Form 103 any franked mail entered by an authorized contractor or endorsed *Presorted First-Class* or *Third-Class Bulk*. Forms 3602 are required for such mailings entered at the reporting post office by representatives of the authorized user of the frank. Forward these Forms 3602, *Statement of Mailing With Permit Imprints*, to the Government Revenue and Examination Branch, Finance Department, USPS Headquarters, Washington, DC 20260-5215, for billing purposes. Post offices must not report data for mail in the following categories on either Form 103 or Form 3602:

a. Third-Class Bulk and other franked mail sent in orange pouches from Washington, DC in accordance with *POSTAL OPERATIONS MANUAL (POM)* 453.123 and 453.2. This mail is counted and reported by the Washington, DC Post Office.

b. The value of special service fees paid on franked envelopes by affixed postage.

c. Volume and revenue for Postage and Fees Paid (Penalty Mail) matter sent by Executive and Judicial agencies and departments of the Federal Government.

.153 Post offices, stations and branches serving Congressional district offices must forward Form 103 for each accounting period to reach their Regional Management Information Branch (RMIB) no later than the fifth working day after the close of the accounting period. These offices must submit negative reports on Form 103 when no reportable franked mail items are processed during an accounting period.

.154 Post offices not regularly serving a local Congressional office should report on a Routing Slip, or by memorandum the volume of any occasional franked mailing made at their offices and data on mailing lists submitted for correction by an authorized user of the frank.

This information must be submitted to the appropriate RMIB at the end of any accounting period when mailings occur or mailing lists are corrected. Negative reports are not required from these offices.

BILLING CODE 7710-12-M

FRANKED MAIL

Authorized Users	Matter that may be franked	Marking required	Period during which the frank may be used
Vice President of the United States, Members of Congress, Resident Commissioners, Secretary of the Senate, Sergeant at Arms of the Senate, and each of the elected officers of the House of Representatives (other than Members of the House).	Public documents printed by order of Congress.	The words <i>Public Document</i> —and the letters U.S.S. or M.C. must appear on the address side.	During the 90-day period immediately following expiration of their respective terms of office.
Members of Congress and Resident Commissioners.	Congressional Record or any part of it or any reprint of any part of it or speeches or reports contained in it, if relating to official business, activities or duties.	The words <i>Congressional Record</i> or <i>Part of Congressional Record</i> —and the letters U.S.S. or M.C. must appear on the address side.	During term of office only.
Members of Congress.	Seeds and agricultural reports from the Department of Agriculture.	The signature and title, either written or printed facsimile, of the person entitled to frank it, must appear on the address side.	During the 90-day period immediately following the expiration of their terms of office.
Vice President of the United States, Members and Members-elect of Congress, Resident Commissioners, Secretary of the Senate, Sergeant at Arms of the Senate, each of the elected officers of the House of Representatives (other than a Member of the House), Legislative Counsels of the House of Representatives and the Senate, the Law Revision Counsel of the House of Representatives, and Senate Legal Counsel.	Official correspondence including Mailgrams.	Mailgrams may be sent in standard Mailgram envelopes. For other correspondence, the signature and title, either written or printed facsimile, of the person entitled to frank it, must appear on the address side.	During term of office only. When the position of Secretary, Sergeant at Arms, elected officer, Legislative Counsel, Law Revision Counsel, or Senate Legal Counsel is vacant, privileges may be exercised in officer's name by authorized persons.
Vice-President-elect.	All mail, sent by the Vice-President-elect in connection with preparation for the assumption of official duties.	The signature and title, either written or printed facsimile, of the Vice-President-elect must appear on the address side.	Until assumption of duties as the Vice President.
Former Vice President, each former Member of Congress, the former Secretary of the Senate, the former Sergeant at Arms of the Senate, each former elected officer of the House (other than a former Member of the House), and each former Delegate or Resident Commissioner.	Matter on official business related to the closing of their respective offices.	The signature and title, either written or printed facsimile, of the person entitled to frank it, must appear on the address side.	During the 90-day period immediately following the date on which he leaves office.
Former Speakers of the House.	Public documents, seeds and agricultural reports from the Department of Agriculture, official correspondence including Mailgrams.	The signature and title, either written or printed facsimile, of the former Speaker, or appropriate Mailgram or public document marking as indicated above, must appear on the address side.	For as long as the former Speaker determines necessary.

EXHIBIT 137.112 - Franked Mail of Members of Congress

137.2 *Penalty Mail—Executive and Judicial Officers*

.21 Definition. Penalty mail is official mail sent by agencies of the United States Government containing matter relating exclusively to the business of the Government of the United States that is authorized by law to be transmitted in the mail without prepayment of postage. For the purposes of 137.2 through 137.4, departments, agencies, corporations, establishments, commissions, committees, and any officers or other authorities of the United States Government authorized to use official penalty mail are generally referred to as "agencies". See 137.24 for a further description of who may send and what may be sent as penalty mail.

.22 Collection of Postage and Fees. Agencies must reimburse the Postal Service the equivalent amount of postage and fees due for the penalty mail service they receive. Instructions governing the manner of reimbursement for penalty mail service are issued and administered by the Manager, Government Revenue and Examination Branch, Finance Department, USPS Headquarters, Washington, DC 20260-5215. Agencies and any contractors authorized by them to use penalty mail services must promptly furnish, in the manner and forms requested, all information which the Manager considers necessary to assure accurate measurements of penalty mail use and adequate budgeting for timely payment. The Manager may require agencies to establish improved methods of estimating or measuring penalty mail volume, or to use penalty postage meters or other forms of direct accountability for the use of penalty mail services, where the Manager determines such action is necessary to insure proper reimbursement. Before making any such determination, the Manager will consult with the agency involved to identify possible alternative actions that might be more efficient or more economical. If the Manager decides to require the use of penalty postage meters or other forms of accountability for the use of penalty mail services, adequate advance notice must be given to affected agencies.

.23 Prepayment of Postage and Fees. Agencies may choose to prepay postage by using regular postage stamps, commercial meters, or any other means available to private sector mailers in addition to, or instead of the procedures described in 137.22. Mail that is prepaid in this manner is not considered penalty mail and must not contain the penalty indicia format elements described in 137.27.

.24 *Eligibility for Penalty Mail Privileges*

.241 General. Only matter relating exclusively to the business of the Government of the United States, mailed by officers of the executive and judicial branches of the Government, the legislative counsel for the House of Representatives and the Senate, the Superintendent of Documents, and, when it mails correspondence concerning the *Congressional Directory*, the Joint Committee on Printing, may be sent without prepayment of postage as penalty mail. Mail matter not relating exclusively to the business of the Government may not be sent as penalty mail. The Postal Service generally considers that the mailing department or agency should determine which matter relates exclusively to its own business. Departments and agencies authorized to mail matter as penalty mail should maintain rules and guidelines for the use of penalty mail privileges, which should include provisions concerning the circumstances, if any, when officers or employees may mail retirement announcements, Christmas cards, job resumes, complaints, grievances, and similar materials, as penalty mail. Instances of questionable use will be referred to the agency.

.242 Special Users of Penalty Mail **a. Department of Agriculture.**

(1) Extension and Home Economics. All correspondence, bulletins, and reports relating to agricultural extension work and home economics carried on in cooperation with the United States Department of Agriculture may be sent as penalty mail, when mailed by the college officer or other person who is connected with the extension department of the college and who has been designated by the Secretary of Agriculture. The designated officer may deposit mailings only at the post office authorized by the Director, Office of Mail Classification, Rates and Classification Department, USPS Headquarters, Washington, DC 20260-5360. Correspondence must be conducted under the name of the designated officer. Correspondence with an autograph signature may be sealed, but all other matter must be left unsealed.

(2) Cooperative Extension Work. All correspondence, bulletins, pamphlets and other matter promoting cooperative extension work as a Federal enterprise or otherwise relating exclusively to the business of the Government of the United States may be sent as penalty mail, when mailed by cooperative extension agents of the United States Department of Agriculture Extension

Service, such as county agents, county home demonstration agents, farm management demonstrators, and farm forestry agents as part of their official duties. Correspondence mailed by cooperative extension employees must be signed by authorized agents of the United States Department of Agriculture, who must give their official titles to indicate they are officers of the United States Government and entitled to use penalty mail.

(3) Research and Experimentation. Bulletins, reports, periodicals, reprints of articles, and other publications necessary for the dissemination of results of research and experiments, including lists of publications available for distribution, may be sent as penalty mail when mailed by agricultural experiment stations designated by the act of March 2, 1887, as amended by the act of August 11, 1955. See 39 U.S.C. 3707(a)(4). The officer in charge of a station that claims the privilege of sending materials through the mail without prepayment of postage must file an application at the post office where the station is located. The post office will forward the application to the Office of Mail Classification, Rates and Classification Department, USPS Headquarters, Washington, DC 20260-5360. This application must state the date of establishment of the station, its name or designation, its official organization, the names of its officers, the name of the college, school, or institution, if any, to which it is attached, the state or territorial legislation providing for its establishment, and any other legislation granting it the benefits of the act of Congress cited above. Use of special services is not authorized for penalty mail of agricultural experiment stations.

(4) College Reports. Annual reports under 7 U.S.C. 325 of Government-aided colleges may be sent as penalty mail, when addressed to the Secretary of Education, the Secretary of Agriculture, or to any other such Government-aided college.

b. State Employment Security Offices. All mail prepared in accordance with 137.272b(4), 137.273, 137.274, and 137.276 by State employment security offices cooperating with the U.S. Department of Labor must be accepted without prepayment of postage or fees. Postage and fees chargeable are collected periodically under a special arrangement between the Postal Service and the U.S. Department of Labor. Such matter must be given the service indicated on the cover.

c. General Secretariat of the Organization of American States and

Pan American Health Organizations (or Pan American Sanitary Bureau). The General Secretariat of the Organization of American States and Pan American Health Organization (or Pan American Sanitary Bureau) are authorized by law to transmit official matter without prepayment. Detailed procedures for international mailings of these organizations are located in International Mail Manual (IMM) 221.344 and 221.345.

.25 Authorizations

.251 General

a. Agencies appearing on the list in 137.252 are authorized to use penalty mail. Agencies not appearing on the list may request the Manager, Government Revenue and Examination Branch, Finance Department, USPS Headquarters, Washington, DC 20260-5215, to authorize their use of penalty mail services.

b. The college officer or other person who is connected with the extension department of the college who has been designated by the Secretary of Agriculture to use penalty mail in accordance with 137.242a(1) must obtain an authorization to deposit penalty mailings at a specific post office from the Director, Office of Mail Classification, Rates and Classification Department, USPS Headquarters, Washington, DC 20260-5360.

c. The officer in charge of an agricultural experiment station that claims the privilege of using penalty mail must submit an application for use of penalty mail to the post office where the station is located in accordance with 137.242a(3). The postmaster will forward the application to the Office of Mail Classification, Rates and Classification Department, USPS Headquarters, Washington, DC 20260-5360.

d. Agencies authorized to use penalty mail may use penalty postage meters, penalty permit imprints, penalty mail stamps, penalty business reply mail, penalty fourth-class reply mail, special services reply mail, and second-class mail privileges only pursuant to specific authorization under the procedures set forth in 137.273-137.277a.

e. Agencies that desire to make nonpresorted ZIP + 4 mailings using standard penalty indicia as provided in 137.263c must obtain an authorization for use of permit imprints at each post office of mailing as described in 137.274a.

f. The right of an officer to use the penalty mail privilege ceases immediately when the officer leaves office.

g. Except as provided in 137.276 and 137.28, an agency must not loan or

furnish penalty envelopes, cards, cartons, labels, meter stamps, or penalty mail stamps to any private person, concern, or organization or permit the use of such penalty envelopes, cards, cartons, labels, meter stamps or penalty mail stamps for matter not relating exclusively to the business of the Government of the United States.

.252 Agency Authorization Codes.

The agency sampling code shown in Column A *Sampling Number* must be shown on each piece of standard penalty indicium mail (see Section 137.272) and must not be used for any other purpose. An "M" in Column A indicates that an agency is not eligible to use standard penalty indicia and is required to use penalty postage meters, penalty mail stamps, or other directly accountable methods of penalty indicia. The *Permit Imprint Number* shown in Column B must be included in the permit imprint indicium of each piece of the agency's penalty permit imprint mail (see 137.274). Agencies desiring additional penalty permit imprint numbers for particular segments of their agencies must submit a written request to the Manager, Government Revenue and Examination Branch, USPS Headquarters, Washington, DC 20260-5215.

(A) Sampling no.	(B) Permit imprint no.
602. Action	G-21.
603. Administrative Conference of the United States	G-260.
426. Administrative Office of the United States Courts	G-18.
566. Advisory Commission on Intergovernmental Relations	G-34.
567. Advisory Committee on Federal Pay	G-146.
568. Advisory Council on Historic Preservation	G-81.
M African Development Foundation	G-275.
101. Agricultural Experiment Stations	G-269.
101. Agricultural Research Service	G-95.
M Agriculture Stabilization & Conservation Service	G-96.
101. Agriculture, Department of (see component agency)	
318. Air Force, Department of the	G-1.
M Alaska Natural Gas Transportation System, Federal Inspector for	G-171.
353. Alaska Power Administration—Energy	G-147.
516. Alaska Railroad	G-148.
396. Alcohol, Drug Abuse and Mental Health Administration—PHS/HHS	G-283.
564. Alcohol, Tobacco and Firearms Bureau—Treasury	G-96.
604. American Battle Monuments Commission	G-149.
320. American Forces Information Service	G-150.
605. American States—Pan American Union, Organization of	G-85.
102. Animal & Plant Health Inspection Service—Agriculture	G-41.
606. Appalachian Regional Commission	G-99.
370. Architect of the Capitol	G-151.
569. Architectural & Transportation Barriers Compliance Board	G-152.
314. Army, Department of the	G-5.
396. Assistant Secretary for Health, Office of—PHS/HHS	G-280.
570. Blind and Other Severely Handicapped, Commission for Purchase from the Board for (see other part of title)	G-153.
354. Bonneville Power Administration—Energy	G-135.
371. Botanic Garden, United States Bureau of (see other part of title)	G-154.
202. Census, Bureau of the—Commerce	G-58.
396. Centers for Disease Control—PHS/HHS	G-284.

(A) Sampling no.	(B) Permit imprint no.
607. Central Intelligence Agency	G-155.
608. Civil Aeronautics Board	G-156.
609. Civil Rights, Commission on	G-73.
322. Civilian Health & Medical Program of the Uniformed Services, Office of—Defense	G-143.
514. Coast Guard, United States—Transportation	G-157.
201. Commerce—Office of the Secretary of Commerce, Department of (see component agency) Commission on (see other part of title)	G-46.
610. Commodity Futures Trading Commission	G-57.
556. Comptroller of the Currency, Office of the—Treasury	G-8.
372. Congressional Budget Office	G-70.
612. Consumer Product Safety Commission	G-72.
101. Cooperative Extension Service—Agriculture	G-268.
373. Copyright Royalty Tribunal Council (see other part of title)	G-159.
426. Court of Claims, United States	G-18.
430. Court of Appeals for the Federal Circuit, United States	G-244.
M Court of Military Appeals, United States	G-251.
565. Court of International Trade, United States	G-252.
552. Customs Service, United States—Treasury	G-97.
309. Defense Audiovisual Agency	G-265.
305. Defense Audit Service—Inspector General	G-160.
M Defense Communications Agency	G-60.
312. Defense Contract Audit Agency	G-161.
Defense, Department of (see component agency)	
302. Defense—(components not listed elsewhere)	G-79.
306. Defense Intelligence Agency	G-162.
328. Defense Investigative Service	G-131.
304. Defense Logistics Agency	G-53.
326. Defense Mapping Agency	G-2.
310. Defense Nuclear Agency	G-163.
622. Depository Institutions Deregulatory Committee	G-125.
437. Drug Enforcement Administration—Justice	G-33.
476. Economic Advisers, Council of	G-184.
209. Economic Analysis, Bureau of—Commerce	G-56.
204. Economic Development Administration—Commerce	G-165.
101. Economic Research Service—Agriculture	G-145.
395. Education, Department of	G-17.
449. Employment & Training Administration—Employment Security	G-12.
350. Energy, Department of (components not otherwise listed)	G-20.
559. Engraving and Printing, Bureau of—Treasury	G-166.
335. Environmental Protection Agency	G-35.
477. Environmental Quality, Council on	G-105.
613. Equal Employment Opportunity Commission	G-14.
M Executive, Legislative, and Judicial Salaries, Commission on	G-290.
M Executive Office of the President—Office of Administration	G-141.
105. Extension Service—Agriculture	G-268.
614. Farm Credit Administration	G-167.
103. Farmers Home Administration—Agriculture	G-265.
515. Federal Aviation Administration—Transportation	G-44.
432. Federal Bureau of Investigation—Justice	G-168.
615. Federal Communications Commission	G-111.
101. Federal Crop Insurance Corporation—Agriculture	G-112.
616. Federal Deposit Insurance Corporation	G-36.
617. Federal Election Commission	G-31.
625. Federal Emergency Management Agency	G-114.
351. Federal Energy Regulatory Commission—Energy	G-142.
571. Federal Financial Institution Examination Council	G-169.
512. Federal Highway Administration—Transportation	G-65.
618. Federal Home Loan Bank Board	G-170.
619. Federal Labor Relations Authority	G-139.
561. Federal Law Enforcement Training Center—Treasury	G-93.
620. Federal Maritime Commission	G-172.

(A) Sampling no.	(B) Permit imprint no.	(A) Sampling no.	(B) Permit imprint no.	(A) Sampling no.	(B) Permit imprint no.
561 Federal 820 Federal Maritime Commission Law Enforcement Training Center—Treasury.	G-17293.	632 Merit Systems Protection Board.....	G-113.	355 Southeastern Power Administration—Energy.	G-236.
621 Federal Mediation and Conciliation Service.	G-173.	450 Mine Safety & Health Administration—Labor.	G-190.	356 Southwestern Power Administration—Energy.	G-237.
573 Federal Mine Safety & Health Review Commission.	G-174.	425 Minerals Management Services—Interior.	G-270.	501 State, Department of.....	G-130.
435 Federal Prison Industries—Justice.....	G-175.	416 Mines, Bureau of—Interior.....	G-191.	101 Statistical Reporting Service—Agriculture.	G-38.
516 Federal Railroad Administration—Transportation.	G-128.	208 Minority Business Development Agency—Commerce.	G-192.	428 Supreme Court of the United States.....	G-238.
622 Federal Reserve System, Board of Governors of the.	G-124.	555 Mint, Bureau of the—Treasury.....	G-7.	424 Surface Mining Reclamation and Enforcement, Bureau of—Interior.	G-239.
361 Federal Supply Service—GSA.....	G-176.	M Museum Services, Institute of.....	G-274.	352 Synthetic Fuels Corporation, United States.	G-255.
623 Federal Trade Commission.....	G-62.	451 National Aeronautics and Space Administration.	G-27.	439 Tax Court, United States.....	G-256.
624 Fine Arts, Commission of.....	G-177.	215 National Bureau of Standards—Commerce.	G-195.	482 Trade Representative, Office of the United States.	G-257.
423 Fish and Wildlife Service—Interior.....	G-77.	633 National Capital Planning Commission.....	G-196.	379 Technology Assessment, Office of.....	G-240.
396 Food and Drug Administration—PHS/HHS.	G-285.	396 National Center for Health Services Research—PHS/HHS.	G-282.	652 Tennessee Valley Authority.....	G-241.
104 Food and Nutrition Service—Agriculture.	G-39.	396 National Center for Health Statistics—PHS/HHS.	G-281.	Transportation, Department of (see component agency).	
106 Food Safety & Inspection Service—Agriculture.	G-42.	M* National Commission on Libraries and Information Science.	G-116.	518 Transportation, Department of (components not otherwise listed).	G-127.
101 Foreign Agricultural Service.....	G-262.	M National Council on the Handicapped.....	G-279.	519 Transportation Systems Center—Transportation.	G-242.
427 Foreign Claims Settlement Commission of the United States.	G-178.	634 National Credit Union Administration.....	G-88.	Treasury, Department of the (see component agency).	
M Forest Service—Agriculture.....	G-40.	635 National Endowment for the Arts.....	G-50.	551 Treasury—(all components not otherwise listed).	G-52.
374 General Accounting Office.....	G-100.	636 National Endowment for the Humanities.....	G-43.	307 University of Health Sciences—Unformed Services.	G-259.
361 General Services Administration.....	G-30.	637 National Gallery of Art.....	G-47.	511 Urban Mass Transportation Administration.	G-129.
413 Geological Survey—Interior.....	G-23.	517 National Highway Traffic Safety Administration—Transportation.	G-90.	601 Veterans Administration.....	G-75.
M German-American Bicentennial, Presidential Commission for.	G-273.	398 National Institute of Education.....	G-25.		
553 Government Financial Operations, Bureau of—Treasury.	G-4.	638 National Labor Relations Board.....	G-132.		
375 Government Printing Office—Superintendent of Documents—Sales Program.	G-160.	639 National Mediation Board.....	G-197.		
377 Government Printing Office—Superintendent of Documents—Statutory & Library Distribution.	G-26.	210 National Oceanic & Atmospheric Administration—Commerce.	G-19.		
376 Government Printing Office (components not otherwise listed).	G-181.	417 National Park Service—Interior.....	G-83.		
583 Harry S. Truman Scholarship Foundation Health & Human Services (HHS) (see component agencies).	G-16.	640 National Science Foundation.....	G-69.		
391 Health and Human Services, Department of (components not otherwise listed).	G-45.	M National Security Agency—Defense.....	G-278.		
392 Health Care Financing Administration—HHS.	G-28.	480 National Security Council.....	G-198.		
396 Health Resources and Services Administration—PHS/HHS.	G-286.	211 National Technical Information Service—Commerce.	G-15.		
401 Housing and Urban Development, Department of.	G-51.	216 National Telecommunications & Information Administration—Commerce.	G-199.		
M Holocaust Memorial Council, United States.	G-287.	641 National Transportation Safety Board.....	G-200.		
393 Human Development Services, Office of—HHS.	G-88.	M Native Hawaiians Study Commission, United States.	G-263.		
433 Immigration and Naturalization Service—Justice.	G-78.	M Navajo Hopi Indian Relocation Commission.	G-138.		
414 Indian Affairs, Bureau of—Interior.....	G-74.	316 Navy, Department of the.....	G-9.		
628 Information Agency, United States.....	G-186.	642 Nuclear Regulatory Commission.....	G-67.		
M Inter-American Foundation Interior, Department of (see component agency).	G-183.	643 Occupational Safety and Health Review Commission.	G-222.		
418 Interior, Department of the (components not otherwise listed).	G-65.	Office of (see other part of title).....			
554 Internal Revenue Service—Treasury.....	G-48.	Organization of (see other part of title).....			
686 International Boundary and Water Commission.	G-184.	644 Overseas Private Investment Corporation.....	G-223.		
627 International Broadcasting, Board for.....	G-185.	688 Pan American Health Organization.....	G-61.		
629 International Development, Agency for United States.	G-107.	645 Panama Canal Commission.....	G-224.		
M International Joint Commission—U.S. & Canada.	G-122.	502 Passport Administration—State.....	G-225.		
206 International Trade Administration—Commerce.	G-54.	502 Passport Office—State.....	G-226.		
653 International Trade Commission, United States.	G-253.	212 Patent Office—Commerce.....	G-84.		
630 Interstate Commerce Commission.....	G-64.	611 Peace Corps.....	G-264.		
575 Japan, U.S. Friendship Commission.....	G-187.	646 Pennsylvania Avenue Development Corporation.	G-227.		
631 John F. Kennedy Center for the Performing Arts.	G-108.	447 Pension Benefit Guaranty Corporation.....	G-92.		
303 Joint Chiefs of Staff.....	G-188.	245 Personnel Management, Office of.....	G-24.		
436 Justice Assistance, Research and Statistics, Office of Justice, Department of (see component agency).	G-91.	M Postal Rate Commission.....	G-228.		
441 Labor Department of.....	G-59.	Postal Service, U.S.....	G-10.		
415 Land Management, Bureau of—Interior.....	G-76.	M President's Commission on Organized Crime.	G-276.		
378 Library of Congress.....	G-103.	434 Prisons, Bureau of—Justice.....	G-231.		
101 Mail and Reproduction Management Division, Office of the Secretary—Agriculture.	G-272.	M Prospective Payment Assessment Commission.	G-288.		
479 Management and Budget, Office of.....	G-80.	560 Public Debt Bureau of the—Treasury.....	G-232.		
431 Management and Finance Information System, Office of—Justice.	G-71.	396 Public Health Service—HHS.....	G-29.		
317 Marine Corps, United States.....	G-63.	648 Railroad Retirement Board.....	G-120.		
578 Marine Mammal Commission.....	G-189.	420 Reclamation, Bureau of—Interior.....	G-110.		
520 Maritime Administration—Transportation.....	G-117.	510 Research & Special Programs Administration—Transportation.	G-126.		
		101 Rural Development Policy, Office of—Agriculture.	G-289.		
		519 St. Lawrence Seaway Development Corporation—Transportation.	G-234.		
		562 Savings Bond Division, United States—Treasury.	G-55.		
		481 Science and Technology Policy, Office of.	G-235.		
		563 Secret Service, United States—Treasury.....	G-258.		
		649 Securities and Exchange Commission.....	G-123.		
		650 Selective Service System.....	G-119.		
		475 Small Business Administration.....	G-82.		
		651 Smithsonian Institution.....	G-94.		
		397 Social Security Administration—HHS.....	G-11.		
		M Soil Conservation Service—Agriculture.....	G-267.		
		655 Soldier's & Airmen's Home, United States.	G-254.		

¹ Standard penalty indicia bearing sampling No. 578 may be accepted until October 1, 1984.

.26 Services, Classes, Rates, and Preparation Requirements

.261 *Policy.* It is Postal Service policy to provide penalty mail customers the same services accorded to other mailers unless otherwise provided by law or regulation. Agencies are not entitled to send penalty mail at nonprofit or subsidized rates (i.e., special bulk third-class rates, fourth-class library rates and the following second-class rates: in-county, special nonprofit, classroom, science of agriculture, limited circulation, and limited circulation science of agriculture).

.262 *Forwarding, Return, and Address Correction Services.* Penalty mail on which forwarding, return, or address correction service has been requested must be given the service requested without being rated for collection of postage due.

.263 Mail Preparation

a. General.

(1) *Penalty Indicia Formats.* Mailings must be prepared using an appropriate penalty indicia format in accordance with 137.27.

(2) *Weight and Size Limits.* Penalty mail must conform to the weight, size and shape requirements for the class of mail being used (see individual classes of mail).

(3) *ZIP Codes.* The address on all penalty mail must include either the ZIP + 4 code or the 5-digit ZIP Code. The return address on all penalty mail pieces procured after April 1, 1985 must also

include either the ZIP + 4 code or the 5-digit ZIP Code.

(4) *Eligibility for Rates.* Penalty mail must meet the general requirements for the class or rate at which it is sent and, unless specifically provided elsewhere in 137.2, must meet the preparation requirements specified for that class and rate.

(5) *Endorsements.* The requirements for class of mail endorsements for standard penalty indicia pieces are in 137.272d. Except for single piece rate First-Class Mail not exceeding 12 ounces and single piece rate fourth-class parcel post, all penalty metered mail must bear the proper endorsement of the class or rate at which it is mailed (see the requirements for the individual classes of mail). Each piece of penalty permit imprint mail must bear the appropriate class or rate endorsement within the permit imprint indicia, or below or to the left of the permit imprint indicia. For certain rate categories it is also permissible for the rate endorsement to appear directly above the top line of the address on pieces prepared with penalty permit imprints (see 137.274b and the requirements for the individual classes of mail). Except for First-Class Mail weighing 12 ounces or less, all mail bearing penalty mail stamps must be marked to indicate the class at which it is mailed. For special service endorsements, see 137.264 and Chapter 9.

(6) *Separation by Class and Service.* Penalty mail must be separated according to the class of mail and special service requested before it is presented to the post office. See 137.42.

b. Bulk Rate Mailings.

(1) *Penalty Indicia Formats.* Bulk rate mailings must be prepared using either penalty postage meters or penalty permit imprints (see 137.273 and 137.274), or for second-class mail, the penalty second-class imprint (137.277a). Exception: Nonpresorted ZIP + 4 mail may be prepared with standard penalty indicia as provided in 137.263c.

(2) *Mailing Fees.* The mailing fees for First-Class Presort rates, bulk third-class rates and presorted special fourth-class rates are billed and charged centrally from Postal Service Headquarters based on records of mailing activity. Agencies listed in 137.252 do not require special authorization to mail at these rates.

(3) *Rate Eligibility and Presort.* ZIP + 4, ZIP + 4 Presort, First-Class carrier route, Presort First-Class, second-class, bulk third-class (all presort levels), presorted special fourth-class mail and bulk bound printed matter must meet the same eligibility requirements for these rates as other mailers (see 323, 324, 420, 622, 723, and 724) and must be

prepared under 360, 460, 660, or 760 respectively. The postmaster will furnish appropriate sack or tray labels with which to identify the various types of mail. Penalty mail must be presented for acceptance and verification at the entry post office in accordance with the same instructions and requirements for other mailers. See 137.42.

(4) *Mailing Statements.* The appropriate Postal Service mailing statement must be submitted with each bulk rate mailing. Second-class mailing statements, Forms 3541, *Statement of Mailings—Second-Class Publications (Except Requester Publications)* and 3541-A, *Statement of Mailing—Second-Class/Requester Publications*, must be submitted in duplicate, (triplicate if the mailer desires a copy). If presented without the appropriate Postal Service mailing statement, a mailing will be refused.

Note.—GPO Form 712 is not a Postal Service mailing statement. Exception: Until February 1, 1985, GPO contractors may submit GPO Form 712 instead of a mailing statement for permit imprint mailings at single piece rates.

(5) *Rate Documentation.* Agencies or their contractors must provide the appropriate documentation for pieces mailed at carrier route and 5-digit level presort rates, and ZIP + 4 presort rates in accordance with the same requirements for other mailers (see the requirements for the individual classes of mail).

(6) *Acceptance.* Acceptance unit employees must employ the same verification and notification procedures for penalty mail as those required for other mail. Therefore, penalty bulk rate mailings submitted at post offices under the National Bulk Rate Mail Verification Program, that have makeup errors of 10 percent or more will be rejected and returned for correction unless the agency elects to reimburse the Postal Service at the single piece rate for the percentage of the mailing estimated to be in error. *Exception:* First-Class bulk rate mail will not be detained. If the agency cannot be contacted concerning disposition of a mailing that is not acceptable at the bulk rate, the single piece rate will be computed for the mailing or appropriate portion of the mailing, and the mailing will be entered into the mailstream. The agency must be notified in writing of the equivalent amount of postage due.

c. Special Procedures for Nonpresorted ZIP + 4 Mail. In addition to use of penalty postage meters and penalty permit imprints in accordance with the same procedures used by other mailers, the standard penalty indicia

may be used by agencies to mail nonpresorted ZIP + 4 mailings provided all of the following conditions are met:

(1) All pieces must meet the requirements in 324, 368.1, and 368.2.
(2) The agency must obtain a penalty permit imprint authorization at each post office where the mailings will be submitted.

(3) The mailing must be presented to the bulk acceptance unit of the post office accompanied by a copy of a Form 3602 that shows the permit imprint number of the agency, the total number of pieces, and the total weight of the mailing in pounds. If the mailing consists of nonidentical weight pieces, the words "nonidentical weight" must be written in the "weight of a single" piece block, and postage will be computed based on the average weight of the pieces.

(4) The endorsement "ZIP + 4" must appear approximately 1/4 of an inch below the agency sampling number in the standard penalty indicium.

.264 Special Services. Penalty mail may be endorsed to indicate a special service and is given the indicated service without prepayment of fees and postage with the following exceptions:

a. Registered mail for which insurance is also requested cannot be sent as penalty mail and must have postage and fees prepaid.

b. Mail insured for over \$50 cannot be sent as penalty mail and must have postage and fees prepaid.

c. Return receipts requested after mailing cannot be accounted for under penalty mail procedures and must be prepaid.

d. Money orders cannot be accounted for under penalty mail procedures and must be prepaid.

e. COD mail cannot be accounted for under penalty mail procedures and must be prepaid.

f. Post office box service fees cannot be accounted for under penalty mail procedures and must be prepaid.

g. Certificates of mailing for less than three pieces must have prepaid postage affixed or have penalty metered postage or penalty mail stamps affixed (see DMM 931.6).

h. Use of special services is not authorized for penalty mail of agricultural experiment stations. See 137.242(3).

Note.—Reimbursement for special mail services is obtained under instructions issued by the Manager, Government Revenue and Examination Branch. For a description of the available services, see Chapter 9.

.265 Shortpaid and Unpaid Mail. The procedures in 146 for handling shortpaid and unpaid mail apply to penalty mail

except that agencies are authorized to pay for shortpaid mail with penalty meter strips or penalty mail stamps in addition to payment methods available to other mailers. The penalty meter strip must be in the exact amount of the postage due and bear the current date. When penalty mail stamps are used for payment of shortpaid mail, sufficient stamps to cover the amount of postage due must be submitted. Credit will not be given if it is necessary to submit stamps in excess of the amount due.

266 International Mail Services. Penalty mail of agencies may be sent to other countries. Such mail is subject to the weight and size limits and other conditions prescribed in IMM 221.34 and 324.4. Reimbursement for the services received is covered by 137.22. However, agencies may elect to prepay the postages and fees in accordance with 137.23.

27 Penalty Mail Indicia Formats

271 General

a. Formats and Methods. There are six separate formats and methods of mailing penalty mail: (1) standard penalty indicium mail, (2) penalty metered mail, (3) penalty permit imprint mail, (4) penalty mail stamps, (5) penalty second-class imprint mail, and (6) penalty reply mail. In addition, there are special procedures for penalty Express Mail and use of E-COM and Intelpost services.

b. Items Carried Outside the U.S. Mail. All penalty mail matter must conform to the requirements described in 137.272 through 137.277. Envelopes and labels prepared according to these requirements may be used only to transmit penalty mail, and must not be used on items carried outside the U.S. except:

(1) When official items are carried by employees of the originating agency;

(2) When official items are carried by contractors for subsequent entry into the U.S. Mail under the provisions of 137.28; or

(3) When agencies reach written agreement with the Manager, Government Revenue and Examination Branch, to account for and pay postage on official items carried outside the U.S. Mail to avoid violation of the Private Express Statutes (18 U.S.C. 1693-1699 and 39 U.S.C. 601-606).

c. Postage Prepaid. Agency mail which is not sent by use of penalty envelopes or labels as provided in 137.272 through 137.277 must have postage prepaid.

272 Standard Penalty Indicia

a. Standard Penalty Indicia Requirements. Except as provided in 137.272 b and c, all penalty mail using

the standard penalty indicia must comply with the following specifications:

(1) **Format.** The indicium must be printed and must consist of the postal emblem (See Exhibits 137.272a(1) and (2)), located $\frac{3}{8}$ of an inch from the top edge of the mail piece. In addition, immediately below the postal emblem, the words **POSTAGE AND FEES PAID**, the name of the agency, and the agency sampling number listed in 137.252, column A, must appear. The complete return address (agency name and mailing address) and the words **OFFICIAL BUSINESS, PENALTY FOR PRIVATE USE, \$300** must appear in the upper left corner of the mail piece (see Exhibit 137.272a(1)). The penalty statement must not be handwritten or typewritten.

(2) **FIM.** The Facing Identification Mark (FIM), a vertical bar code pattern which functions as an orientation mark for automatic facing and canceling equipment, is required on single piece rate letter-size mail as follows:

(a) An area of 3 inches by $1\frac{1}{4}$ inches in the upper right corner of the address side of each mail piece must be reserved for the indicium and the FIM. The entire indicium, including the postal emblem, must be within $1\frac{1}{4}$ inches from the right edge and within $1\frac{1}{4}$ inches from the top edge of the mail piece. A FIM must be printed on all letter-sized mail pieces, including cards, envelopes, and self-mailers (see 128), but is not required on labels or envelopes larger than letter-size.

(b) The FIM must be positioned so that the distance from the right edge of the mail piece to the nearest FIM bar is 2 inches plus or minus $\frac{1}{8}$ of an inch, and the top of the FIM pattern is within $\frac{1}{8}$ of an inch of the top edge of the mail piece. It is permissible for the pattern to touch the top edge of the mail piece. The bars must be $\frac{3}{8}$ of an inch long plus or minus $\frac{1}{8}$ of an inch. A clear area free of any other printing must be maintained around the FIM, beginning $1\frac{1}{4}$ inches from the right edge of the mail piece and extending $1\frac{1}{4}$ inches to the left. The clear area must extend $\frac{3}{8}$ of an inch down from the top edge. (See Exhibit 137.272a(2)). Additional specifications for printing the FIM are contained in Publication 12, **Bar Code and FIM Printing Guidelines**.

(c) Because the spacing between the vertical bars must be precise, the Postal Service provides negatives which must be used for printing the FIM pattern. In all cases, Postal Service specifications and negatives must be used. The specifications and negatives for FIM are available from local post offices or from the Manager, Government Revenue and

Examination Branch, Finance Department, USPS Headquarters, Washington, DC 20260-5215. A FIM must appear on all letter-size mailing pieces procured beginning April 1, 1982. Stocks of cards, envelopes, and self-mailers procured before April 1, 1982, which do not bear a FIM may be used until exhausted.

b. Requirements for Special Users of Standard Penalty Indicia.

(1) **Mail of a Designated State Extension Director.** Penalty mail of a designated State extension director as described in 137.242a(1) must bear in the upper left corner the name of the agricultural college and the name of the post office at which the mail is to be accepted without prepayment of postage. This must be followed by the name and title of the designated officer and the words **COOPERATIVE AGRICULTURE EXTENSION WORK—ACTS OF MAY 8 AND JUNE 30, 1914**. The words **OFFICIAL BUSINESS, PENALTY FOR PRIVATE USE \$300**, must appear below this statement. The penalty statement must not be handwritten or typewritten. The words **POSTAGE AND FEES PAID U.S. DEPARTMENT OF AGRICULTURE**, and the agency sampling number (Column A, 137.252) must appear in the upper right corner of the address side immediately below the postal emblem. The postal emblem must be prepared in accordance with 137.272a(1). The FIM pattern must be used as described in 137.272a(2).

(2) **Mail of Agricultural Experiment Stations.** Penalty mailings by agricultural experiment stations as described in 137.242a(3) must bear in the upper left corner of the address side: the name of the station, the name of the post office at which the matter is to be accepted, and the name and title of the officer in charge of the station, followed by the word **PUBLICATION**. The title of the bulletin or report may be used. The words **OFFICIAL BUSINESS, PENALTY FOR PRIVATE USE \$300**, must appear below this statement. The penalty statement must not be handwritten or typewritten. The words **POSTAGE PAID, U.S. DEPARTMENT OF AGRICULTURE**, and the agency sampling number must appear in the upper right corner of the address side immediately below the postal emblem. The postal emblem must be prepared in accordance with 137.272a(1). The FIM pattern must be used as described in 137.272a(2).

(3) **Mail of Cooperative Extension Agents.** Penalty mailings of cooperative extension agents described in 137.242a(2) must be prepared in

accordance with the provisions of 137.272a.

(4) *Mail of State Employment Security Agencies.* Penalty mailings of State employment security agencies cooperating with the Department of Labor must bear in the upper left corner the name and complete return address (mailing address) of the state agency and the words **OFFICIAL BUSINESS, PENALTY FOR PRIVATE USE \$300.** The penalty statement must not be handwritten or typewritten. The words **POSTAGE AND FEES PAID, EMPLOYMENT SECURITY MAIL, LAB 449** must appear in the upper right corner of the address side immediately below the postal emblem. The postal emblem must be prepared in accordance with 137.272a(1). The FIM pattern must be used as described in 137.272a(2).

c. *Exceptions to Format Requirements.* The following exceptions apply to standard penalty indicia format requirements: (1) The FIM pattern and use of the postal emblem as part of the indicium is optional on larger than letter-size mail; (2) the postal emblem and FIM pattern may be omitted on self-mailers completely printed by computer with no provision for printing designs other than letters and numbers, provided the items are faced, sorted and tied in bundles by ZIP Code; (3) the FIM pattern is not required on second-class mail, and must not appear on penalty permit imprint, or penalty metered mail, or mail bearing penalty mail stamps; (4) stock of cards, envelopes, and self-mailers procured prior to April 1, 1982, that do not bear a FIM may be used until exhausted.

d. *Endorsements.* Standard penalty indicium mail may only be endorsed for mailing at single piece rates. All standard penalty indicium mail which is not endorsed for another class will receive First-Class service and will be charged at First-Class rates, with the following exceptions: (1) Unendorsed mail weighing over 12 ounces but less than 16 ounces will be treated and charged as single piece third-class, (2) Unendorsed mail weighing 16 ounces or over will be treated and charged as fourth-class parcel post, (3) Pieces weighing over 12 ounces which are to be given First-Class service must be endorsed "First Class" or "Priority". To assure consistency of treatment and handling appropriate to the level of service desired, all agencies should endorse their flats and small parcels as "First-Class", "Third-Class", "Parcel Post", or "Priority" as appropriate. Pieces mailed at the nonpresorted ZIP + 4 rates must bear the endorsement "ZIP + 4" (see 137.263c). Any endorsement

for a special service or class of mail must appear approximately 1/4 of an inch

below the agency number in the indicium.

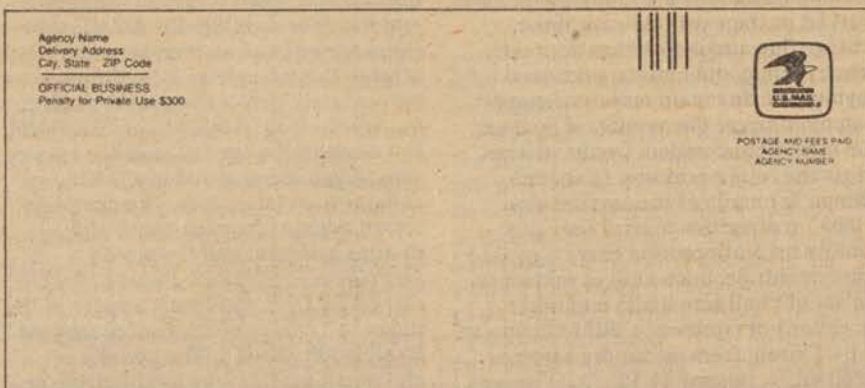


EXHIBIT 137.272a(1)—Standard Penalty Indicia Format

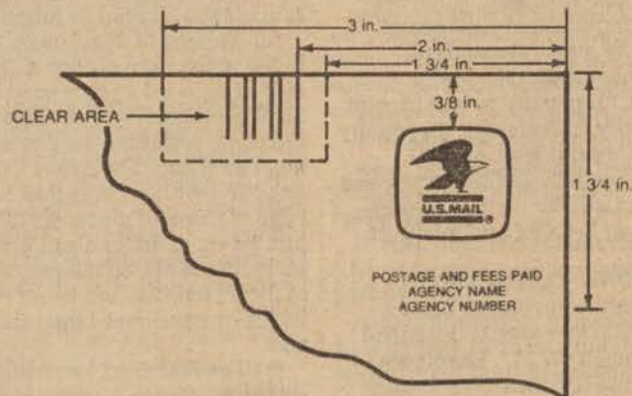


EXHIBIT 137.272a(2)—Placement of Standard Penalty Indicia Format Elements

273 Penalty Meters.

a. *Description.* Postage meters having a special penalty design may be used by agencies. The procedures described in 144 govern the use of these meters. *Exceptions:* (1) The provisions of 144.344, 144.355, 144.38, and 144.39 are not available to penalty meter users; and (2) as otherwise modified below.

b. *License.* Agencies must obtain a license to use a penalty postage meter by submitting Form 3601-A, *Application For a Postage Meter License*, to the Manager, Government Revenue and Examination Branch, Finance Department, USPS Headquarters, Washington, DC 20260-5215. A separate application must be submitted for each meter to be set. A copy of each approved license will be sent to the post office at the requested location and will

authorize setting one penalty postage meter without prepayment.

c. *Meter Indicia Format.* Special penalty mail meter stamp designs prescribed for metered penalty mail in 144.41b must be placed in the upper right corner of the mail pieces. Envelopes used with a penalty postage meter must not contain FIM patterns, or standard penalty indicia, and must not contain printing other than the meter indicium in the area where the meter stamp will be applied. However, postmasters at post offices where penalty meters are licensed may grant an exception to this requirement by allowing agencies a reasonable time to use existing supplies of standard penalty indicium envelopes by printing penalty meter impressions over the indicia. This should be permitted only when the surplus standard penalty indicium envelopes

cannot reasonably be used at another non-metered location. If this exception is granted, post offices will check to ensure that no standard penalty indicium envelopes are mailed without metered postage printed over the indicia. The complete return address (agency name and mailing address) must appear in the upper left corner of each mail piece. The words **OFFICIAL BUSINESS** must appear immediately below the return address. (The return address for mail of State agricultural extension directors, agricultural experiment stations, and State Employment Security Offices must consist of the information required for the upper left corner of standard penalty mail of these users as required in 137.272b (1), (2), and (4)).

d. *Meter Settings and Payment.* Only one meter may be set for each license issued. Payment is not required at the time a penalty meter is set. Agencies are charged by Postal Service Headquarters for the amount of postage set during each quarter, based on reports prepared by the meter-setting office. *Note:* Since penalty meters must be inspected by the setting post office at least once every six months (144.224) and payment is based on the amount of postage set rather than the amount used, agencies should have their meters set at least once every six months. In this way, an agency can meet the inspection requirement and also achieve budgetary control over metered penalty postage.

3e. *Spoiled or Unused Penalty Meter Postage.* To obtain credit, an agency must present spoiled or unused penalty meter postage to the setting post office. When such postage is presented, the procedures in 147.2 must be followed by completing Form 3533, *Application and Voucher for Refund of Postage and Fees*. No refunds may be made in cash or applied to a meter. Agencies will be credited with the spoiled postage amount by reports prepared at the meter setting office and forwarded to Postal Service Headquarters.

f. *Changing Penalty Meter Location.* When a penalty postage meter is transferred from one post office to another, the agency must reapply in accordance with 137.273a for a license authorizing the new post office to set the meter without prepayment. Penalty meters may be transferred between stations or branches of the same post office with the permission of the postmaster. A new license application or notification to Headquarters is not required for such transfers within the same office.

g. *On-site Penalty Meter Settings.* Agencies which desire on-site penalty meter settings must pay the setting fee

prescribed in 144.35 when the meter is set. *Note:* Payment for the actual amount of postage set under the on-site program is handled through the procedures in 137.273d.

h. *Replacement Penalty Meters.* If a meter is replaced, the remaining postage is transferred from the original meter to the replacement meter. It will not be transferred to a penalty meter operating under a different license number. For penalty meters checked out-of-service without replacement, see 137.273i.

i. *Checking Penalty Meters Out-of-Service.* When a penalty meter is checked out-of-service without replacement and postage remains on the meter, no cash refund will be given by the post office. Credits due will be reported on Form 3612, *Quarterly Report of Official Mail Meter Settings*, and reflected on the agency billing statement.

j. *Mailings.* Penalty meter imprints should indicate the correct postage, including any applicable special service or surcharge for the class and weight of the mail piece. Penalty metered mail with insufficient postage imprinted must be handled in accordance with 146.13. If envelopes and labels designed for penalty meter use are found in the mail without a penalty meter stamp, they must be handled in accordance with 146.12. Agency units or locations that use penalty postage meters are prohibited use of standard penalty indicia.

274. Penalty Permit Imprint Mail

a. Application

(1) Agencies may apply to use penalty permit imprint procedures by completing two (2) copies of Form 3601, *Application to Mail Without Affixing Postage Stamps*, and submitting both copies to the post office where the mailings will be deposited. It is suggested that the agency show the permit imprint number in the "Permit Number" section of the application portion (top half) of Form 3601 that normally is for completion by the Postmaster. The agency should also be sure to show the complete name of the agency, and subunit of the agency if applicable, in the "Name of Applicant" section of the form to assist the post office in verifying that the permit number is correct. This is especially important for agencies assigned use of more than one permit imprint number. When the agency has obtained authorization in accordance with 137.251a or 137.252 to use a penalty permit imprint number not shown in 137.252, Column B, a copy of the letter from the Manager, Government Revenue and Examination Branch, authorizing the use of that permit number must be

submitted to the post office where mailings will be made along with the Forms 3601. The appropriate permit imprint fee will be billed and charged centrally, based on application forms forwarded to USPS Headquarters by the post office.

(2) When a contractor mails penalty permit imprint matter, the agency must follow the procedures described in 137.274a(1) or provide both copies of the completed Form 3601 to the contractor for submission to the entry post office.

b. *Indicium Requirements.* The penalty permit imprint indicium must appear in a rectangular box in the upper right corner of the mail piece. The penalty permit imprint indicium must include the words **POSTAGE AND FEES PAID**, the agency name, and the agency's assigned penalty permit imprint number 137.252, Column B, or other penalty permit imprint number authorized by the Manager, Government Revenue and Examination Branch. This number must always be preceded by the letter "G". In addition, the class of mail or appropriate rate endorsement must appear either as the first item within the permit imprint (the preferred position) or immediately below or to the left of the permit imprint. (Rate endorsements for certain rate categories may also appear directly above the top line of the address; see the requirements for the individual classes of mail.) The city of mailing, amount of postage, and weight of the piece may be included within the permit imprint but are not required. First-Class penalty permit imprints may also show the date. Examples of the penalty permit imprint indicium are provided in 145.5 e, f, and g. The complete return address (agency name and mailing address) must appear in the upper left corner. (The return address for mail of State agriculture extension directors, agricultural experiment stations, and State Employment Security Offices must consist of the information required for the upper left corner of standard penalty mail of these users as set forth in 137.272b (1), (2), and (4)). The words **OFFICIAL BUSINESS, PENALTY FOR PRIVATE USE \$300** must appear immediately below the return address. The penalty statement must not be handwritten or typewritten. The FIM pattern described in 137.272a(2) must not be used on penalty permit imprint mail.

c. Mailings.

(1) *General.* Mail sent under penalty permit imprint procedures, including international mail, must meet the provisions of 145, except for 145.4 and 145.66. The appropriate Postal Service mailing statement, Form 3602, *Statement*

of Mailing With Permit Imprints, or 3605, *Statement of Mailing—Bulk Zone Rates*, as prescribed in 145.65 must be submitted in duplicate with each penalty permit imprint mailing. If a receipt is desired, the mailer must submit a duplicate copy which will be returned to the mailer by the acceptance employee after verification. When mailing statements are submitted by Government Printing Office (GPO) contractors, the serial number of the GPO Form 712 submitted with the mailing must be shown in the upper right hand corner of the accompanying Forms 3602 or 3605. *Exception:* A copy of GPO Form 712 may be submitted instead of a 3602 or 3605 for single piece rate mailings until February 1, 1985.

(2) *Exception for GPO Contractor Mailings.* Agency mailings submitted by GPO contractors may contain nonidentical weight pieces and contain more than one class of mail provided all of the following conditions are met:

(a) The pieces are for mailing at single piece rates.

(b) All other requirements for use of permit imprints are met including the minimum quantity requirements in 145.61 and the requirement in 137.274a(1) that the pieces contain the proper class of mail endorsements either within or immediately adjacent to the permit imprint.

Example: For a mailing containing both First-Class and fourth-class pieces, the pieces mailed at First Class rates must show the marking "First-Class" or "Priority" within or adjacent to the permit imprint, and the pieces mailed at the fourth-class rate must show the marking "Fourth-Class" within or adjacent to the permit imprint.

(c) Effective February 1, 1985, a properly completed PS Form 3602-G, *Statement of Mailing with Penalty Permit Imprints*, must be submitted to the entry post office for each mailing. A duplicate copy must be submitted if the contractor wishes to retain a copy. *Exception:* Until February 1, 1985, GPO Form 712 may be submitted instead of Form 3602-G.

(d) The mailings are physically separated according to the class and weight categories on Form 3602-G upon presentation to the post office. *Note:* This does not apply to mailings

submitted with GPO Form 712 in accordance with the exception in 137.274c(2)(c).

(e) A GPO Form 712 is submitted with the mailing as evidence that the mailing is made by a GPO contractor.

Postage will be computed based on the average weight of a piece for each category of mail reported on Form 3602-G. Mailings made using Form 3602-G are not eligible for the fourth-class intra BMC parcel post rates. *Note:* GPO contractors may choose to use Form 3602-G for single piece rate mailings that would be eligible for reporting on Form 3602 or Form 3605.

.275 Penalty Mail Stamps

a. *Use and Authorization.* Penalty mail stamps may be used by government agencies to facilitate postage accountability. Penalty mail may be sent under penalty mail stamp procedures when an agency has obtained authorization in accordance with 137.275c.

b. *Availability.* Penalty mail adhesive stamps are available in several denominations. Penalty mail stamped stationery (plain stamped envelopes, printed stamped envelopes, and postal cards) is also available.

c. *Application.* Federal government agencies may apply to use penalty mail stamps by submitting a letter of application to the Manager, Government Revenue and Examination Branch, USPS

Headquarters, Washington, DC 20260-5215. The letter of application must state the degree to which the agency has adopted other accountable systems and the manner and extent to which it plans to use penalty mail stamps. The Manager, Government Revenue and Examination Branch, will approve or deny applications for use of penalty mail stamps.

d. Format

(1) *Adhesive stamps.* Penalty mail adhesive stamps must be firmly affixed in the upper right corner of the address side of the mail piece. The complete return address of the government agency (mailing address) must appear in the upper left corner of the address side of the mail piece. The words *Official Business* must appear immediately below the return address. See Exhibit 137.275d(1).

(2) *Stamped Stationery.* The complete return address of the government agency (mailing address) must appear in the upper left corner of the address side of the mail piece. The words *Official Business*, and *Penalty for Private Use \$300* must appear immediately below the return address. See Exhibit 137.275d(2).

Note.—The return address of mail of State agricultural extension directors, agriculture experiment stations and State Employment Security agencies must consist of the information required for the upper left corner of standard penalty indicia mail of these users as described in 137.272b (1), (2), and (4).

Agency Name
Delivery Address
City, State ZIP Code
OFFICIAL BUSINESS



EXHIBIT 137.275d(1)—Penalty Mail Stamp Format

Agency Name
Delivery Address
City, State ZIP Code



OFFICIAL BUSINESS
Penalty for Private Use \$300

EXHIBIT 137.275d(2)—Penalty Mail Stamped Stationery Format

e. Use on Standard Penalty Indicia Mail. The penalty mail stamp normally must not be used on mail bearing the standard penalty indicia (FIM, postal emblem, agency sampling number, and the words *Postage and Fees Paid*). However, postmasters may grant an exception to this requirement by allowing agencies a reasonable amount of time to use existing supplies of standard penalty indicia envelopes with the penalty mail adhesive stamps placed over the postal emblem and the agency sampling code obliterated. When this exception is granted, post offices will check to ensure that no standard penalty indicia envelopes are mailed without penalty mail adhesive stamps placed over the postal emblem.

f. Ordering Procedures. Departments and agencies authorized by 137.245a to use penalty mail stamps must order penalty mail stock as follows:

(1) Orders for penalty mail stamp stock other than printed stamped envelopes must be submitted to the stamp distribution office (SDO) serving the ZIP Code area to which the stamp stock is to be shipped on a properly completed Form 17-GX, *Official Mail Stamp Requisition* or properly completed Form 17-G, *Penalty Mail Stamp Requisition*. Order for printed stamped envelopes must be submitted to the United States Stamped Envelope Agency, Williamsburg, PA 16693-0500, on Form 17-JX, *Official Mail Printed Stamped Envelope Order* or Form 17-J, *Penalty Mail Printed Stamped Envelope Order*.

(2) Each component unit of an agency

is requested to submit no more than one order for penalty mail stamp stock each quarter.

(3) Each order must total at least \$40. Orders received for stamp stock totaling less than this minimum dollar amount will be increased to meet or exceed the minimum by adding full stamp coils (100 stamps) at the current First-Class single piece rate for pieces weighing one ounce or less.

(4) Each denomination of stamps can be ordered only in multiples of 100 (i.e., full sheets or coils), except that \$5 stamps can be ordered only in multiples of 20.

(5) Penalty postal cards may be ordered only in units of 250 cards (full packs).

(6) Penalty stamped envelopes (plain and printed stamped envelopes), may be ordered only in units of 500 envelopes (full boxes).

g. Reporting Procedures. Government agencies will receive a quarterly statement reflecting all penalty mail stamp stock shipped during that quarter. The statement will list all orders filled in that quarter and include a summary dollar total and number of requisitions.

h. Mailings. Sufficient penalty mail stamps to cover the correct single piece rate postage, including any applicable surcharges, or special services must be affixed to each mailing piece. Except for First-Class Mail weighing 12 ounces or less, all mail bearing penalty mail stamps must be marked to indicate the class at which it is mailed. Pieces with insufficient penalty mail stamps affixed must be handled as shortpaid mail in

accordance with 146.13 or 146.4 as appropriate. If envelopes and labels designed for use with penalty mail stamps are found in the mail without a penalty mail stamp, they must be handled as unpaid mail in accordance with 146.12 or 146.4 as appropriate.

i. Exchanges. Mistakes made by an SDO in shipping the wrong items, or shipping damaged, defective, or otherwise unserviceable stamps may be corrected by the SDO by exchanging the items at full value.

.276 Penalty Reply Mail

a. Restriction to Approved Formats. Agencies may distribute penalty envelopes, cards, cartons or labels to any person, concern, or organization from whom or through whom official matter is desired by: (1) Using the penalty business reply format provided by 137.276g; (2) using the penalty metered reply format provided by 137.276d; (3) affixing penalty mail adhesive stamps or using penalty mail stamped stationery as provided in 137.276e; or (4) by following the penalty fourth-class and special services reply procedures in 137.276f. Standard penalty indicium envelopes, cards, cartons, and labels described in 137.272 may not be distributed for reply purposes except as provided in 137.276f, or when used to return matter to the Bureau of the Census as provided in 137.276b below.

b. Bureau of the Census. Standard penalty indicium envelopes and labels prepared in accordance with 137.272a and containing the preprinted address of the Department of Commerce or one of its bureaus or agencies may be used to transmit mail relating to a collection of statistics, survey, or census authorized by Title 13, United States Code.

c. Prepayment of Reply Mail. Adhesive postage stamps may be affixed to cards and envelopes distributed for reply purposes under the provisions of 137.23.

d. Penalty Metered Reply Mail. An agency which holds a penalty postage meter license may distribute penalty metered reply cards and envelopes for return to the meter license holder, as provided in 144.112. Instructions in 144.112 a, b, and c governing the preparation of the address side of metered reply cards and envelopes also apply to penalty metered reply mail.

e. *Penalty Mail Stamp Reply Mail.* A department or agency authorized to use the penalty mail privilege may furnish to a person, concern, or organization from or through whom official matter is desired, for reply purposes, printed penalty mail stamped stationery or envelopes or cards bearing penalty mail stamps that contain the preprinted address of a Federal Government office or officer.

f. *Penalty Fourth-Class and Special Services Reply Mail.* Agencies may distribute penalty envelopes, cards, cartons or labels for return at fourth-class rates or for return with a special service, by using the standard penalty indicium format in 137.272a. Prior written approval is required from the Manager, Government Revenue and Examination Branch. Requests to use this procedure must be submitted in writing to the Manager, Government Revenue and Examination Branch, Finance Department, USPS Headquarters, Washington, DC 20260-5215. Such requests must include: (1) The service desired, (2) The post offices to which the mail will be returned, and (3) The proposed procedures to determine actual volume and postage due. Return envelopes, cards, cartons, or labels distributed under this provision must have the appropriate fourth-class endorsement or the desired special service preprinted on them.

g. *Penalty Business Reply.*

(1) *Application.*

(a) An agency must apply to furnish penalty return envelopes to correspondents by filing an application in duplicate on Form 3614, *Application to Distribute Business Reply Cards, Envelopes, Cartons, and Labels*. The application must be filed at the post office where the mail will be returned, or at the post office where the agency headquarters is located if mail bearing a single business reply mail permit number will be returned to offices in more than one city.

(b) Agencies must notify the Manager, Government Revenue and Examination Branch, if penalty business reply mail having a single permit number will be returned through post offices other than the permit issuing post office. This notification must include, for each permit number, the addresses and cities where mail will be returned.

(2) *Format Requirements.* Penalty business reply mail envelopes must bear the address of one of the authorized agencies listed in 137.252, or one of their component units. They must be printed in the format required by 917.5 with the following exceptions:

(a) The address may be printed, typewritten, or handstamped directly on

the mail piece, or a printed gummed label may be affixed in the address area. It must not be handwritten. All other preparation requirements for the address side in 917.51 must be met.

(b) The legend required by 917.52a(4) must read **POSTAGE WILL BE PAID BY** (name of authorized agency). *Exception:* The legend must not appear on Postal Service business reply mail.

(c) The space for permit holders' use described in 917.52b(3)(e) must include the statement, **OFFICIAL BUSINESS, PENALTY FOR PRIVATE USE, \$300**. Space above this statement may be used for return address, logos, distribution codes, etc.

(d) The following is an illustration of the penalty business reply mail format:

EXHIBIT 137.276g(2)(d)—Penalty Business Reply Mail Format

(3) *Payment of Postage and Fees.* Agencies will be charged an annual permit fee in accordance with 917.23 and 917.252. In addition, the annual business reply mail accounting fee will be charged each calendar year for each permit issued. However, post offices will not collect money from agencies in connection with the issuance of penalty business reply permits, accounting fees, or for postage and fees due on such mail. Annual permit fees, accounting fees, postage and business reply fees will be paid by agencies in accordance with the reimbursement procedures of 137.22.

227 *Procedures for Certain Classes of Penalty Mail*

a. *Penalty Second-Class Mail.*

(1) *Application.* Agencies may apply for penalty second-class mail privileges for periodical publications which meet the basic qualifying conditions stated in 421 and the requirements of 422.2 or 422.6 by completing Form 3501, *Application for Second-Class Mail Privileges*, or Form 3511, *Application for*

Second-Class (Requester) Privileges, (as appropriate). The application and the appropriate number of copies of the publication for which the privileges are desired should be filed at the post office where the known office of publication is located in accordance with 441.11, and either 441.12, or 441.15.

(2) *Mailing Format.* Penalty mail sent at second-class rates must meet the provisions of Chapter 4, except for 455.2 and 481. A penalty mail second-class imprint must be printed on the front or back cover of each copy, preferably in the upper right corner of the address area, or must be printed in the upper right corner of the address side of its envelope or wrapper. The imprint for copies mailed while an application is pending must read "Application to Mail at Second-Class Rates Pending." The imprint for authorized publications must contain: (1) the words **SECOND-CLASS MAIL** or **SECOND-CLASS NEWSPAPER** (as appropriate); (2) the words **POSTAGE AND FEES PAID**; (3) the agency name; and (4) the

International Standard Serial Number (ISSN) assigned by the Library of Congress, if the publication has one, or the publication number assigned by the Postal Service at the time of authorization. For both authorized publications and publications with applications pending, the front or back cover of each copy, or the address side of its envelope or wrapper must also contain the agency name and a complete return address, preferably in the upper left corner of the address area. The

words, **OFFICIAL BUSINESS**, **PENALTY FOR PRIVATE USE, \$300** must appear immediately below the return address (see Exhibit 137.277a). The penalty statement must not be handwritten or typewritten. *Exception:* Publications authorized before October 1, 1984 may be prepared with standard penalty indicia showing the marking **SECOND-CLASS MAIL** or **SECOND-CLASS MAIL NEWSPAPER** until July 1, 1985.

meters or penalty mail stamps are used, an agency number must *not* appear in the customer number block of Express Mail Labels. *Note:* Agencies may also prepay postage for Express Mail (i.e. not use penalty mail procedures, see 137.23). When Express Mail is prepaid, an agency number must *not* appear in the customer number block of Express Mail Labels.

c. **E-COM and INTELPOST.** Agencies desiring use of E-COM service and Intelpost may contact the Manager, Government Revenue and Examination Branch, USPS Headquarters, Washington, DC 20260-5215, to make arrangements for accounting for such mail.

.28 Contractors.

.281 **Reimbursement.** Agencies authorized to use the penalty mail privilege must reimburse the Postal Service for contractor use of penalty mail services. Agencies must promptly furnish, in the manner and form requested, all information concerning contractor use of penalty mail services which the Manager, Government Revenue and Examination Branch, considers necessary to insure accurate reimbursement to the Postal Service. Except for Standard Penalty Indicia Express Mail, contractors are prohibited the use of standard penalty indicium envelopes or labels described in 137.272.

.282 **Use of Penalty Indicia Formats.** Contractors must prepare penalty mailings in accordance with the following:

(1) First-, third-, and fourth-class penalty mailings must be prepared using either penalty permit imprints as described in 137.274 or penalty meters as described in 137.273. Single piece rate mailings may also be prepared with penalty mail stamps as described in 137.275. *Exception:* Bulk third-class mailings for agencies that were authorized at particular post offices to prepare bulk third-class mailings with standard penalty indicia before October 1, 1984 may be prepared for entry at those post offices with standard penalty indicia (bearing the proper rate endorsement(s)) until July 1, 1985. *Note:* First-, third-, and fourth-class mailings made by contractors that do not meet the requirements in 137.274 and 145 for use of permit imprints must be mailed using official penalty meters or penalty mail stamps. If penalty meters or penalty mail stamps are not available, the contract must require the contractor to prepay the postage on such mailings and be reimbursed for the postage under the contract terms. Pieces prepaid by the contractor in this manner must not bear an official penalty indicium format. See

Agency Name Delivery Address City, State ZIP Code	Application to Mail at Second-Class Rates Pending
OFFICIAL BUSINESS PENALTY FOR PRIVATE USE \$300	

EXHIBIT 137.277a(1)—Penalty Second Class Format for Publications Mailed While an Application is Pending

Agency Name Delivery Address City, State ZIP Code	Second-Class Mail Postage and Fees Paid Agency Name ISSN or USPS Pub. No.
OFFICIAL BUSINESS PENALTY FOR PRIVATE USE \$300	

EXHIBIT 137.277a(2)—Penalty Second-Class Format for Authorized Second-Class Publications

(3) **Payment of Postage and Fees.** Post offices will not collect money from agencies in connection with applications for original entry, additional entry, reentry, or for postage on second-class mailings. However, agencies must submit a Form 3541 or Form 3541-A, in duplicate, for each mailing at the entry post office. Postage and fees will be paid in accordance with the reimbursement procedures in 137.22.

b. **Penalty Express Mail.** Agencies have the same service and contract

options as other mailers when making arrangements for penalty Express Mail service. A description of the available services is contained in Chapter 2. The procedures for preparing penalty Express Mail service are explained in Handbook M-68, *Express Mail Service*, Chapter 7, *Federal Agency Special Permit and Postage Trust Accounts*. Postmasters should be consulted before the start of service. Penalty postage meters or penalty mail stamps may also be used for Express Mail. If penalty

137.274c for exceptions to permit imprint identical weight and identical class of mail requirements for Government Printing Office (GPO) contractors using Form 3602-G.

(2) Second-class mail must be prepared using a penalty second-class imprint described in 137.277a(2). *Exception:* Publications authorized penalty second-class mail privileges before October 1, 1984 may be prepared using standard penalty indicia endorsed either *SECOND-CLASS MAIL* or *SECOND-CLASS MAIL NEWSPAPER* until July 1, 1985.

(3) Reply mail must be prepared in accordance with 137.276.

(4) Express Mail must be prepared with standard penalty indicia, official penalty postage meters or penalty mail stamps as described in 137.277b.

.283 *Mailing Statements.* Contractors submitting mailings that require mailing statements (all permit imprint mailings, second-class mailings, and metered mailings at presort or ZIP + 4 rates) must prepare the mailing statements in duplicate (triplicate for second-class) if they wish to receive a copy back from the Postal Service.

.284 *Contractor Progress Reports.* When agencies require contractors to provide progress reports or to return government materials to the agency by mail, they may require the contractor to prepay postage on such items, or, as an alternative, they may provide contractors with business reply envelopes and labels for these purposes (see 137.276g).

.285 *Return Addresses.* Penalty envelopes and labels used by any contractor must bear the printed return address of one of the authorized agencies listed in 137.252. The name and address of a private person, concern, organization, or contractor must not be shown in the return address.

.286 *Special Services.* When a special service is required for contractor penalty mailings, the type of service desired must be printed on the envelope or label.

137.3 Absentee Balloting Materials

.31 Purpose.

.311 Balloting materials, consisting of post card applications, ballots, voting instructions, and envelopes, may be sent

through the mail without prepayment of postage to enable every person in any of the following categories to apply for registration and to vote by absentee ballot when absent from the place of voting residence, and when otherwise eligible to vote as an absentee:

a. Members of the Armed Forces while in the active service and their spouses and dependents.

b. Members of the Merchant Marine of the United States and their spouses and dependents.

c. Citizens of the United States residing for a definite or indefinite time outside the territorial limits of the United States and the District of Columbia and their spouses and dependents when residing with or accompanying them.

.312 To be mailable without prepayment of postage, the balloting materials must be deposited at a United States post office or an overseas United States military post office, or presented to an American Embassy or American Consulate.

.32 *Mailings Between Officials.* Balloting materials may be mailed between State and local election officials, individually or in bulk, without

prepayment of postage. Packages of materials mailed in bulk must bear an address label complying with 137.341.

.33 *Elections Affected.* Materials may be sent for any general election of electors for President and Vice President, or of Senators and Representatives in Congress, and for other general, primary, and special elections.

.34 Required Markings.

.341 *Envelopes.* Envelopes used to send balloting material and envelopes supplied for return of the ballots must have printed across the face two parallel horizontal red bars, each $\frac{1}{4}$ of an inch wide, extending from one side of the envelope to the other side, with an intervening space of $\frac{1}{4}$ of an inch, the top bar to be $1\frac{1}{4}$ inches from the top of the envelope. The words *Official Election Balloting Material*, or similar language prescribed by State law, must be printed between the bars. In the upper right corner of each envelope, in a rectangular box, the words *U.S. Postage Paid 42 USC 1973dd* must be printed. All printing on the face of the envelope must be red, with an appropriate inscription or blanks for the return address of the sender in the upper left corner (see Exhibit 137.341).

Name and complete address		 U.S. Postage Paid 42 USC 1973dd

PAR AVION		
OFFICIAL ELECTION BALLOTING MATERIAL - VIA AIR MAIL		
TO	SECRETARY OF STATE OF MARYLAND Montgomery County Elections Board Montgomery County Court House 1234 Main Street Anywhere, MD 00000-0000	

EXHIBIT 137.341—Balloting Materials Envelope Format

Name and complete address _____ _____ _____ _____ _____		U.S. Postage Paid 42 USC 1973dd PAR AVION OFFICIAL ELECTION BALLOTING MATERIAL - VIA AIR MAIL TO _____ _____ _____ _____ _____
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EXHIBIT 137.342—Federal Voting Registration Post Card Application Format

.342 *Post Cards.* The Federal voting registration post card application must be approximately 5x8 inches in size. The design shown in Exhibit 137.342 must be printed in red ink on the address side of the card.

.343 *Facing Identification Marks.* Facing identification marks (FIM) must be printed on the address side of envelopes and cards in accordance with specifications in Publication 12. The shade of red ink identified as Pantone 193U will generally meet print reflectance needs (30 percent) when used on white or light colored paper stock. A darker shade of red ink will be needed on darker paper stock.

137.4 *General Instructions.* These instructions apply to all official mail.

.41 *Official Mail Not To Be Detained.* Except as provided in 115 and 137.263b(6) official mail will not be detained even though there are indications of abuse of official mailing privileges. It will be promptly dispatched and delivered to the addressee. Reports of indicated abuses are submitted to the Office of Mail

Classification, Rates and Classification Department, USPS Headquarters, Washington, DC 20260-5360. The Office of Mail Classification will refer instances of abuse to the appropriate agency for investigation and appropriate action.

.42 *Separation of Official Mail By Mailer.* Official mail must be separated according to the class of mail and special service requested before it is deposited at the post office. Presorted First-Class, ZIP + 4, second-class, bulk third-class, presorted special fourth-class mail, and bulk bound printed matter must be prepared under 360, 460, 660, or 760, as appropriate. The postmaster will furnish appropriate sack or tray labels with which to identify the various types of bulk rate mail.

PART 145—PERMIT IMPRINTS (MAIL WITHOUT AFFIXED POSTAGE)

Renumber 145.5g as 145.5h. amend 145.5e and f, and add new 145.5g to read as follows:

145.5 Format of Permit Imprints.

e. Official Mail (First-Class).

FIRST-CLASS MAIL
POSTAGE & FEES PAID
Agency Name
Permit No. G-____

PRESORTED
FIRST-CLASS MAIL
POSTAGE & FEES PAID
Agency Name
Permit No. G-____

FIRST-CLASS
CARRIER ROUTE PRESORT
POSTAGE & FEES PAID
Agency Name
Permit No. G-____

ZIP + 4
POSTAGE & FEES PAID
Agency Name
Permit No. G-____

ZIP + 4 PRESORT
POSTAGE & FEES PAID
Agency Name
Permit No. G-____

f. Official Mail (Third-Class).

THIRD-CLASS MAIL
POSTAGE & FEES PAID
Agency Name
Permit No. G-____

PRESORTED
SPECIAL FOURTH-CLASS RATE
POSTAGE & FEES PAID
Agency Name
Permit No. G-____

BULK RATE
POSTAGE & FEES PAID
Agency Name
Permit No. G-____

BOUND PRINTED MATTER
POSTAGE & FEES PAID
Agency Name
Permit No. G-____

BULK RATE
CARRIER ROUTE PRESORT
POSTAGE & FEES PAID
Agency Name
Permit No. G-____

BULK RATE
BOUND PRINTED MATTER
POSTAGE & FEES PAID
Agency Name
Permit No. G-____

g. Official Mail (Fourth-Class).

FOURTH-CLASS MAIL
POSTAGE & FEES PAID
Agency Name
Permit No. G-____

SPECIAL FOURTH-CLASS RATE
POSTAGE & FEES PAID
Agency Name
Permit No. G-____

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of these changes will be published in the *Federal Register* as provided in 39 CFR 111.3. (39 U.S.C. 401(2), (10), 403(b), 404(a)(1), 3201-18, 42 U.S.C. 1973cc-13, 1973cc-14)

W. Allen Sanders,
Associate General Counsel, Office of General Law and Administration.

Form 3602-G is reproduced below for mailer information:

BILLING CODE 7710-12-M

Instructions

.....
 This form may be used only for single piece rate mailings containing at least 200 pieces or 50 pounds. Mailings not meeting these requirements must be prepared with penalty postage meters, penalty mail stamps, or have postage affixed by the contractor.

Contractor — Complete Unshaded Portions of the Form as indicated below:

- Item 1 — Enter the name of the agency, and the agency's mailing address, including the ZIP Code.
 Item 2 — Enter the name of the contractor, and the mailing address of the contractor, including the ZIP Code.
 Item 3 — Enter the permit imprint number of the agency.
 Item 4 — Enter the serial number shown on the GPO Form 712 submitted with the mailing.
 Item 5 — Enter the name and telephone number, including area code, of the agency employee to be contacted in the event there is a problem with the mailing.
 Item 6 — Enter the name and telephone number, including area code, of the contractor employee to be contacted in the event there is a problem with the mailing.
 Item 8 — Show the number of sacks, trays, or other containers used for each mail category that you report in items 14-26.
 Item 9 — For mailer's use if desired.
 Items 14-21 — For each rate category (and where applicable, for each weight category within a rate), enter in Column A the total number of pieces and in Column B the total weight of the pieces. The mailing must be physically segregated by these rate and weight categories upon presentation to the post office acceptance unit. The class of mail shown in the permit imprint on the pieces submitted must correspond to the class of mail reported on this form.
 Item 22 — Enter the sum of Column A and the sum of Column B.
 Item 24 — Self-explanatory.

Acceptance Unit — Complete shaded portions of the form as indicated below:

Note: Place Form 3607-G beneath this form with carbon paper for simultaneous completion of the forms.

As use of Form 3602-G is limited to mailings made by GPO contractors, do not accept mailings on this form unless accompanied by a GPO Form 712.

- Item 7 — Enter the Month, Day, Year (2 digits each) and time received.
 Item 10 — Enter the ZIP Code of the Finance Office of the main post office.
 Items 11-13 — Self-explanatory.
 Items 14-26 — Columns C, D, and E
 1) Find the verified total weight of the first category of mail reported in items 14 through 26 by weighing the group of pieces in bulk and subtracting the tare weight. The weight must be recorded in pounds carried out to two decimal places.
 2) If the pieces are of identical weight, verify the number of pieces in the category (find the average weight of a single piece and divide the total verified weight by the average weight of a single piece). If the pieces are nonidentical weight, use the number of pieces reported by the mailer.
 3) Divide the verified total weight by the number of pieces to find the average weight. The average weight must be recorded in pounds carried out to four decimal places.
 4) Enter the number of pieces, verified total weight, and average weight in Columns C, D, and E, respectively on the proper line (items 14-26). The proper line item is determined by the class of mail at which the pieces are endorsed, the average weight, and in some instances by the size of the piece. *Note:* If the mail is not eligible for the class of mail shown in the permit imprint by virtue of weight or other considerations, reject the mailing.
 5) Repeat steps 1 through 4 for each category of mail reported by the contractor in items 14-26.
 — Column F — In each category, enter the appropriate single piece rate for a piece having the weight shown in the average weight column (Column E). For zone rated categories, use Zone 5 when determining the appropriate rates. Note that fourth-class mail weighing 25 pounds or less must be computed at the inter BMC machinable parcel post rates and fourth-class mail weighing over 25 pounds must be computed at the inter BMC nonmachinable parcel post rates.
 — Column G — For each category, multiply the total number of pieces (Column C) by the piece rate (Column F) and enter the results in Column G.
 Item 27 — Enter the totals of Columns C, D and G.
 Item 28 & 30 — Self-explanatory.

Conversion Table

Ounces	Pounds	Ounces	Pounds
1	= .0625	9	= .5625
2	= .1250	10	= .6250
3	= .1875	11	= .6875
4	= .2500	12	= .7500
5	= .3125	13	= .8125
6	= .3750	14	= .8750
7	= .4375	15	= .9375
8	= .5000	16	= 1.0000

PS Form 3602-G, Aug. 1984 (Reverse)

[FR Doc. 84-22355 Filed 8-22-84; 8:45 am]

BILLING CODE 7710-12-C

Registered Trademark

Thursday
August 23, 1984

Part IV

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 273

Request for Comments on Proposed
Options to Distribution Formula;
Proposed Revision Under the Johnson-
O'Malley Act

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 273

Request for Comments on Proposed Options to Distribution Formula

August 20, 1984.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Propose revision of the distribution formula under the Johnson-O'Malley Act.

SUMMARY: This notice advises tribes recognized by the Secretary of the Interior that the Bureau intends to amend the Johnson-O'Malley program distribution formula. Tribes are invited to comment on or to recommend additional formulas for prescribing equitable distribution of supplemental Snyder Act funds to contractors. Indian tribes and organizations will also have the opportunity, during consultation meetings to be conducted by Area Education Programs Administrators (Area EPA's) or Agency Superintendents for Education (ASE's), to express their views on changing the formula.

DATES: Comments must be received or postmarked on or before October 22, 1984.

ADDRESS: Written comments may be sent by mail or hand-carried to the Director, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 18th and "C" Streets, NW., Room 3510, Washington, D.C. 20240, telephone number (202) 343-2175.

FOR FURTHER INFORMATION CONTACT: Maribel W. Printup, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 18th and "C" Streets, NW., Washington, D.C. 20240, telephone number (202) 343-6364.

SUPPLEMENTARY INFORMATION: Meetings will be held by the Area EPA's or ASE's for the purpose of consultation. In addition, interested persons are invited to submit written comments, suggestions

or objections to the Director, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 18th and "C" Streets, NW., Washington, D.C. 20240.

✓ The current distribution formula is a part of the regulations as required by Pub. L. 95-561, Sec. 1102. This Section requires the Secretary to revise such formula periodically as necessary, in accordance with the prescribed procedures.

The prescribed procedures contained in Sec. 1102 require the Secretary to develop alternative methods for the equitable distribution of supplemental program funds. Such alternatives are to be published in the *Federal Register* for the purpose of allowing eligible tribes to comment and/or to submit additional options. During the sixty (60) days comment period, the Area EPA's or ASE's will arrange meetings for consultation and collection of further comments.

The Secretary will select, after review of all comments and options received, formula alternatives and submit them to a vote of the tribes. The voting period will be open for sixty (60) days. The formula determined to be the most equitable and receiving the majority of tribal votes in approval, as evidenced by a vote count certified to the Secretary, will be adopted for distribution for funds. In the event no formula receives a majority vote, there will be another vote on the two formulas receiving the most votes. The formula which receives more than fifty percent (50%) of the vote of the eligible voting tribes will be accepted as the final rule and published in the *Federal Register*. Tribes, recognized by the Secretary of the Interior, will have one vote each.

Background

Funds are distributed to eligible contractors through a formula that is based on the number of eligible Indian students served, the States' average per pupil costs and the national average per pupil cost.

List of Subjects in 25 CFR Part 273

Government contracts, Indians—Education, Indian—Self determination.

Distribution Formula Options

The following options for distribution of funds have been developed for consideration and are published for the purpose of allowing eligible tribes to comment by October 22, 1984.

(1) Option "A" is the current formula used in the distribution of funds. This is based on the number of eligible Indian students to be served, the national average per pupil expenditure and a weighting factor which is intended to take into account the differences in education costs among the States. The weighting factor is the quotient obtained by dividing the State's cost of delivering educational services by the national average; except that for every State whose cost is at or below the national average, that State's cost will be based on the national average.

(2) Option "B" is similar to Option "A" except that only those school districts in the State attended by eligible students funded by a Johnson-O'Malley program are used to determine the State's per pupil average.

(3) Option "C" is the same as Option "B" except that there is a maximum weighting factor of two (2) for any State.

(4) Option "D" provides for an equal per pupil distribution of funds for eligible students in all States except Alaska. Alaska will receive an additional twenty-five (25%) of the equal per pupil distribution.

Tribes are invited to recommend additional formulas as well as comment on those described above.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs under 209 DM 8.

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 84-22404 Filed 8-20-84; 2:44 pm]

BILLING CODE 4310-02-M

Federal Register

Thursday
August 23, 1984

Part V

Federal Communications Commission

47 CFR Parts 0 and 73

Revision of Programming and
Commercialization Policies, Ascertainment
Requirements, and Program Log
Requirements for Commercial Television
Stations; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 73

[MM Docket No. 83-670; FCC 84-293]

Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action revises the Commission's policies with respect to programming and commercialization regulations, ascertainment and program log requirements for commercial television stations. This proceeding eliminates existing programming requirements which require the presentation of specified amounts of informational (news and public affairs), local and overall non-entertainment programming. Also eliminated are existing regulations pertaining to ascertainment procedures. Moreover, this proceeding eliminates existing regulations which limit the amount of commercial programming that may be presented. Under the new regulatory scheme, licensees will remain subject to an obligation to provide programming that responds to issues confronting their communities. Accordingly, existing logging procedures have been revised to reflect the new regulatory focus. Licensees will be required to place in their public files, on a quarterly basis, an issues/programs list.

This action is predicated on the recognition that market incentives are the primary determinants of licensee compliance. Accordingly, the existing regulatory scheme is no longer necessary to achieve our regulatory objectives. Moreover, the existing system imposes unnecessary administrative costs on licensees as well as raising potential First Amendment problems.

EFFECTIVE DATE: September 24, 1984.

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

FOR FURTHER INFORMATION CONTACT: David L. Donovan, Marcia Alterman, Freda Thyden or Thomas Walsh, Mass Media Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television, Radio broadcast.

Report and Order (Proceeding Terminated)

In the matter of the revision of programming and commercialization policies, ascertainment requirements, and program log requirements for commercial television stations; MM Docket No. 83-670.

Adopted: June 27, 1984.

Released: August 21, 1984.

By the Commission: Commissioner Rivera concurring in part and dissenting in part and issuing a statement.

I. Introduction

1. Before the Commission for consideration are comments filed in response to the *Notice of Proposed Rule Making* in the above-captioned proceeding.¹ The *Notice* solicited comments on several proposals that would amend the Commission's policies with respect to programming, ascertainment, commercialization and program log requirements for commercial television station licensees.

2. After an exhaustive review of the record in this proceeding, our independent study of the economic incentives for the delivery of video programming, and a re-examination of the current programming policies, we conclude that modifications to the existing regulatory system are appropriate. Stating our conclusions along the functional lines outlined by the specific rules and policies examined in this docket, we find that market incentives will ensure the presentation of programming that responds to community needs and provide sufficient incentives for licensees to become and remain aware of the needs and problems of their communities. Moreover, we are convinced that these forces will continue to hold levels of commercialization below our existing guidelines. Given these economic and policy conclusions, we no longer believe it appropriate to routinely review the programming, the levels of commercialization, and the formal ascertainment practices of television licensees in the uncontested renewal context. In addition, existing logging requirements should be revised to reflect the policies articulated in this proceeding. Accordingly, a quarterly issues/programs list, similar to that now required of commercial radio broadcasters, is hereby instituted.

3. Our action today constitutes another step in the deregulation of the telecommunications industry. It reflects the importance and viability of market incentives as a means of achieving our

regulatory objectives and will provide television broadcasters with increased freedom and flexibility in meeting the continuously changing needs of their communities. Our action here, however, does not constitute a retreat from our concern with the programming performance of television station licensees.² Thus, as in related actions involving commercial radio and non-commercial broadcasting, we are by this Order retaining the obligation of licensees to provide programming that responds to issues of concern to the community. The quarterly issues/programs list will provide the public and the Commission with the information needed to monitor licensees' performance under this new regulatory scheme and thus permit us to evaluate the impact of our decision. Existing procedures such as citizen complaints and petitions to deny will continue to function as important tools in this regard. We believe that this approach will fully meet our current regulatory needs with respect to the programming performance of commercial television broadcasters, while permitting the elimination of unnecessary and often burdensome regulations.

4. Our discussion of the issues in this proceeding has been divided into five segments: programming, ascertainment, commercialization, program logs and an analysis of long form audit procedures. Appendix A contains the specific rule changes that result from this proceeding. A detailed evaluation of all comments filed in this proceeding appears in Appendix B. An analysis of the competitive status of commercial television can be found in Appendix C. The results of a comprehensive study concerning the levels of informational and local programming on commercial television for the year 1980 have been included as Appendix D.

II Analysis

A. Program Guidelines

1. Background

5. The guidelines which we are eliminating today originated as informal directions to the staff concerning the routine processing of television renewal applications. The directions indicated which otherwise uncontested applications should be referred to the full Commission for disposition and included both quantitative programming

¹ We do not imply that the programming obligations of broadcast licensees, as we have historically viewed them, are not properly subject to review and revision in appropriate proceedings. See *infra* para. 7 and n.7.

² Notice of Proposed Rule Making in MM Docket 83-670, 94 F.C.R. 2d 678 (1983), 48 FR 37239 (August 17, 1983) (hereinafter "*Notice*").

and commercialization standards.³ The guidelines were amended and made public for the first time in 1973, in conjunction with a general revision of the Commission's delegations of authority to the former Broadcast Bureau.⁴ As to program performance, the revised guidelines provided only that renewal applications demonstrating less than 10 percent non-entertainment programming could not be routinely processed by the staff. The current programming criteria were adopted in 1976 and require Commission action on any commercial television station renewal application reflecting less than five percent local programming, five percent informational programming (news and public affairs) or ten percent total non-entertainment programming.⁵

2. Proposals

6. The *Notice* contained three policy alternatives to the present regulatory system. Under Option I, all programming guidelines would be eliminated, but television broadcasters would operate under a general obligation to address issues of concern to their communities. Thus, the Commission would no longer routinely consider categories and amounts of programming in the uncontested renewal context. This option would also eliminate the promise versus performance standard. Option II would retain a process of Commission review at the renewal stage based upon performance in the existing program categories and current promise versus performance standard, but would ease the rigid application of the guidelines, thereby allowing licensees to experiment with non-entertainment programming. This could be done by either lowering the percentage standards in the delegations, or by permitting a licensee to explain to the staff the reason why its programming

performance does not meet the guidelines. We also sought comment on a third policy alternative that relied solely on statutory requirements. Under this approach, there would be no programming obligation of any kind except for those programming requirements that are explicitly statutory in nature.⁶ Accordingly, absent statutory violations, the Commission would no longer consider programming in the licensing of broadcast stations. In addition to the aforementioned policy alternatives, we stated that we would consider any other deregulatory proposal submitted in response to the *Notice*.

3. Discussion

7. Our review of the record herein convinces us that the current programming guidelines and the routine review of program performance in uncontested renewal proceedings that they facilitate are not necessary to the effective discharge of our licensing responsibilities. Accordingly, we adopt Option I as contained in the *Notice*, eliminating the programming guidelines entirely. In addition, the promise versus performance standard will no longer be applied by the staff in the uncontested renewal context. In reaching this conclusion, we reject Option II as contained in the *Notice*. While this option would relax the specific requirements of the guidelines, it would retain a category-based, quantitative approach to evaluating a licensee's programming performance. As will be discussed later in this document, we do not believe that such an approach is necessary or appropriate given our view of the television marketplace and the nature of licensees' underlying programming obligations. We also have elected not to pursue the statutory reliance option in this proceeding. We believe the issues raised by the statutory option are significant and warrant full examination by the Commission. This policy alternative, however, would affect the programming responsibilities of all broadcasters, not just commercial television licensees. Therefore, we intend to examine these issues elsewhere.⁷

8. Our decision to eliminate the processing guidelines is based on two fundamental considerations. First, our

review of the record and study of station performance persuades us that licensees will continue to supply informational, local and non-entertainment programming in response to existing as well as future marketplace incentives, thus obviating the need for the existing guidelines. See *F.C.C. v. WNCN Listeners Guild*, 450 U.S. 583, 594 (1981) [hereinafter *F.C.C. v. WNCN*]; *National Association of Regulatory Utility Commissioners v. F.C.C.*, No. 83-1225, slip op. at 109 (D.C. Cir. 1984) [hereinafter *N.A.R.U.C. v. F.C.C.*]; *M.C.I. Telecommunications Corp. v. F.C.C.* 627 F.2d 322 (D.C. Cir. 1980). See also *infra* n. 33. Second, our reexamination of the current regulatory scheme reveals several inherent disadvantages, including: potential conflicts with Congressional policies expressed in the Regulatory Flexibility Act and the Paperwork Reduction Act,⁸ imposition of burdensome compliance costs, possibly unnecessary infringement of the editorial discretion of broadcasters, and distortion of the Commission's traditional policy goals in promulgating and monitoring programming responsibilities. We now turn to a more detailed discussion of these issues.

(a) *Need for the Guidelines.* 9. *Existing Market Performance.* Our review of the programming performance of commercial television stations is comprised of three separate studies. This first focuses on overall station compliance with the existing guidelines from 1973 to 1979. The second study examines the average performance of UHF independent stations both before and after they were exempted from the existing programming guidelines in 1976. A final study consists of an econometric examination of programming behavior for 1980.

10. Overall station data indicate that during the six year period from 1973 to 1979, commercial television broadcasters allocated an average of 13.7 percent, 10.3 percent and 24.3 percent of their broadcast time to informational (news and public affairs), local and overall non-entertainment programming respectively.⁹ These programming levels far exceed our present guidelines in every program category. Specifically, they represent performance at 274 percent of the guideline standard for informational programming, 206 percent for local programming and 243 percent for total non-entertainment programming.

³ *Notations of General Agenda*, June 28, 1961. According to the notations, the staff could not act upon any applications which proposed any of the following:

- (1) Greater than 85 percent commercial programming,
- (2) Less than 5 percent local live programming,
- (3) Greater than 90 percent network programming,
- (4) Less than 10 percent sustaining programming between 6-11 p.m.,
- (5) Greater than an average of 12 commercial spot announcements during an hour, and
- (6) No programming in the following categories unless an adequate explanation was given: entertainment, religious, agricultural, educational, news, discussion (forum, panel, roundtable), and talks (all conversational not falling under one of the above categories).

⁴ See *Order (Amendments to Delegations of Authority)*, 43 F.C.C. 2d 638, 640 (1973).

⁵ See *Order (Amendments to Delegations of Authority)*, 59 F.C.C. 2d 491, 493 (1976) and 47 CFR 0.283 (a)(7)(i)(A), (ii)(A).

⁶ See *Notice supra* n. 1 at 37250 (discussing the program requirements envisioned by this policy alternative).

⁷ We emphasize that we in no way prejudice this proposal. We conclude only that the major matters raised in this docket can and should be resolved here and that any further action on the statutory reliance alternative should await a more complete discussion in separate proceedings.

⁸ Regulatory Flexibility Act, Pub. L. 96-354 (1980), 5 U.S.C. 601 *et seq.*; Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*

⁹ *Notice*, at 37252, Table 1.

11. Moreover, the record indicates that there has been a trend toward increasing amounts of total non-entertainment programming on television. In 1973, commercial television stations devoted 22.6 percent of their time to this program category. By 1979, this amount had risen to 26.1 percent.¹⁰ A similar trend exists for informational programming.¹¹ In 1973, 13.3 percent of television broadcast time was devoted to informational programming. By 1979, this average had increased to 13.9 percent.¹² By 1980, commercial television stations devoted 15.26 percent of their time to informational programming, more than three times the level set by the guidelines.¹³

12. Within the informational programming category, the data also reveal a nearly constant relationship between the amounts of news and public affairs programming presented over time. Between 1973 and 1979 the percentage of public affairs programming averaged 4.6 percent and ranged from 4.3 percent to 5 percent. During this same period, news programming averaged 8.9 percent and ranged from 8.6 percent to 9.2 percent.¹⁴ Moreover, this relationship persisted despite the fact that there was no informational programming guideline prior to 1976 and, that even after the informational programming requirement was adopted, there was no guideline

with respect to the specific amounts of news and public affairs programming. It would appear, therefore, that there has been a stable market demand over time for both news and public affairs programming and that commercial television stations have consistently met that demand.

13. Data supplied by NAB corroborate these results.¹⁵ NAB found that the amount of time devoted to informational programming increased from 12.8 percent in 1973 to 17.3 percent in 1983. Total non-entertainment programming increased from 22 percent in 1973 to 29.2 percent in 1983.

14. While informational and overall non-entertainment programming have increased, locally produced programming has declined in percentage terms since 1973. The amount of time devoted to local programming by all commercial television stations declined .4 percentage points from 10.5 percent in 1973 to 10.1 percent in 1979.¹⁶ Also, an analysis of 1980 programming data found that the amount of time devoted to local programming had declined to 9.52 percent. Again, NAB data confirm these results, reporting a decline from 11.3 percent in 1978 to 8.9 percent in 1983, a trend which existed for all markets.¹⁷ Despite this percentage decline in local programming, however, the amount of broadcast time devoted to this category remains well above our guidelines.

15. Moreover, in evaluating the above data, it is important to note that the figures cited are percentage averages. They do not, therefore, reflect the significant increase in the absolute supply of programming in the relevant categories resulting from the substantial growth in the number of television stations over time. Since 1973, for example, the number of operating television facilities has increased by

approximately 25 percent.¹⁸ Thus, even in such categories as local programming, where there has been a relative decline in the percentage average performance of stations, the absolute number of broadcast minutes devoted to such programming may well have actually increased in many markets. As for total non-entertainment and informational programming, where the average percentage has risen, the growth in television outlets is yet another factor contributing to an overall increase in the supply of broadcast programming in these categories.

16. Our experience with the performance of television stations that are already exempt from the programming guidelines further supports our belief that the existing processing standards are unnecessary. Independent UHF stations were subject to the programming guidelines when they were first enacted in 1973. In 1976, however, the Commission exempted UHF independents from the program processing guidelines.¹⁹ An examination of the programming performance for these exempted UHF stations reveals that elimination of the programming delegations had no material effect on the amount of informational, local and non-entertainment programs broadcast. Prior to the exemption, the average amount of time devoted to informational, local, and total non-entertainment programming amounted to 7.9 percent, 14.5 percent, and 22 percent respectively, whereas programming for the three years after the exemption amounted to 8.2 percent, 13.4 percent and 32.9 percent for the same program categories.²⁰ Thus, while the percentage of local programming declined somewhat in the post-exemption period, from 14.5 percent to 13.4 percent, it nonetheless remained at levels more than 2½ times that prescribed by the guidelines.²¹

¹⁰ The breakdown by various television stations for total non-entertainment programming for the years 1973 and 1979 was as follows: VHF affiliated stations increased from 23.6 percent to 25.3 percent; UHF affiliated stations increased from 20.5 percent to 25 percent; and UHF independents increased dramatically from 18.2 percent to 34.6 percent. The only decline in this program type occurred for VHF independents (20.6 percent to 18.3 percent).

¹¹ Notice at 37252, Table 6.

¹² *Id.* at Tables 2, 3, 4, and 5. The increase for the various television media for news and public affairs programming from 1973 to 1979 was as follows: VHF affiliates (14.4 percent to 15.5 percent); UHF affiliates (12.1 percent to 13.2 percent); and UHF independents (7 percent to 7.4 percent). A minor decrease in news and public affairs was noted for VHF independents (9.6 percent to 9.1 percent).

¹³ See Appendix D for analysis of 1980 programming data.

¹⁴ The percentage of time devoted to news and public affairs programming for the years 1973 through 1979 from sign-on to sign-off was as follows: 1973 (8.6 percent news, 4.3 percent public affairs); 1974 (8.6 percent news, 4.5 percent public affairs); 1975 (9.2 percent news, 5 percent public affairs); 1976 (9 percent news, 4.4 percent public affairs); 1977 (9 percent news, 4.6 percent public affairs); 1978 (8.6 percent news, 4.3 percent public affairs); and 1979 (9.1 percent news, 4.5 percent public affairs). Moreover, public affairs programming was presented during periods of high viewership. From 1973 through 1979 the amount of time devoted to public affairs programming from 6:00 p.m. to 11:00 p.m. was as follows: 1973 (5.1 percent); 1974 (2.5 percent); 1975 (5.3 percent); 1976 (3 percent); 1977 (2.9 percent); 1978 (3.3 percent); and 1979 (3.7 percent).

¹⁵ NAB Comment, Appendix B, *NAB Television Programming Study, Final Report on Local Commercial Stations*, 1983. The study examined the programming of 107 local commercial stations in 29 markets, including stations in the top 50, 51-100 and 101+ markets, by analyzing 1982-1983 TV Guide listings for these stations. Data for years prior to 1982 were taken from previous NAB studies conducted by James A. Wollert and Michael Wirth in 1982, 1978 and 1976.

¹⁶ Notice at 37252, Appendix B, Table 6. A comparison of 1973 programming percentages with 1979 percentages indicates an across-the-board decline in all television media. VHF affiliates (10.4 percent to 10.2 percent), VHF independents (17.9 percent to 14.6 percent), UHF affiliates (7.6 percent to 7.1 percent) and UHF independents (13.4 percent to 12.9 percent).

¹⁷ See NAB Comments, Appendix B (local programming declined in all markets during this period (1978 to 1983) from 14.1 percent to 11.6 percent in the top 50 markets; from 8.9 percent to 8.4 percent in markets 51-100; and from 7.6 percent to 6.7 percent in the 101+ markets).

¹⁸ See Appendix C (discussion of growth in number of television stations).

¹⁹ Amendment to Delegations of Authority, *supra* n. 5, at 492.

²⁰ The data used in this analysis were taken from Table 5 of Appendix B in the Notice. Pre-exemption data were derived by calculating the mean average level of performance, in percentage terms, for the three years preceding the 1976 exemption. The same method was used to calculate the mean average level of performance during the three year post-exemption period. Programming data for 1976 were eliminated since the exemption was granted during that year.

²¹ The evidence does not suggest that declines in local programming are related to the presence or absence of the guidelines. For example, UHF independent stations, on average, devoted more time to local programming during the pre-exemption period than during the post-exemption period. The decline in local programming, however, was even

Moreover, informational and overall non-entertainment programming actually increased after the 1976 exemption and, as with local programming, was provided at levels far exceeding the processing standards.

17. A comparison of the post-exemption performance of the subject UHF stations with other television media reveals that UHF independents actually outperformed some of the television stations that remained subject to the guidelines.²² For example, from 1977 to 1979, UHF independents devoted more time to local programming than either UHF or VHF affiliated stations.²³ Non-affiliated UHF stations also devoted more time to overall non-entertainment programming than all other commercial television stations.²⁴ We recognize that UHF independents programmed less news and informational programming than other commercial television media. It should be noted, however, that a similar situation existed prior to the 1976 exemption.²⁵

greater for VHF independents during the same period. Thus, during the post-exemption period, UHF independent stations exhibited a decline of 1.1 percentage points in local programming, while VHF independents, which were subject to our guidelines, showed a decline of 2.8 percentage points, from 17.4 percent (pre-exemption period) to 14.6 percent (post-exemption period). If the presence or absence of regulation was the primary factor influencing local programming, then one would have expected the most significant decline in local programming to appear in the unregulated medium, i.e., UHF independents. However, this was not the case.

²² Data for this analysis were taken from Tables 1 through 5 of Appendix B in the Notice. The same method of calculating the mean average level of performance for television stations subject to the guidelines (VHF affiliates, VHF independents and UHF affiliates) was utilized in determining pre- and post-exemption performance. See *supra* n.20.

²³ During the years 1977 to 1979, UHF independents devoted an average of 13.4 percent of their time to local programming. During this same period UHF and VHF affiliated stations devoted only 6.9 percent and 10 percent of their time to local programming respectively.

²⁴ During this time period, UHF independents averaged 32.9 percent overall non-entertainment programming, as opposed to 24.2 percent for UHF affiliates, 19.2 percent for VHF independents and 24.8 percent for VHF affiliates.

²⁵ During the years 1973 to 1975, UHF independents devoted an average of 7.9 percent of their time to news and informational programming. During this same period UHF affiliates, VHF independents and VHF affiliated stations devoted an average of 12.3 percent, 10.1 percent and 14.8 percent of their time to informational news programming, respectively. This pattern continued after the 1976 exemption. For the years 1977 to 1979 UHF independents devoted an average of 8.2 percent of their time to informational programming, UHF affiliated 12.7 percent, VHF independents 9.7 percent and VHF affiliated 15.1 percent.

18. Finally, our conclusions that television stations' program performance is dictated by market incentives and is essentially independent of our processing guidelines is supported by a third analysis conducted by our own staff concerning programming behavior of commercial television stations during 1980.²⁶ The study examined the impact of the guidelines on the presentation of informational (news and public affairs) and local programming by comparing the programming performance of exempted UHF independents to all other commercial television stations. Through the use of multivariate regression analysis, the study was able to control for various factors that may influence program performance such as, market size, number of competing stations in a local market, number of competing stations, network affiliation, station revenue and VHF/UHF status. By controlling these variables, the study was able to isolate the impact of the guidelines on the levels of programming. The study found that with respect to local programming, approximately 2 percentage points of the overall non-exempt station average seems attributable to the guidelines.²⁷ Thus, even in a worst case situation elimination of the guidelines would result in an overall level of station performance above the existing standard for local programming.²⁸ Moreover, the guidelines appear to have no impact on the levels of informational (news and public affairs) programming. Accordingly, it would appear that, absent the current guidelines, overall station performance for informational programming would remain at approximately 15 percent, fully three times the level required by current processing standards.

19. In summary, these three studies provide convincing evidence that existing marketplace forces, not our guidelines, are the primary determinants of the levels of informational, local and overall non-entertainment programming provided on commercial television. It

appears, moreover, that these forces have consistently elicited a level of such programming well above the amounts arbitrarily set by our processing criteria. We are confident, therefore, that under current marketplace conditions such programming will continue to be available irrespective of our elimination of the guidelines.²⁹

20. *Future Market Incentives.* We are confident, as well, that the market demand for informational, local and non-entertainment programming will continue to be met as the video marketplace evolves. Many new video technologies such as Subscription Television (STV), Multipoint Distribution Service (MDS), Satellite Master Antenna Television (SMATV), Low Power Television (LPTV), Direct Broadcast Satellite (DBS), Multi-Channel MDS (MMDS) and Instructional Television Fixed Service Stations (ITFS) have begun, or are just beginning, to assert themselves in the marketplace.³⁰

²⁶ A footnote in a study submitted by the NAB implied that the presentation of "public interest" programming may decline in a deregulatory environment. See Wirth, Bloch and Thompson, *Television and Radio Expenditure Behavior Under the Uncertainty of License Renewal* (April 1982) cited in NAB Comments, App. B. We do not believe that the statements made in the NAB study detract from our conclusions in this proceeding. The NAB study assumes that a relationship exists between the presentation of "public interest" programming and a licensee's perception of the difficulty in getting its license renewed. *Id.* at 7. Thus, in projecting the results of the data, the NAB study assumes that the presentation of "public interest" programming is an indirect cost of the license renewal process. *Id.* at 14. It is on this basis that the NAB study makes an assumption, which some might wish to cite as a conclusion, that "public interest programming" will decline in a deregulated environment. *Id.* at 20, n. 15. The study's own data, however, do not support such an assumption. To the contrary, the NAB study found the relationship between "public interest" programming and the total costs of license renewal was statistically insignificant. *Id.* at 10. In contrast, the staff studies upon which we rely measure the effect of the program processing guidelines on actual station performance. The data in these studies demonstrate that licensees, in the absence of the programming guidelines, will present programming at levels well above the guidelines. We believe that actual performance data contained herein provides a better indication of licensee behavior than an unverified assumption. Moreover, the NAB study does not define precisely the term "public interest" programming. The programming elements in the study appear to have consisted of public service announcements, local and informational programming. While we recognize that the presentation and production of programming in these categories can be expensive, it is incorrect to assume that such an expense is a "cost" that is not market-dictated. For example, the study appears to have included all informational programming, which includes news programming, as a cost of the licensing process. Such an assumption incorrectly ignores the market demand for news programming.

³⁰ See Appendix C.

²⁶ *F.C.C. v. WNCN*, *supra* para. 8, at 591. See Appendix D for a complete analysis of these data.

²⁷ See Appendix D, para. 29, *infra*.

²⁸ We do not believe that a 2 percentage point decline in locally produced programming is necessarily inconsistent with the public interest. This is especially true where the overall levels of local programming will remain at levels above the present guidelines. Moreover, as the Commission has noted in other contexts, the coverage of local issues does not necessarily have to come from locally produced programming. See *Deregulation of Radio*, 84 F.C.C. 2d 966, 999 (hereinafter "Deregulation of Radio"). See also *In re WPXI, Inc.*, 68 F.C.C. 2d 381, 402 (1978) (premise that local needs can be met only through programming produced by a local station lacks presumptive validity).

While it is difficult to predict the success of these services, we expect that overall subscribership to these video technologies, excluding cable, will range between 25.7 million and 47 million households by 1990.³¹ Cable television service already reaches some 29.9 million subscribers (1984 estimate)³² and is expected to reach some 58 million by 1990.³³

21. The emergence of these new technologies, coupled with the continued growth in the number of television stations, will create an economic environment that is even more competitive than the existing marketplace. Given the market-based demand for these types of programming evidenced by our studies of past broadcast performance, this increased level of competition can, in our view, only further ensure the presentation of sufficient amounts of such programming.³⁴

22. A synthesis of the above-referenced data yields several significant findings with respect to the programming performance of commercial television station licensees. First, the data reveal that licensees are presenting levels of informational, local and non-entertainment programming that are far in excess of our guidelines. These figures indicate that non-entertainment programming is an important part of broadcasters' financial viability and other aspects of their overall operations and, thus, there are reasons other than regulatory oversight to engage in this programming. The overall performance data contained herein convince us that the current and future video marketplace will continue to supply this type of issue-oriented programming in response to a basic market demand.³⁵ We note, however,

that there may be individual stations that are not meeting the guidelines with respect to all of the programming categories. We do not believe that such an occurrence is inconsistent with the public interest since the overall data demonstrate that, on average, stations are performing well above the guidelines. It appears, therefore, that the failure of some stations to provide programming in some categories is being offset by the compensatory performance of other stations. In this respect, market demand is determining the appropriate mix of each licensee's programming. For example, a licensee may find it competitively appropriate to emphasize one type of programming within the guidelines rather than presenting programming in all categories. At the same time, other stations in the market may elect to present other types of programming. The net result of this shifting in the programming mix is that overall performance will exceed the guidelines even though individual stations are not presenting required amounts in all program categories.³⁶

23. We believe that licensees should be given this flexibility to respond to the realities of the marketplace by allowing them to alter the mix of their programming consistent with market demand. Such an approach not only permits more efficient competition among stations, but poses no real risk to the availability of these types of programming on a market basis. This is particularly true in view of the continuing obligation of all licensees to contribute issue-responsive programming and their responsibility to ensure that the strongly felt needs of all

significant segments of their communities are met by market stations collectively.³⁷ The current guidelines, while failing to have a significant impact on overall station performance, tend to restrict the freedom of individual licensees by requiring them to present programming in all categories. Such a requirement is unnecessary and burdensome in light of overall market performance.³⁸

24. Given these considerations, we believe that the existing guidelines are unnecessary. In addition, the record reveals that the existing regulatory structure imposes burdens on both licensees and the public. In light of the economic conclusions reached herein, we believe changes to that structure are warranted.

(b) *Disadvantages of the Current Programming Guidelines.* 25. At the outset, we note that to the extent current levels of programming exceed regulatory standards the guidelines are simply no longer necessary. In this respect, we note that the Court of Appeals has held that regulations, originally adopted to correct a specific problem, may be capricious if the underlying problem no longer exists.³⁹ Moreover, retaining the guidelines in light of our conclusions concerning marketplace incentives would be inconsistent with Congressional policies established in both the Regulatory Flexibility Act and the Paperwork Reduction Act.⁴⁰

26. Second, we note that the existing guidelines impose administrative costs on licensees. Although data from the previous analysis demonstrate that the existing programming amounts are largely a reflection of market forces rather than our guidelines, the compliance costs associated with these

³¹ *Tentative Decision and Request for Further Comments* is BC Docket No. 82-345 (Amendment of *Syndication and Financial Interest Rules*), 48 FR 38020, 38037, Table 9 (August 22, 1983).

³² *Television and Cable Factbook 1984*, (Cable and Services Volume) p. 1725.

³³ *Supra*, n. 31.

³⁴ To the extent that the video marketplace might evolve in the direction of a narrowcasting model, we believe our conclusion in the radio deregulation proceeding that adequate market incentives exist under such conditions to ensure appropriate levels of these types of programming is directly applicable here. See *Deregulation of Radio* *supra* n. 28 at 969. See also Owen, Beebe & Manning, *Television Economics* at 90 (1974).

³⁵ The data presented above were based on the amounts of informational, local and non-entertainment programming. As noted in our radio deregulation proceeding, issue-responsive programming can include programming described under current definitions and can consist of, but is not limited to, public affairs, public service announcements, editorials, free speech messages, community bulletin boards and religious programming. See *Deregulation of Radio* *supra* n. 28

at 982-983. For example, the definition of public affairs programming may make this particular program category per se issue-responsive. See 47 CFR 73.1810(d)(iv). We believe, therefore, that information relating to the current programming categories also provides a more than adequate data base on which to rest a predictive judgment that there will be a continued supply of issue-responsive programming. See *F.C.C. v. WNCN Listener's Guild*, *supra* at 594-595 (1981); *N.A.R.U.C. v. F.C.C.*, *supra* at para. 8; *Office of Communications of the United Church of Christ v. F.C.C.*, 707 F.2d 1413, 1437 (D.C. Cir. 1983) (hereinafter *U.C.C. v. F.C.C.*); *N.A.A.C.P. v. F.C.C.*, 682 F.2d 993, 1001 (D.C. Cir. 1982); *M.C.I. Telecommunications Corporation v. F.C.C.*, *supra* at para. 8 (predictive judgments of market developments are within the institutional competence of the Commission and are entitled to substantial judicial deference). While these categories provide an adequate data base, however, the concept of issue-responsive programming extends beyond the mere presentation of specified amounts of programming in discrete categories. See text, *infra* at para. 33.

³⁶ The *Notice* contained frequency distribution data indicating that some stations are performing below the guidelines. See *Notice* at 37253. These data do not necessarily suggest a market failure with respect to issue-responsive programming since they ignore the importance of market-based shifts in the programming mix.

³⁷ *Stone v. F.C.C.*, 466 F.2d 316 (D.C. Cir. 1972).

³⁸ A similar conclusion was reached in our radio deregulation proceeding. In radio deregulation, numerous outlets in each market had created the economic incentives to narrowcast to discrete audiences. We recognize that in this regard current video markets do not parallel the radio model. It is important to note, however, that the narrowcasting model is not a precondition to deregulation. For example, small radio markets were also deregulated even though they had not yet reached the narrowcasting model. We believe that in this regard the small radio market approach is analogous to the current video marketplace. Therefore, our decision herein, as in radio, turns on overall licensee performance in response to marketplace incentives. Thus, the existence of narrowcasting incentives is not necessarily related to the threshold decision to deregulate. The narrowcasting model, as opposed to broad-based programming incentives may, however, be relevant to a licensee's issue selection in the deregulated environment. See *Deregulation of Radio* *supra* n. 27 at 978; see also text, *infra* at para. 34.

³⁹ See *Home Box Office v. F.C.C.*, 567 F.2d 9, 46 (D.C. Cir. 1977).

⁴⁰ *Supra*, n. 8.

guidelines, with respect to formalized ascertainment and program logging requirements are not market dictated. The record here indicates that these costs are significant.⁴¹ To the extent that these rules are not necessary to meet our regulatory objectives, we conclude that the costs incident to technical compliance and record keeping are inappropriate.

27. Third, we find that the present regulatory structure raises potential First Amendment concerns. Congress intended private broadcasting to develop with the widest journalistic freedom consistent with its public interest obligation.⁴² Moreover, the public interest standard necessarily invites reference to First Amendment principles.⁴³ These concerns with the First Amendment are exacerbated by the lack of a direct nexus between a quantitative approach and licensee performance.⁴⁴

28. To the extent that existing levels of programming are market-dictated, then it may be argued that the overall intrusive nature of the guidelines is not pervasive. This does not mean, however, that there is no current infringement on the editorial discretion of individual broadcasters.⁴⁵ For example, each licensee must still monitor its performance in light of this government-imposed standard. Further, the continued existence of the programming guidelines in the context of an evolving video services marketplace could conceivably constitute an unacceptable general level of infringement at some future time. In this regard, our action today provides a less intrusive means of meeting our regulatory objectives.⁴⁶

⁴¹ See text, *infra*, at para. 51 for a complete discussion of the compliance costs associated with the formalized ascertainment and program logging requirements.

⁴² *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 914 (1973).

⁴³ *F.C.C. v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 795 (1978).

⁴⁴ See *U.C.C. v. F.C.C.*, *supra* n. 33 at 1430 (quantity alone cannot be the measure of a licensee responsiveness); *National Black Media Coalition v. F.C.C.*, 589 F.2d 578, 581 (D.C. Cir. 1978) (hereinafter *N.B.M.C. v. F.C.C.*) (quantitative guidelines do not guarantee improved service).

⁴⁵ For example, a licensee that is currently presenting levels of programming at the limits of the guidelines may desire to alter its mix of non-entertainment programming. In this particular situation, our guidelines may infringe upon its editorial discretion by requiring it to present specified levels of non-entertainment programming that it would not otherwise air. See text, *supra* at para. 22 and n. 35.

⁴⁶ In the delicate area of the First Amendment we have an affirmative obligation to examine our policies in light of the means used to obtain our objectives and whether other less restrictive mechanisms can achieve the same results. *United States v. O'Brien*, 391 U.S. 367, 377 (1968). See also

Accordingly, we believe that our new regulatory approach is more consistent with underlying First Amendment values.

29. Our final concern with the present regulatory scheme focuses on the way in which it operationally defines a licensee's programming obligation in quantitative terms. The Commission's traditional policy objectives with respect to programming have never been fulfilled by the presentation of mere quantities of specific programming. On the contrary, the Commission has consistently sought to avoid this type of regulatory approach.⁴⁷ Moreover, the Courts have recognized that quantity, in and of itself, is not necessarily an accurate measure of the overall responsiveness of a licensee's programming.⁴⁸ Instead, a licensee's programming obligation has always been described in terms of providing programming that responds to the needs of the community.⁴⁹ Thus, the existing quantitative structure significantly misrepresents the nature of a broadcaster's underlying programming obligation by incorrectly suggesting that the broadcasting of specified quantities of programming is enough to fulfill their traditional programming responsibilities. By restating the programming obligation in uncontested renewal proceedings in terms of issue-responsive programming,

Home Box Office v. F.C.C., *supra* n. 39 at 48 (incidental restrictions on First Amendment freedoms must be no greater than is essential to the furtherance of that interest).

⁴⁷ *Report and Order in Docket No. 19142, (In the Matter of Children's Programming and Advertising Practices)*, 49 FR 1704 (January 13, 1984); *Notice of Proposed Rule Making in BC Docket No. 81-496, (Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting)*, 87 F.C.C. 2d 716 (1982); See also *Commission Policy Concerning the Non-Commercial Nature of Educational Broadcast Stations*, 86 F.C.C. 2d 141 (1981), *recon. denied*, clarification and declaratory ruling granted, 90 F.C.C. 2d 895 (1982) (modification of over-the-air fundraising rules); *Report and Order in BC Docket No. 78-335, (Community Service Programming)*, 82 F.C.C. 2d 130, 142 (1980); *Report and Order in BC Docket No. 78-251, (On the Airing of Public Service Announcements by Broadcast Licensees)*, 81 F.C.C. 2d 346, 366 (1980); *Memorandum Opinion and Order in Docket No. 20682 (Changes in the Entertainment Formats of Broadcast Stations)*, 60 F.C.C. 2d 858 (1976), *recon. denied*, 66 F.C.C. 2d 78 (1977), *rev'd WNCN Listeners Guild v. F.C.C.*, 610 F.2d 838 (D.C. Cir. 1979), *rev'd sub nom.*, *F.C.C. v. WNCN*, *supra* at para. 8; *En Banc Programming Inquiry*, 44 F.C.C. 2303, 2314 (1980).

⁴⁸ See *U.C.C. v. F.C.C.*, *supra*, n. 35 (quantity alone cannot be a measure of a licensee's responsiveness).

⁴⁹ For example, a station with programs addressing public issues and aired during high viewership time but amounting to only three percent of its weekly programming may be doing a superior job to a station airing six percent non-entertainment programming, little of which deals with community issues and which is broadcast when the audience is small.

we are providing broadcasters with a more appropriate description of their programming obligation.

30. In summary, our analysis of the record with respect to overall station performance and our re-evaluation of the problems inherent in the existing regulatory scheme lead us to the conclusion that the programming guidelines should be eliminated.⁵⁰ As a result, we no longer believe that the public interest requires an evaluation of programming in the processing of uncontested renewal applications.⁵¹ Moreover, we note that remaining procedures are more than adequate to bring to our attention the failings of any particular licensee. As we have stated in numerous proceedings, citizen complaints and formal petitions to deny provide an important monitoring function in our regulatory endeavors. We believe these procedures will continue to provide us with important information relative to an individual licensee's compliance. We also note that we are not eliminating a licensee's obligation to provide programming that meets the needs of its community. We shall now turn to a more detailed discussion of this obligation in the context of the video marketplace.

4. Licensee's Obligations

31. While we conclude that the existing guidelines should be eliminated, we are not in this proceeding relieving a licensee of all programming responsibilities. As we noted in the radio deregulation proceeding, the Commission's involvement in the area of non-entertainment programming has always been driven by a concern that issues of importance to the community will be discovered and addressed in programming so that the informed public opinion, necessary in a functioning democracy, will be possible.⁵² Given our conclusion with respect to existing economic incentives, however, we believe that our new regulatory approach should place greater emphasis on the role of the marketplace in achieving our regulatory objectives. In addition, deletion of quantitative

⁵⁰ See *Black Citizens for Fair Media v. F.C.C.*, 719 F.2d 407 (D.C. Cir. 1983) *cert. denied* (No. 83-1498, June 18, 1984) (Commission may infer compliance given that the inference is rebuttable and the regulatory environment provides strong incentives for operation in the public interest).

⁵¹ *Greater Boston Television Corporation v. F.C.C.*, 44 F.2d 841, 852 (D.C. Cir. 1970) [agency's view of what is in the public interest may change without a change in circumstances as long as it has supplied reasoned analysis indicating that prior policies are being deliberately changed and not casually ignored.]

⁵² *Deregulation of Radio* *supra* n. 28 at 977.

guidelines as to programming responsibilities comports more closely with the Commission's programming concerns.

32. In light of these considerations, we believe that, in this context the only programming obligation of a licensee should be to provide programming responsive to issues of concern to its community of license. Accordingly, a commercial television broadcaster will remain subject to an obligation to provide programming that is responsive to the issues confronting its community. Moreover, licensees can be expected to demonstrate their compliance with this requirement by using the issues/programs list as discussed below.

33. A licensee, in the exercise of its good faith judgment, will be able to address issues by whatever program mix it believes is appropriate in order to be responsive to the needs of its community.⁵³ This includes, but is not limited to, programming described under current definitions of non-entertainment programming.⁵⁴ Moreover, licensees will also have the freedom to decide what amounts of such programming will be offered. Stations should continue to be guided by the needs of the community and their reasonable good faith discretion in selecting issues to be covered and appropriate programming responsive to those issues.

34. The significance of our new regulatory scheme lies not only in its impact on the programming behavior of licensees in today's video marketplace, but also in its flexibility in accommodating the natural economic incentives of the developing video marketplace. For example, as the number of video outlets increases, a television licensee may, in response to economic incentives, begin to direct its programming towards a narrower

audience.⁵⁵ Unlike the existing guidelines, the new regulatory approach fosters this development by allowing the licensee to consider the programming of other television stations in its market in fulfilling its programming responsibilities.⁵⁶

35. Having discussed the basic programming obligation being adopted by our action today, we believe it is appropriate to discuss the impact of this action within the contexts of uncontested renewals, petitions to deny and comparative proceedings. At the outset, we envision no significant change in petitions to deny or comparative proceedings.

36. *Renewal Standard.* In general, the basic renewal standard will continue to consist of an obligation that a licensee, during its prior license term, addressed community issues with responsive programming and complied with all other legal requirements. A licensee need only have addressed community issues with whatever types of programming, that in its reasonably exercised discretion, it determined was appropriate to those issues. With respect to uncontested applications, our determination in this proceeding permits us to make the renewal judgment called for by section 309 of the Communications Act of 1934, as amended, on a presumption of compliance with this standard.⁵⁷ Accordingly, we will no longer routinely review a licensee's programming in the uncontested renewal context.

37. *Petitions to Deny.* Individual licensees remain obligated to provide programming that is responsive to the community. Therefore, programming will remain a relevant issue in proceedings arising from petitions to deny. While

overall programming remains a consideration in petitions to deny, eliminating the guidelines will affect the relevancy of certain types of programming issues. Since we are not concerned with the quantity of specified program categories, arguments based solely on the failure to present amounts of nonentertainment programming will not be appropriate.⁵⁸ Petitioners raising programming issues will have to demonstrate that an individual station is failing to address issues facing the community in its programming.⁵⁹ The focus of an allegation in this context should not be on the mere amount of programming presented. We have no wish to return to a simple quantitative approach. Moreover, we believe the obligation of a licensee in this context is to contribute to the overall information flow in its market. Thus, while this obligation is not negated by the existence of other issue-responsive programming in the market, it may be affected by the amounts and types of programming provided by other television broadcasters. The basic responsibility to contribute to the overall discussion of issues confronting the community is a non-delegable duty for which each licensee will be held individually accountable.

38. Similarly, petitioners may make allegations in a petition to deny that an individual station has failed to address issues of particular relevance to a significant segment of the community. Such a petition may be brought even in cases where a licensee has provided some issue-responsive programming.⁶⁰ We believe that a station confronted with this type of petition to deny should be able to respond by pointing not only to its own programming that may have addressed such issue, but also to other television stations available in the community that could reasonably have been relied upon to address such issues.⁶¹ Of course, a licensee will not

⁵³ Of course, broadcasters cannot engage in intentional discrimination in the selection of issues to be addressed in their programming. See *Deregulation of Radio* supra at 978. See also *LaMar Life Broadcasting Co.*, 38 F.C.C. 1143, 1154-55 (1965), rev'd and remanded on other grounds sub nom., *Office of Communications of the United Church of Christ v. F.C.C.*, 359 F.2d 994 (D.C. Cir. 1966).

⁵⁴ We envision no departure from the definitions of issue responsive programming established in the radio deregulation proceeding. See *Memorandum Opinion and Order* in B.C. Docket No. 79-219, 87 F.C.C. 2d 797, 807 (1981). As in radio deregulation, such programming can consist of, by way of example and not limitation, public affairs, public service announcements, editorials, free speech messages, community bulletin boards and religious programming. *Deregulation of Radio* supra at 982-983. Indeed, programming in any of the categories contained in the 1960 Programming Statement could be issue-responsive. See *U.C.C. v. F.C.C.* supra. We note, however, that generally, entertainment programming is not issue-responsive. See *Report and Order* in B.C. Docket No. 78-335 (*Community Service Programming*) supra n. 47 at 150.

⁵⁵ See Owen, Beebe & Manning, *Television Economics* at pp. 49-90 (1974).

⁵⁶ In this context, the term "television stations" includes both commercial and non-commercial television stations. We emphasize, however, that the existence of a non-commercial television station in a market does not obviate a licensee's obligation to provide programming that is responsive to issues facing the community. See *Deregulation of Radio* supra n. 28 at 1088.

⁵⁷ We note that current postcard renewal procedures do not require submission of programming data. Question 5 of the renewal short form, concerning compliance with the Commission's rules relative to the public inspection files, encompasses the obligation to provide issue-responsive programming. See *Report and Order* in the B.C. Docket No. 80-253, (*Revision of Applications for Renewal of License of Commercial and Non-Commercial AM, FM, and Television Stations*), 46 FR 26236 (May 11, 1981). The existence of short form renewal procedures in a deregulated environment has received judicial approval. See *Black Citizens for Fair Media v. F.C.C.*, supra n. 50. Elimination of the programming delegations, however, does call into question the continued need for current long form audit procedures for commercial television stations. See text *infra* at para. 80.

⁵⁸ The petition to deny procedure is governed by statute. See 47 U.S.C. 309(d). However, the types of issues which are considered relevant in this process are subject to change by the Commission. *Deregulation of Radio*, supra at 990.

⁵⁹ Petitions to deny must still contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be *prima facie* inconsistent with the public interest. 47 CFR 73.3584(a).

⁶⁰ See *Stone v. F.C.C.*, supra n.37. See also *Alianza Federal de Mercedes v. F.C.C.*, 539 F.2d 736 (D.C. Cir. 1976), *Deregulation of Radio*, supra at 991.

⁶¹ It is in this context that we believe our action today will serve to increase the number of issues placed on the public's agenda, thereby advancing the fundamental goal of diversity. Under existing regulations licensees cannot look to other stations in determining which issues to address. Allowing licensees to look to other television stations in

have to demonstrate that programming was available in the community in an amount proportional to the complaining group's representation of the community.⁶² Since all individuals have general interests as well as special interests, we believe it is inappropriate to expect special interest programming to be proportional to special interest populations.

39. The focus of our inquiry in the petition to deny context can be expected to be whether the challenged licensee acted reasonably in choosing the issues it addressed in its programming. Assessing the reasonableness of a licensee's decision will necessitate an *ad hoc* review to examine the circumstances in which the programming decision was made.⁶³ The examination will focus on the licensee's evaluation of the programming of other television stations and its own responsive programming in light of the needs of its community. In any event, in the face of a petition to deny which makes a *prima facie* case that a licensee has been unreasonable, the burden will be upon the licensee to demonstrate that the exercise of discretion was appropriate in the circumstances. Of course, all other potential grounds for petitions to deny that are not affected by this proceeding will remain as valid grounds for such petitions.

40. *Comparative Proceedings.* We recognize that at the present time the Commission has before it a pending *Further Notice of Inquiry* in BC Docket No. 81-742, 47 FR 46117 (October 1982) concerning comparative renewal standards. Our action today in no way prejudices any issues raised in the context of that proceeding. Until these issues are resolved, however, we believe it is appropriate to discuss the impact this decision will have on the existing comparative process. As in radio, two

determining which issues to address, coupled with the responsibility to contribute issue-responsive programming may increase the absolute number of issues receiving coverage on television. The Court of Appeals recognized the pro-diversity aspects of deregulation in reviewing the radio deregulation order.

"On this view, then, radio stations must specialize to prosper, and audiences benefit by the increased diversity of program offerings across the market—a benefit that offsets the loss of more diverse programming on any individual station. *U.C.C. v. F.C.C.* at 1434."

We believe this logic is applicable to the instant proceeding. However, we recognize that significant cross-market diversity benefit may not be fully realized until video markets mature and move towards a narrowcasting model.

⁶² See *Stone v. F.C.C.*, *supra*.

⁶³ Such *ad hoc* evaluations have been made by the Commission in other areas. See *Fairness Doctrine Primer*, 40 F.C.C. 2d 598, 599 (1964). *Fairness Report*, 48 F.C.C. 2d 1, 9 (1974). *Deregulation of Radio*, *supra* n. 28 at 992.

crucial questions arise with regard to comparative proceedings. The first issue concerns whether elimination of the guidelines will adversely affect a licensee's legitimate renewal expectancy. The second, and more fundamental concern, is the way in which issue-responsive programming will be evaluated in the comparative context. In this regard, we note that this proceeding will not depart from current comparative evaluation with respect to non programming factors or in the current manner of evaluating other types of programming which do not fall within our new issue-responsive scheme.

41. The existing programming guidelines are utilized solely for the routine processing of *uncontested* renewal applications. Many commenters, however, expressed concern that elimination of the guidelines would impact adversely on a licensee's "legitimate renewal expectancy" in the comparative renewal context. As we concluded in the radio deregulation proceeding, there is no nexus between the programming guidelines and the granting of a renewal expectancy. In that context, compliance with the programming guidelines has never been utilized as a measure for determining substantial or minimal program performance. On the contrary, the fundamental inquiry in granting a comparative preference is whether the licensee has presented programming that addressed the issues facing its community. The Commission has consistently refrained from adopting quantitative standards in the comparative renewal context, preferring to review comparative hearings on an *ad hoc* basis.⁶⁴

42. We conclude that elimination of the programming guidelines will not affect existing programming considerations in either the competing new applicant or the comparative renewal contexts. The standards for evaluating competing new applicants are set out in the *1965 Policy Statement on Comparative Broadcast Hearings*.⁶⁵ While programming may be a consideration in these proceedings, it is but one of several elements that may be of decisional significance.⁶⁶

⁶⁴ See *Report and Order* in BC Docket No. 19154, 66 F.C.C. 2d 419 (1977) (terminating proceeding commenced in 1971 relative to adopting a quantitative standard for determining substantial service). The decision not to adopt such a quantitative standard was upheld by the Court of Appeals. *N.B.M.C. v. F.C.C.*, *supra* n.44.

⁶⁵ *Policy Statement on Comparative Broadcast Hearings*, 1 F.C.C. 2d 393 (1965).

⁶⁶ *Id.* The primary factors in the comparative analysis as defined in the *1965 Policy Statement*, are (1) diversification of control, and (2) best practicable service to the public. *Id.* at 394. The

Moreover, programming issues are raised only where there are material and substantial differences between competing proposals.⁶⁷ When programming becomes an issue, however, the Commission's evaluation is not based on the mere compliance with quantitative criteria. Instead, the Commission determines which programming proposal would best meet the needs of the community. Accordingly, elimination of the programming guidelines will not affect the way in which programming is evaluated in the competing new applications process.

43. Apart from the criteria established in the *1965 Policy Statement*, comparative renewal proceedings raise the issue of how much weight should be given to an incumbent's past programming performance.⁶⁸ The procedures for evaluating applications in the comparative renewal context were solidified in the Commission's *Cowles Broadcasting* decisions.⁶⁹ In *Cowles*, the Commission concluded that an incumbent licensee could be granted a renewal expectancy for past meritorious service. The "expectancy" amounts to a comparative preference which is weighed against other factors such as diversification, integration and licensee misconduct.⁷⁰ The strength of the comparative preference depends on the merit of the incumbent's past programming.⁷¹

"best practicable service" rubric covers the integration of ownership with management, minority ownership, and the local residence, broadcast experience and civic activities of the owners. *Id.* at 395-99.

⁶⁷ *Id.* at 397. See *Johnston Broadcasting Co. v. F.C.C.*, 175 F.2d 351, 359 (D.C. Cir. 1949) [decisional significance accorded only to material and substantial differences between proposed program plans.]

⁶⁸ See *Policy Statement on Comparative Hearings Involving Regular Renewal Applicants*, 22 F.C.C. 2d 424 (1970), *rev'd Citizens Communications Center v. F.C.C.*, 447 F.2d 1201, 1214 (D.C. Cir. 1971); *Report and Order* in BC Docket No. 19154, 66 F.C.C. 2d 419, *aff'd N.B.M.C. v. F.C.C.*, *supra*.

⁶⁹ *In re: Cowles Broadcasting Inc.*, 60 F.C.C. 2d 372 (1976) *recon. denied* and clarified 62 F.C.C. 2d 953 (1977), *recon. denied* 40 RR 2d 1627 (1977), vacated and remanded *sub nom. Central Florida Enterprises Inc. v. F.C.C.*, 598 F.2d 37 (D.C. Cir. 1978) *cert. denied*, 441 U.S. 957 (1979) on remand, *recon. denied* 86 F.C.C. 2d 993 (1981) *aff'd Central Florida Enterprises Inc. v. F.C.C.*, 683 F.2d 503 (D.C. Cir. 1982).

⁷⁰ *Cowles Broadcasting Inc.*, 66 F.C.C. 2d at 1012.

⁷¹ See e.g., *Deregulation of Radio* *supra* at 984; *Victor Broadcasting, Inc. v. F.C.C.* No. 82-1964, slip. op. (D.C. Cir. 1983). The generic questions of how the Commission should label and define that level of service that would give rise to a legitimate renewal expectancy are currently under examination in BC Docket No. 81-742, in response to a *Further Notice of Inquiry* in that proceeding. Some commenters suggested adoption of quantitative programming standards as either

Continued

44. Our action today allows a commercial television station licensee to consider the programming of the other television stations in its market when selecting its issue-responsive programming. Accordingly, an applicant's proposed programming or past programming performance may properly reflect such considerations.

B. Ascertainment

1. Background

45. Currently, applicants for television licenses, and those seeking renewal of existing licenses, are required to follow specific ascertainment procedures set forth in the *Primer*⁷² and *Renewal Primer*.⁷³ Specific standards are established for determining the composition of the area to be served, consultation with community leaders and members of the general public, enumerating of community problems and needs, evaluation of the problems and needs, and relating proposed programming to the evaluated problems and needs. In addition, those seeking renewal must maintain an ongoing ascertainment process during their license terms, possess a community leader checklist, maintain information of the composition of the community in the public file, place documentation of ascertainment procedures in the station public inspection file, and annually file a list of not more than ten problems and needs of the station's service area along with a list of programs treating those problems and needs.

2. Proposals

46. In the *Notice*, the Commission set forth two proposals relative to formal ascertainment requirements. Option I called for the elimination of formal ascertainment obligations. All references to ascertainment would be deleted from Commission rules and the *Primers* would be abolished. Option II

mandatory or voluntary benchmarks for measuring meritorious performance. Our action today in abolishing the numerical processing guidelines does not signify any predetermination of the issue of the desirability and/or necessity for quantitative standards to be applied for purposes of assessing a legitimate renewal expectancy in the context of a comparative challenge. Should the Commission be required to address these questions during the pendency of this proceeding, we shall consider them on a case-by-case basis. Of course, the Commission would take cognizance of the fact that licensees may consider the programming of other stations in the market as they select their own issue responsive programming.

⁷² *Ascertainment of Community Problems*, 27 F.C.C. 2d 650 (1971).

⁷³ *First Report and Order in Docket No. 19715 (In the Matter of Ascertainment of Community Problems by Renewal Applicants)*, 57 F.C.C. 2d 418, 441 (1975), recon. granted in part, 61 F.C.C. 2d 1 (1976).

called for the retention of an ascertainment requirement but would allow licensees to use any reasonable means to do so. The adequacy of a station's procedures would not be questioned absent a complaint that the licensee failed to meet its programming obligation.

3. Discussion

47. The Commission herein adopts Option I as set forth in the *Notice*. We believe that the public interest no longer requires adherence to ascertainment procedures. In conformance with the programming obligations set forth above, commercial television licensees, applicants for new television licenses, for the assignment or transfer of existing licenses or applicants for major modifications of existing facilities may determine the issues in their community that warrant consideration by whatever means they consider appropriate. The Commission will not request standardized documentation and submission of these efforts.

48. Ascertainment procedures were never intended to be an end in and of themselves. Rather, these procedures were intended as a means of ensuring that licensees actively discovered the problems, needs and issues facing their communities, thereby positively influencing the programming performance of stations by affecting the process of program decision-making. Yet, we have no evidence that these procedures have had such an effect.⁷⁴ Indeed, under existing requirements there is no guarantee that once a concern is ascertained by formal or informal means, programming responsive to that concern will be presented.⁷⁵ Moreover, we believe that licensees become and remain aware of the important issues and interests in their communities for reasons wholly independent of ascertainment requirements, and that our existing procedures are, therefore, neither necessary nor, in view of their significant costs, appropriate.

49. The current figures for non-entertainment programming categories show percentages far beyond those sought under the guidelines.⁷⁶ These figures indicated that non-entertainment programming is a financially important part of the broadcaster's revenue and that there are reasons other than regulatory oversight to engage in this programming. Commercial necessity

dictates that the broadcaster must remain aware of the issues of the community or run the risk of losing its audience. In short, present market forces provide adequate incentives for licensees to remain familiar with their communities. Moreover, future market forces, resulting from increased competition, will continue to require licensees to be aware of the needs of their communities. Given this commercial reality, we believe that the need for our ascertainment regulation has declined and will continue to decline, and that the Commission should eliminate it.⁷⁷

50. We note in this regard that ascertainment is not mandated by the statute and is not an exclusive way to assure that licensees remain aware of their communities. Indeed, the Commission has recently relaxed ascertainment requirements in several areas. Ascertainment procedures are no longer required in the case of commercial radio,⁷⁸ or in the case of small markets,⁷⁹ and we are today eliminating ascertainment requirements for non-commercial stations.⁸⁰ In addition, the Commission has also refrained from imposing ascertainment requirements upon alternate video technologies.⁸¹

51. The costs of ascertainment are numerous. The Commission estimates that elimination of ascertainment requirements will result in annual savings of 66,956 work hours to the industry and 761.5 work hours to the Commission.⁸² A study conducted by

⁷⁷ Such a determination is consistent with the purposes and intents of Congress to eliminate unnecessary government regulation. Regulatory Flexibility Act, Paperwork Reduction Act of 1980, *supra* n.8.

⁷⁸ *Second Report and Order in BC Docket 79-219 (Deregulation of Radio)*, 49 FR 19019 (May 4, 1984).

⁷⁹ *Small Market Ascertainment Exemption*, 86 F.C.C. 2d 798 (1981) *Aff'd sub. nom. National Black Media Coalition v. F.C.C.* 706 F.2d 1224 (D.C. Cir. 1983).

⁸⁰ *Report and Order in BC Docket No. 81-496 (Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees)*, — F.C.C. 2d — (Adopted June 27, 1984).

⁸¹ *Subscription Television Service*, 90 F.C.C. 2d 341, 358 (1982); *Report and Order in BC Docket No. 78-253 (Inquiry into Future Role of Low Power Broadcasting)* 47 FR 21468, 21491 (May 18, 1982); *Report and Order in Gen Docket No. 80-603 (Inquiry into Development of Regulatory Policy in regard to Direct Broadcast Satellites)*, 90 F.C.C. 2d 676 (1982); see generally 47 CFR Part 76, Cable Television Service.

⁸² These figures, developed by the mass Media Bureau for the Administrative impact statement in this proceeding, assume that licensees will still ascertain community interests and concerns absent formal ascertainment procedures. Based on this assumption, the figures presented are 50 percent of the actual hour savings estimated by the Mass Media Bureau connected with the elimination of formal ascertainment procedures.

⁷⁴ See *Ascertainment of Community Problems by Renewal Applicants*, *supra* at 460 (dissent of Commissioner Robinson).

⁷⁵ See *Deregulation of Radio*, *supra* n.28 at 996.

⁷⁶ See paras. 10-15, *supra*.

Michael O. Wirth found the annual mean cost of ascertainment for the licensee to be \$6,574.⁸³ An informal survey conducted by NAB found the range of costs to be from \$2,425 to \$8,986.⁸⁴

52. Other costs to the public, the licensee, and the Commission must be considered as well, such as the expense of litigation over the formalized requirements of ascertainment. The Commission has previously characterized its experience with ascertainment in the adversarial arena as "litigation over trivia."⁸⁵ As we observed in the *Notice*, the *Pike and Fisher Radio Regulation Digest* currently contains over sixty pages of ascertainment annotations, most relating to mechanistic aspects of the process.⁸⁶ Furthermore, ascertainment hearings unnecessarily delay service to the public. Even without actual litigation, it is clear that substantial resources are expended to make certain that a formalistic challenge is avoided.⁸⁷

53. Finally, we find that to the extent the licensee is compelled to follow specific procedures, resources are diverted and the opportunity for licensee discretion is foreclosed. The resources which the licensee is forced to expend to satisfy procedural requirements are lost from other potentially beneficial activities, such as program production in response to determined needs.⁸⁸

⁸³ The study, using 1979 data from 43 randomly selected stations, was presented to the Economics Division of the Western Social Service Association Annual Conference, Denver, Colorado (April 22, 1982) and entitled "Television and Radio Expenditure Behavior Under the Uncertainty of License Renewal." While the mean cost of ascertainment is found to be \$6,574, the standard deviation related to cost is \$7,370 signifying that the costs of ascertainment are quite varied. 68 percent of these surveyed have costs of ascertainment between 0 and \$13,944.

⁸⁴ These figures, included in the NAB comment to this proceeding, are the result of a telephone survey conducted in 3 television markets in October, 1983. The average station in the top 50 market surveyed estimated it would spend 27 percent less money and 29 percent less time absent formal procedures. The average station in the 51-100 market estimated savings at 25 percent less money and 18 percent less time while the average for the 101+ market was 29 percent less money and 23 percent less time absent formal procedures.

⁸⁵ *Revision of Application for Construction Permit for Commercial Broadcast Station*, 50 FR 2d 381, 382-383 (1981).

⁸⁶ *Notice* at 37247.

⁸⁷ Counsel must be consulted to assure that formalities have been satisfied. Many of the commenters noted that a major savings from the elimination of formal ascertainment would be a reduction in attorney's fees.

⁸⁸ Many of those questioned in the informal NAB survey noted they would continue an "ascertainment" procedure but forego significant savings in the efficiencies they could realize absent formal requirements.

4. Conclusion

54. We do not believe that the benefits of the ascertainment requirements justify the costs of this procedure. While ascertainment does provide the licensee with knowledge of the community, it is clearly not the exclusive means of acquiring this knowledge, and is certainly not the most efficient. Licensees, like other citizens, are exposed to newspapers, newsletters, town meetings and other community activities, all of which provide indications of those issues that are important to the community. Broadcasters do not operate in a vacuum and, as discussed above, it is in the economic best interest of the licensee to stay informed about the needs and interests of its community. Given these considerations, as well as the continuing obligation of all licensees to provide issue-responsive programming, we believe that ascertainment requirements can now be abandoned with little or no risk of adverse effects on the programming performance of television licensees.⁸⁹ Accordingly, in all future proceedings, the focus of our inquiry shall be upon the responsiveness of a licensee's programming, not the methodology utilized to arrive at those programming decisions. If the programming presented by the licensee satisfies its obligation, the ascertainment efforts of the station are irrelevant.

C. Commercial Guidelines

1. Background

55. The Commission's concern with commercial practices has been shaped by two primary considerations: the desire to prevent the abuse of scarce broadcast resources through excessive commercialization, and a reluctance to adopt rigid quantitative standards.⁹⁰ As the *Notice* observed, our regulation of commercial practices has been characterized by the concern that licensees avoid abuses with respect to the total amount of time devoted to

⁸⁹ We note as well that licensees remain obliged to ensure the market availability of programming addressing the strongly felt needs of significant segments of their communities. See *Stone v. F.C.C.*, *supra* n.37.

⁹⁰ The *Notice* cited the following examples of Commission consideration and rejection of proposals to adopt quantified commercial requirements: *Notice of Proposed Rule Making*, 28 FR 5158 (May 23, 1963) (looked toward the adoption of rigid commercial standards but chose not to adopt such standards); *Commercial Advertising Standards*, 36 F.C.C. 45 (1964) (refused to initiate rule making regarding overcommercialization citing lack of public reaction and possible First Amendment problems); *TV Overcommercialization*, 49 FR 2d 391 (1981) (concluding that best form of regulation was self-imposed voluntary restraint).

advertising as well as the frequency with which programming is interrupted for commercial messages.⁹¹ In our 1973 *Order (Amendments to Delegations of Authority)*,⁹² we adopted the 16 minute commercial guideline at issue herein. It was our intention in adopting a guideline rather than a rule, that licensees be given some flexibility in fulfilling their public interest responsibility as it relates to commercialization. However, it has been suggested that given the penalty for exceeding the guideline, it has the practical effect of a rule. In addition, the evidence demonstrates that levels of commercialization have remained significantly below the 16 minute ceiling imposed by the guideline.

2. Proposals

56. The commercial standard at issue herein is contained in § 0.283(a)(7) of our rules. Under this rule, the authority to review proposed levels of commercialization in new applications, renewals or transfers, is delegated to the Mass Media Bureau, except in the case of

[c]ommercial TV applicants for a new station, or assignment or transfer, or renewal of license, proposing to exceed 16 minutes of commercial matter per hour, or during periods of high demand for political advertising, providing for exceptions permitting in excess of 20 minutes of commercial matter per hour during 10 percent or more of the station's total weekly hours of operation.

Those applications which propose to exceed this guideline must be reviewed by the Commission.

57. In the *Notice*, we proposed two specific options for modifying this procedure as well as a general statutory model. We sought comments on these proposals and invited commenters to offer alternatives. The three options proposed in the *Notice* were:

(1) The elimination of all rules and policies restricting the amount of commercial time and reliance on marketplace forces to regulate levels of commercialization;

(2) The amendment of the commercial time restrictions to give broadcasters more discretion and encourage experimentation but retention of some oversight authority; and

⁹¹ *Report and Statement of Policy Re: Commission en banc Programming Inquiry*, 44 F.C.C. 2303 (1960).

With respect to advertising material, the licensee has the additional responsibility . . . to avoid abuses with respect to the total amount of time devoted to advertising continuity as well as the frequency with which regular programs are interrupted for advertising messages.

⁹² 43 F.C.C. 2d 638 (1973).

(3) the general statutory model recommending reliance solely upon whatever applicable requirements were explicitly contained in the Act.

Comments submitted expressed preferences all along this regulatory continuum.

3. Discussion

58. The record in this proceeding provides convincing evidence that marketplace forces can better determine appropriate commercial levels than our own rules. In addition, such reliance provides a significantly less intrusive and less expensive alternative than our current regulatory scheme. Based on our decision today, the above-noted commercial guideline is herein eliminated. The Commission will no longer consider levels of commercialization in the processing of license applications. Furthermore, we will no longer entertain petitions to deny based on allegations of overcommercialization. Finally, we will rescind our policy banning program length commercials.⁹³

(a) *Market Incentives.* 59. The Notice in this proceeding included an analysis of the number of commercial minutes aired on commercial television stations in three states during a recent license renewal period.⁹⁴ The data showed that network affiliates averaged 10.87 minutes of commercial matter per hour when the entire broadcast day was considered.⁹⁵ The Notice also found that

⁹³ Similar action was approved by the Court of Appeals for the D.C. Circuit in the radio deregulation proceeding. "[T]he Commission acted well within its discretion by concluding from the record and its own experience that it is the marketplace and not regulation that has kept down the level of commercialization. The Commission hypothesized that since audiences avoid radio with excessive advertising, those stations would become less attractive to advertisers, and therefore, would lose advertising revenue. Thus, at present and in the future, a self-regulating market mechanism will prevent overcommercialization. In the absence of any statutory mandate obligating the Commission to maintain these processing guidelines, this court must give substantial deference to such policy judgments and predictions of future industry behavior." *U.C.C. v. F.C.C.*, supra n.35 at 1438.

⁹⁴ See Notice, supra n.1 at 37254-55, Appendix C.

⁹⁵ The Notice also cited a less exact estimation of 13.5 commercial minutes obtained per hour of network programming, by simply adding the network and local commercial averages. However, this figure fails to account for variations in the amount of commercial time throughout the broadcast day. The above-noted average of 10.87 is more statistically accurate because it is calculated by adding the average number of local commercial minutes aired by an affiliate per day to the average number of network commercial minutes and then dividing by the daily average number of broadcast hours.

99.67 percent of all broadcast hours studied were within the guideline. A study proffered by NAB in its comments submitted in this proceeding also found commercialization levels significantly below the guideline.⁹⁶ Using a sample of 166 VHF stations (136 network affiliates and 30 independents), NAB found that network affiliates averaged 10.4 minutes of commercials per hour while independents averaged 9.6, for an overall average of 10.3 commercial minutes per hour. In either case, the data convincingly demonstrate that marketplace forces, and not the guideline, are the decisive factor in determining appropriate levels of commercialization for commercial television stations.

(b) *Burdens of Existing Regulation.* 60. Based on the foregoing evidence, we can no longer continue to justify either the direct costs imposed by adherence to the commercial guideline—the paperwork burden of record keeping, reviewing and monitoring—or its more indirect costs such as possible anti-competitive effects or stifling commercial experimentation and intrusion into the realm of commercial speech protected by the First Amendment.

61. The direct burdens imposed by the guideline are straightforward and do not require further illumination herein. However, we believe that closer examination of the indirect costs of our guideline will help to clarify our actions today.

62. *Competitive Effect.* A significant danger posed by our commercial guideline is that it may impede the ability of commercial television stations to present innovative and detailed commercials. In addition to creating a potential disadvantage to video and non-video services currently in operation, our regulation may also interfere with the natural growth and development of broadcast television as it attempts to compete with future video market entrants. We believe that this risk can no longer be justified in view of our conclusion that the desired result is produced by primary reliance on marketplace forces.

63. *First Amendment Concerns.* In addition to potential anti-competitive effects, we are concerned about becoming involved in the regulation of program content and of the attendant potential chilling effect on commercial speech which the guideline might exert. The Supreme Court has granted significant First Amendment protection

to commercial speech.⁹⁷ Moreover, the continued existence of very broad governmental regulations is inconsistent with the Supreme Court's mandate in *United States v. O'Brien* that regulation in constitutionally sensitive areas use the least restrictive means suitable to achieving its legitimate ends 391 U.S. at 377 (1978).⁹⁸ The record in this proceeding, including the date and economic analysis performed herein, demonstrates that marketplace forces should effectively regulate commercial excesses. That evidence, in addition to the absence of any indication that elimination will otherwise harm the public interest, provides sufficient cause to eliminate the commercial guideline.

(c) *Other Considerations.* 64. The empirical data presented in the Notice demonstrate to our satisfaction that commercial levels will be more effectively regulated by audience selection and market forces than by the guideline. The data presented by NAB in its comments in this proceeding corroborate this finding. However, several commenters suggest that because most of these data were collected while the NAB Code was still in force, its results might be misleading. While this suggestion of possible bias must be considered, we note that not all television stations subscribed to the Code and that those subscribing were not subject to vigorous NAB enforcement. However, the relevant data are sufficiently dramatic to demonstrate that the levels of advertising are not dependent on the NAB Code or Commission guidelines. Thus, it is our conclusion, based on the extent to which actual performance fell below the guideline, that it is competition, not enforcement of the guidelines or the NAB Code, that most effectively regulates current levels of commercialization.

65. Another concern raised by commenters in this proceeding was that elimination of the guideline might increase commercial "clutter"—the number of consecutive advertisements in each commercial break. Currently the Commission does not regulate this aspect of commercialization. However, it is our opinion that eliminating the guideline will not significantly change the behavior of licensees in this area. We believe that (1) audiences are likely to avoid stations with excessive clutter,

⁹⁷ See *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976); *Bates v. State Board of Arizona*, 433 U.S. 350 (1976); and *Bigelow v. Virginia*, 421 U.S. 809 (1975).

⁹⁸ See also *Home Box Office, Inc. v. F.C.C.*, supra n.39 at 48.

⁹⁶ The NAB study, cited in Appendix C of its comments, covers the period from 1978 to 1983.

thus making those stations less attractive to advertisers; and (2) advertisers are likely to avoid such stations because their advertisements are less effective within the clutter of other commercial matter.

66. Finally, several commenters objected that market forces will not be adequate to control overcommercialization because of the fractured economic relationship between the licensee and its audience. Suggesting that licensees in fact market their product primarily to advertisers rather than audiences, these parties suggested that elimination of the guideline would increase commercial loading and ultimately result in greater advertiser control over programming. As noted, however, the record does not support the assumption that elimination of the guidelines will lead to increased commercial loading. Moreover, to the extent the concerns raised by these commenters are directed to the fundamental, advertiser supported nature of commercial television, we would readily concede that the advertiser supported nature of the medium has some effect on program content. Again, however, there is no concrete evidence that elimination of the commercial guideline will lead to an increase in the programming power of advertisers to the detriment of the public interest.

4. Conclusion

67. By our action today, the current commercial guideline is eliminated. It is our intention that this change promote licensee experimentation and otherwise increase commercial flexibility. We are taking this step because we are convinced that commercial levels will be effectively regulated by marketplace forces and because we do not believe that elimination of the guideline will otherwise harm the public interest. In sum, it seems clear to us that if stations exceed the tolerance level of viewers by adding "too many" commercials the market will regulate itself, i.e., the viewers will not watch and the advertisers will not buy time.⁹⁹

D. Program Logs

1. Background

68. Since the beginning of broadcast regulation, some types of program logging requirements have existed.

⁹⁹ We note that our action today does not prejudice the issues raised in the complaint filed by Action for Children's Television. See, e.g., *In the Matter of Continental Broadcasting Network, Inc. (WXNE-TV Boston) et al.* (filed October 11, 1983), the complaint filed by The National Association for Better Broadcasting against KCOP-TV Los Angeles (filed April 5, 1984) and other related pleadings.

Under present rules the Commission requires television broadcasters to maintain a contemporaneous listing of all programs broadcast.¹⁰⁰ The program type and source must also be set forth. Program logs must be maintained for a period of two years.¹⁰¹ Television licensees are required to make these logs available for public inspection if the requester of the information meets certain procedural safeguards.¹⁰² Although, a copy of the program logs for a composite week are to be submitted to the Commission by those renewal applicants selected to complete the long form audit, as a general matter, the logs are not to be filed with this agency.¹⁰³ When filed, the logs are perused by the Commission to determine whether the licensee has programmed in accordance with the promises made in its previous license application.

2. Proposals

69. As mentioned in the *Notice*, according to a 1978 GAO report, the Commission's logging requirements constituted the largest government burden on business in terms of total burden hours.¹⁰⁴ According to calculations made by Commission staff, previously indicated in the *Notice*, the burden imposed on commercial television licensees by our program log requirements exceeds 2,468,000 hours per year.¹⁰⁵ Because the Commission's actual utilization of the program logs is minimal, and therefore we felt the burdens imposed by our present requirements might not be justified, their elimination was proposed. In addition, since our program logging requirements are intended as documentation of a licensee's programming and commercialization practices, if these policies are amended or eliminated, retaining the present logging requirements might be unnecessary.

70. We were mindful of the *Notice* that in the radio deregulation case, the Court of Appeals questioned the Commission's action eliminating the

program log requirements and replacing them with an issues/programs list.¹⁰⁶ Although upholding the Commission's action deleting guidelines regarding non-entertainment programming and commercial levels and eliminating community ascertainment requirements for commercial radio stations, the court inquired into whether a revised log would be a more appropriate mechanism than the issues/programs list for meeting the informational needs of the Commission and the public. The court asked whether, in view of the new regulatory scheme for radio, this annual list could provide a sufficient gauge of a station's overall public service performance. Therefore, we proposed in the *Notice* in the instant proceeding to explore those options raised by us on remand in the radio deregulation proceeding. In the radio deregulation *Second Report and Order*, *supra* n. 78, the Commission resolved to retain the issues/programs list obligation. However, it modified this duty in two respects. First, it eliminated the limitation that no more than 10 issues be listed. Second, the Commission required that these lists be prepared and made available quarterly rather than annually.¹⁰⁷ Commenters in the instant case were also invited to address the question whether a revised program logging rule by itself would satisfactorily meet the Commission's information collection requirements. In raising these questions for comment, we cautioned the parties to keep in mind the Commission's goal of carefully tailoring any reporting or logging rules to assure the collection of truly needed information while minimizing the burdens imposed on those submitting the information.

3. Discussion

71. After carefully reviewing the record in this proceeding, we have concluded that the best method of documentation suitable and adequate to our new regulatory scheme for television broadcasting is a quarterly issues/programs list requirement.¹⁰⁸ This list is

¹⁰⁰ Amendment of Program Logging Rules for Television Broadcast Stations, 5 F.C.C. 2d 185 (1966).

¹⁰¹ See § 73.1840 of the Commission's Rules.

¹⁰² Program Logs, 44 F.C.C. 2d 845 (1974), *recon. denied*, 45 F.C.C. 2d 781 (1974).

¹⁰³ For the Commission's adoption of a streamlined and simplified license renewal procedure. See *Revision of Application for Renewal of License of Commercial and Noncommercial AM, FM, and Television Licensees*, 49 RR 2d 740, (1981) *recon. denied*, 50 RR 2d 704 (1981). *Aff'd sub nom. Black Citizens for a Fair Media v. F.C.C.*, *supra* n. 50.

¹⁰⁴ GAO, *Federal Paperwork: Its Impact on American Business*, pp. 43-44 (1978).

¹⁰⁵ There is no less reason for that number to have changed since its original calculation, less than a year ago.

¹⁰⁶ U.C.C. v. F.C.C., *supra* n. 41.

¹⁰⁷ In the *Further Notice of Proposed Rule Making* in BC Docket No. 79-219, 48 FR 33499 (July 22, 1983), we stated that our tentatively preferred reporting option involved an exemplary annual issues/programs list with from five to ten issues of concern to the community plus some form of log specifying the date, time, duration and issue addressed for all those programs aired that are responsive to community issues. We also indicated that the issues/programs list alone might be sufficient to oversee and implement our newly instituted policies.

¹⁰⁸ By the action taken herein, we no longer require a commercial television broadcaster to

to be placed in a station's public inspection file and it should contain, in narrative form, a brief description of at least five to ten issues to which the licensee gave particular attention with programming in the past three months with a statement of how each issue was treated.¹⁰⁹ The list also is to include information pertaining to the date and time of broadcast and the duration of listed programming. While this list is intended to be exemplary in nature, quarterly submission should provide a sufficient record for making a public interest evaluation.

72. In evaluating the merits of the various options proposed, we have focused on the costs to be imposed on commercial television licensees and the benefits to be gleaned by the public and the Commission. Although an annual issues/programs list minimally burdens broadcasters, it is unclear that it provides adequate information for the Commission and the public to judge a station's overall public service performance. On the other hand, the proposed comprehensive log would significantly burden broadcasters and yet may not provide the most useful information to evaluate a station's public interest programming. See para. 76, *infra*.

73. As to costs of logging, commenters in this proceeding asserted that logs containing information relevant to the new regulatory scheme would require involvement of management level staff and therefore would be substantially more costly and burdensome than the simple traditional logs, which can be maintained by clerical staff. We have no cause to question these assertions, and they seem reasonable. The issue, therefore, is whether there is clear need under our new regulatory scheme for logging which is substantially more

place a "problems-programs" list in its public inspection file. Specifically, this yearly listing was to contain no more than ten significant problems and needs of the area served by the station during the preceding 12 months. In relation to each problem cited, licensees were to indicate and describe illustrative programs which were broadcast in response to those problems. See §73.3526(a)(9).

¹⁰⁹In *Deregulation of Radio*, we required licensees to describe how they determined the issues to be ones facing their communities. In reviewing the adequacy of the commercial radio issues/programs list in the *Second Report and Order*, we concluded that this particular aspect of the obligation conflicted with our prior decision that the methodology utilized by licensees to become aware of the issues facing their community is not of concern to us. This is true as well in the instant proceeding. Consequently, we will not require television broadcasters to describe and explain the means by which they ascertain each issue to be one facing their community. The burden incident to such a requirement is not warranted, for it is programming and not the process of ascertaining community issues that is of interest to us.

costly and burdensome than that presently required.

74. As noted by the court in the radio deregulation proceeding, the Communications Act does not compel the Commission to retain the programming log requirements. We are no longer interested in amounts of programming in categories such as "news" and "public affairs" because we have eliminated programming guidelines. Furthermore, we have eliminated commercial guidelines which could require the maintenance of logs for substantiation. Therefore, we see no need to require documentation of non-entertainment programming other than issue-responsive programming. Thus, retaining the present logging obligations no longer serves any regulatory purpose. We have found that marketplace forces at work today will elicit adequate amounts of non-entertainment programming, without regulatory intervention. If at some time in the future, there is significant market failure with respect to such programming, we are certain this will be brought to our attention by such means as audience complaints. Having been alerted to any problem which arises, we can document its scope by any of several means, such as special studies, investigations and temporary logging requirements and take whatever regulatory action is needed. We do not believe that to guard against the mere possibility that at some future time adequate amounts of non-entertainment programming may not be broadcast, we should now impose a costly general logging requirement on our licensees.

75. The Court of Appeals found it reasonable to conclude that a logging requirement designed to make available certain information relevant under one regulatory scheme might be useless if transplanted unchanged to a new regulatory scheme. We have considered the court's suggestion, made in the context of the radio deregulation proceeding, that a revised log might be a more appropriate mechanism than the issues/programs list for meeting the informational needs of the Commission and the public. However, we believe that the issues/programs list technique is best equipped to elicit the kind of purposeful programming information relevant to our current regulatory concerns. A logging requirement might be devised which could be useful in monitoring licensees' fulfillment of their programming obligation.¹¹⁰ However, we

¹¹⁰We are aware that the system of record keeping adopted herein will require the involvement of management-level personnel. While this may appear, in some respects, to be more burdensome

believe the better alternative source of information for this purpose is the issues/programs list. The new regulatory scheme imposes a basic issue-responsive programming responsibility on commercial television licensees. An issues/programs list is a more useful vehicle to record a licensee's effort in this regard. An exhaustive log, perhaps necessary under the old regulatory requirements, is not needed to document the current program obligation which is directed to issues of concern to the community rather than to categories or amounts of programs.

76. The most significant source of issue-responsive information under the new regulatory scheme will be the issues/programs list. These lists will certainly contain more relevant information than traditional logs, which usually do not identify issues and issue-responsive programming. Since we are not limiting the number of issues on these lists, we anticipate that broadcasters will probably use them to adequately document their significant issue-responsive programming, because doing so will serve their own self interest.

77. In the context of a routine license renewal, the existence of the issues/programs list in the station's public file will give the Commission sufficient assurance that the station has met its issue-responsive programming responsibility during the past license term to grant license renewal on that issue. In other contexts, such as when a programming issue is raised in a petition to deny or in a comparative renewal, these lists will serve as a significant source of information for any initial investigation by a member of the public or by the Commission. If in a particular case, a station's issues/programs lists do not provide sufficient information to resolve a substantial question of fact, the Commission may ask, as it has in the past, for more information from the licensee. In a contested license renewal the burden of proving that programming relevant to public issues has been provided is on the licensee. A broadcaster must demonstrate, if called on to do so, in a hearing or otherwise, that it has met its responsibility in this regard.

78. Another source of information regarding the performance of our television licensees is the public. We note that programming logs have in the past been one source relied on by

than a rote logging requirement, the adoption of a quarterly issues/programs list will reduce the actual time devoted by licensees to record keeping by more than 1.9 million work hours.

petitioners to deny renewal of existing licenses. We also note, however, that petitions to deny have been and can be expected to continue to be documented by other means. For example, petitioners can begin consulting the published newspaper or magazine entertainment guides which give detailed lists of individual station offerings and often include brief summaries of program topics. In addition, petitioners to deny can provide their own documentation by monitoring the service of the station. Any need for such monitoring would of course impose some burden on petitioners, but it would only be that of supplementing, in a particular case, the documentation available in the issues/programs lists of the station in question and others in its market. When such supplemental documentation is needed and supplied, it should be a helpful indicator of any need for reassessment of our new regulatory scheme. However, if experience in the future indicates that the public interest would be served by easing the documentation burdens of petitioners to deny at the cost of imposing logging requirements on television licensees, we can revisit this issue.

4. Conclusion

79. In sum, we believe that a quarterly requirement, with no limitation on the number of issues addressed,¹¹¹ will ensure that availability of an information base sufficiently broad to prevent misjudgments due to a limited sample size or overly narrow selection by licensees in preparing an annual list. The quarterly, no limit issues/programs list is capable not only of providing data needed to evaluate a licensee's individual performance but can be utilized to monitor the effect of the action taken earlier in this document deregulating the commercial television broadcast service. We believe this approach is the best means of meeting our information needs while minimizing the recordkeeping burdens on licensees.

E. Long Form Audit

80. In our *Notice* we stated that in proposing to revise the regulatory scheme for television licensees it was also appropriate to reconsider the information needs of the Commission.¹¹²

The burdens imposed by our present requirements may be viewed as overly burdensome. One such information requirement is the random long form renewal audit of commercial television licensees, eliminated for commercial radio stations but maintained for a random five percent of commercial television stations.¹¹³ The long form audit was preserved in television to assure that the licensees would conform with current requirements and more significantly because no regulatory revision had occurred in television as it had in radio.

81. In the case of radio we determined that significant changes had occurred in the radio marketplace such that detailed regulation of non-entertainment programming, ascertainment, commercialization, and program logging requirements was no longer needed to preserve the generalized obligations of stations to operate in the public interest. Since these guidelines had been eliminated in the case of commercial radio, we determined that a long form audit would serve no purpose and would in fact dilute the intended effect and impact of the radio deregulation proceeding.¹¹⁴

82. In the present proceeding we have similarly reviewed our information requirements in commercial television. We have determined that the current and future video marketplace will provide sufficient incentives. Detailed regulation related to non-entertainment programming guidelines, ascertainment, commercial guidelines, and program logging are no longer required. A simplification of procedures in these areas still provides us with adequate information to make a determination whether a licensee is in violation of any statutory requirements. As in radio, we believe that absent regulations in these areas a long form audit will serve no useful purpose.¹¹⁵ Therefore, the long form audit is hereafter eliminated for commercial television licensees.

83. The Commission will continue to conduct random FOB technical inspections and check the public inspection files of commercial television licensees for completeness. Elimination of the long form audit does not alter the substantive obligation of commercial

television licensees to serve the public interest. While the short form renewal application carries with it a presumption of service in the public interest, the presumption is rebuttable by responses which indicate statutory or regulatory violations. Petitions to deny or complaints alleging violations could also serve to rebut a presumption carried by the short form renewal application.¹¹⁶

F. Administration of Deregulation

84. The policies enunciated herein, along with the relevant rule changes set forth in Appendix A, will become effective thirty days from the publication of this document in the *Federal Register*. After the effective date of these policies, application for new stations, as well as application for the assignment, transfer, renewal and/or modification of existing stations, will be modified by subsequent Commission action, in accordance with the provisions of this *Report and Order*, and all such applicants will be required to file only the information requested herein.

1. New Applications

85. Because the policies enunciated herein will affect the future operation of commercial television broadcast stations, we believe that they should also be applied to applications filed before the effective date of this *Report and Order* but still before the Commission for consideration.¹¹⁷ Therefore, upon the effective date of this *Report and Order*, those portions of applications for new facilities which have been obviated by this action will be considered immaterial to the Commission's determination of that application. We will not physically return those portions of the applications, and it will not be necessary for applicants to file amendments to conform with the revised wording of the applicable form. For example, the ascertainment and programming portions of applications already on file should adequately respond to the revised questions. If additional information is needed, especially with

¹¹¹ Some community issues may be of such significance that they are repeated on subsequent issues/programs lists. Such a decision is left to the licensee's discretion and open to public and Commission scrutiny in their judgment on the broadcaster's good faith efforts to program to meet community issues. We also note that responsive programming may consist of numerous and diverse broadcasts in answer to any one issue.

¹¹² *Notice*, supra n.1 at 37248.

¹¹³ *Radio Broadcast Services: Revision of Applications for Renewal of License of Commercial AM, FM, and Television Licensees*, 46 FR 26236 (May 11, 1981).

¹¹⁴ *Id.* at 26241.

¹¹⁵ Form 303-C also inquires into television network affiliation agreements. This information is duplicative. Reporting of these agreements is separately compelled by § 73.3613 of the Commission's rules. It is part of the ownership report (FCC Form 323 or 323-E) which still must be filed and is unaffected by this proceeding.

¹¹⁶ With the elimination of Form 303-C, licensees will no longer be required to present a separate list of programs designated for children 12 years or under. Our action in this regard, however, in no way changes licensees' programming obligations with respect to children. It is part of the licensee's general public interest obligation to examine the program needs of children and to be ready to demonstrate its attention to those needs. See *In the Matter of Children's Programming and Advertising Practices*, 49 FR 1704 (January 13, 1984).

¹¹⁷ These procedures cover application for new facilities; applications for modifications of existing facilities; and the buyer's portions of applications for assignment or transfer of existing stations.

regard to proposed programming, the Commission's staff will contact the applicant. Thus, modifications of applications already on file will not be necessary.

86. We further believe that when these policies become effective they should apply to pending applications for new facilities that have been designated for hearing or are in any further stage of the hearing process. Therefore, if issues which are obviated by this action have been specified and/or tried, Administrative Law Judges and the Review Board are directed to resolve those issues in accordance with the policies enunciated herein. Thus, the issues should be deleted in either an interlocutory order or in the decision, as appropriate. In directing this course we wish to emphasize no intention to foreclose consideration of related issues not directly affected herein. Thus, issues concerning *alleged* misrepresentations relating to ascertainment will not be extinguished. However, there would be no need to resolve issues on the sufficiency of ascertainment based upon alleged failures to follow the steps detailed in the *Primer*.

2. Renewal Applications

87. The administration of these policies to renewal applications is complicated by the fact that such applications encompass both the licensee's past performance and proposals for the future. Certainly, the portions of renewal applications which relate to future proposals should be treated in the same manner as new applications. Accordingly, the procedures and directions set forth above will govern the consideration of the prospective portions of renewal applications.¹¹⁸

88. The retrospective portions of renewal applications and the seller's portion of assignment and transfer applications relate to conduct during the time when the licensee was expected to adhere to rules and policies which have been eliminated herein. It is not our intention to relieve licensees of those obligations after the fact. On the other hand, we do not believe it would be reasonable to continue to require licensees to file information on the diminishing portion of the past license term which was governed by the old policies. Accordingly, we will continue to require the filing of, and we will consider, the retrospective portions of renewal applications until the effective date of the *Report and Order*. Thereafter, licensees will file renewal

applications in accordance with the reformed application to best set forth in further action by the Commission in accordance with the provisions of this *Report and Order*. Thus, although we will not require routine filing of materials related to past ascertainment, commercialization or programming performance, these issues could be raised in a petition to deny or on the Commission's own motion. This is the case because violations of a past regulation at the time when it was in effect may be relevant to a licensee's qualifications to retain its license, even if the subject regulation was modified or eliminated in this proceeding.

III. Conclusion

89. Our action today constitutes a significant step in the deregulation of commercial television. It is predicated on the recognition that marketplace dynamics, not our regulations, are the primary determinants of licensee performance with respect to programming, commercialization and ascertainment. In light of these conclusions, we have re-examined the current regulatory scheme and conclude that it imposes unnecessary burdens on both licensees and the public. We believe that the new regulatory approach adopted here, will provide licensees with the flexibility necessary to respond to the needs and demands of their communities.

90. We feel confident that existing and future marketplace forces will ensure the presentation of programming that addresses significant issues in the community. Moreover, the record keeping requirements adopted here will provide us with the information necessary to monitor the performance of our new regulatory scheme. In addition, there are other formal and informal procedures readily available to bring specific problems to our attention. Accordingly, we believe that the existing regulatory scheme is no longer necessary to assure operation in the public interest.

Regulatory Flexibility Analysis

I. Need for and Purpose of Rule

91. The Commission has concluded that the programming and commercialization guidelines and the ascertainment and logging requirements imposed on commercial television stations burden both the broadcasters and the Commission without any commensurate benefits. The proposed elimination of these various requirements will enable broadcasters to satisfy their fundamental obligations with greater alacrity. We have also

concluded that existing and potential marketplace forces can satisfactorily govern these areas.

II. Summary of Issues Raised by Public Comment in Response to the Initial Regulatory Flexibility Analysis, Commission Assessment, and Changes Made as a Result

A. *Issues Raised.* 92. In regard to programming guidelines, many of those commenting questioned whether non-entertainment programming levels would remain high absent the existence of minimum guidelines. Similar issues were raised regarding commercialization and ascertainment. Absent guidelines would commercialization increase and would ascertainment continue absent the specific procedures called for in the *Primer*? In the area of logs, many commenters questioned whether adequate information would be provided to the Commission and the public, absent present logging requirements.

Assessment:

93. The Commission concludes that the arguments supporting the relaxation of programming and commercialization policies and ascertainment and program log requirements pertaining to commercial television stations are persuasive.

94. We conclude that current and future marketplace forces can govern these matters satisfactorily. Additionally, by eliminating these formalistic requirements commercial broadcasters may be able to provide more efficient service to their communities of license.

Changes made as a result of such comment:

95. Responding to comments, we now eliminate our guidelines relating to programming and commercialization, our formal ascertainment requirements, and relax our program log requirements.

Significant alternatives considered and rejected:

96. In addition to allowing commercial television stations to make their own decisions in the area of commercialization, programming and ascertainment, the *Notice* proposed modifications to the existing guidelines and requirements instead of elimination. The *Notice* also proposed to solely rely upon specific statutory requirements in determining whether licensees have met their public interest responsibilities. These alternatives were rejected because the Commission concluded that it was best to rely to an extent upon current and future marketplace forces to satisfy the public interest.

¹¹⁸ This will also apply to the buyer's portion of assignment and transfer applications.

responsibilities of commercial television broadcasters. The statutory option was further rejected because it compelled consideration of ancillary issues not necessary for our current purpose and requiring further comments.

97. Accordingly, it is ordered, That Parts 0 and 73 of the Commission's Rules and Regulations are amended, effective September 24, 1984, as set forth in Appendix A.

98. It is further ordered, That the *Ascertainment Primer* and the *Renewal Primer* shall no longer be applicable to commercial television broadcast applicants or licensees and that in their place the above stated policy regarding ascertainment of issues shall apply to such stations.

99. It is further ordered, That FCC Form 303-C is eliminated.

100. It is further ordered, That FCC Forms 301, 302, 314 and 315 will be amended by separate Commission action, in accordance with the provisions of this *Report and Order*.

101. It is further ordered, That the Secretary shall cause a copy of this *Report and Order* to be published in the FCC Reports.

102. It is further ordered, That this proceeding is terminated.

103. Authority for the action taken herein is contained in Sections 4(i), 5(c), and 303(r) of the Communications Act of 1934, as amended.

104. For further information concerning this *Report and Order*, contact David L. Donovan, Marcia C. Alterman, Freda Lippert Thyden, Thomas S. Walsh, Mass Media Bureau, (202) 632-7792.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix A

1. 47 CFR 0.283 is amended by removing and reserving the following paragraphs: paragraphs (a)(6); (a)(7)(i)(B), (a)(7)(ii), (a)(7)(ii) (A) and (B), (a)(8), (a)(8), (i) and (ii) and by revising paragraph (a)(7)(i)(A) to read as follows:

§ 0.283 Authority delegated.

(a) * * *

(7) *Programming: Program content and ascertainment of community needs.*

(i) Applications for new stations or assignments and transfers.

(A) Commercial AM and FM proposals and commercial TV proposals of applicants for new stations and of assignees and transfers that have not submitted a narrative statement of their proposed programming.

2. 47 CFR 73.1225 is amended by revising paragraphs (d)(2) and (d)(2)(i) to read as follows:

§ 73.1225 Station inspections by FCC.

(d) * * *

(2) *For noncommercial educational AM, FM, and TV stations.*

(i) Program logs.

3. 47 CFR 73.1810 is amended by removing and reserving paragraphs (a), (b), (c) and (d) to read as follows:

§ 73.1810 Program logs.

(a)-(d) [Reserved]

4. 47 CFR 73.1820 is amended by revising paragraph (a)(1)(iii) to read as follows:

§ 73.1820 Station log.

(a) * * *

(1) * * *

(iii) An entry of each test of the Emergency Broadcast System procedures pursuant to the requirement of Subpart G of this Part and the appropriate EBS checklist. All stations may keep EBS test data in a special EBS log which shall be maintained at any convenient location; however, such log should be considered a part of the station log.

5. 47 CFR 73.1850 is amended by revising paragraph (a) to read as follows:

§ 73.1850 Public inspection of program logs.

(a) The program logs of noncommercial AM, FM, and TV licensees shall be made available for public inspection and reproduction at a location convenient and accessible to the residents of the community to which the station is licensed. All such requests for inspection shall be subject to the procedural requirements in paragraph (b) of this section. Where good cause exists, the licensee may refuse to permit such inspection. (See paragraph 64, the Public and Broadcasting Manual). The licensee shall remain responsible for the safekeeping of the logs when permitting inspections.

§ 73.3500 [Amended]

6. 47 CFR 73.3500, Application and report forms, is amended by removing the entry for Form 303-C and its title, Renewal Application Audit Form for Commercial TV Broadcast Stations.

7. 47 CFR 73.3526 is amended by revising paragraphs (a), (a)(8) and (e), by adding a Note following paragraph (a)(8), by removing paragraphs (a)(9), (a)(10), (a)(11) and (a)(12) and by

redesignating paragraphs (a)(13) and (a)(14) as (a)(9) and (a)(10) respectively, to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

(a) *Records to be maintained.* Every applicant for a construction permit for a new station in the commercial broadcast services shall maintain for public inspection a file containing the material described in paragraph (a)(1) of this section. (Every permittee or licensee of an AM, FM or TV station in the commercial broadcast services shall maintain for public inspection a file containing the material described in paragraphs (a) (1), (2), (3), (4), (5), (6), and (7) of this section. In addition, every permittee or licensee of a TV station shall maintain for public inspection a file containing the material described in paragraphs (a) (8) and (9) of this section; every permittee or licensee of an AM or FM station shall maintain for public inspection a file containing material described in paragraph (a)(10) of this section. The material to be contained in the file is as follows:

(8) For commercial TV broadcast stations every three months a list of at least 5 to 10 community issues addressed by the station's programming during the preceding 3 month period. The list is to be filed by the tenth day of each calendar quarter (e.g. July 10, October 10, January 10 and April 10) and should include a record of programming for the 3 preceding calendar months (e.g. the list filed by October 10 would be a record of programming from July 1 through September 30). The list shall include a brief narrative describing how each issue was treated. The description of the program should include, but is not limited to, the time, date and duration of each program, the title, and the type of programming in which the issue was treated, (e.g. public service announcements, a call-in program with a public official, etc.). These lists are to be retained for the entire license renewal period.

Note.— The first quarterly filing is to include at least the past three months of a station's programming performance. If the last annual issues/programs list was filed more than three months prior to October 1, 1984, the licensee must place in its public inspection file an issues/programs list encompassing the period of time between its last annual filing and October 1, 1984.

(e) *Period of retention.* The records specified in paragraph (a)(4) of this section shall be retained for periods specified in § 73.1940 (2 years). The

manual specified in paragraph (a)(6) of this section shall be retained indefinitely. The letters specified in paragraph (a)(7) of this section shall be retained for the period specified in § 73.1202 (3 years). The issues/programs list specified in subparagraphs (a)(8) and (10) of this section shall be retained for the term of license (5 and 7 years, respectively). The records specified in paragraphs (a)(1), (2), (3) and (5) of this section shall be retained as follows:

§ 73.4010 [Amended]

8. 47 CFR 73.4010, Advertising time—amount of, is removed in its entirety.

§ 73.4080 [Amended]

9. 47 CFR 73.4080, Commercials, program length, is removed in its entirety.

§ 73.4220 [Amended]

10. 47 CFR 73.4220 Promise versus performance: Commercial announcements, is removed in its entirety.

Appendix B—Summary of Comments

I. An Overview of the Comments

1. The *Notice* in this proceeding generated considerable response. The Commission received twenty-six formal comments,¹ eleven formal reply comments,² and numerous informal

¹ Formal comments in this proceeding were submitted by the following parties: Action for Children Television (ACT), American Association of Advertising Agencies (AAAA), American Broadcasting Companies, Inc. (ABC), American Legal Foundation (ALF), Channel 57 Corporation (CFC), Choosing Our Future (COF), Columbia Broadcasting System, Inc. (CBS), John W. Detar (Detar), Direct Marketing Association (DMA), Cosmos Broadcasting Corporation, Cox Communications, and Multimedia, Inc. (DLA), Eagle Forum (Eagle), Henry Geller and Donna Lampert (Geller), Long Island Coalition for Fair Broadcasting (LIC), Television Station Licensees (MWK), National Association of Broadcasters (NAB), National Broadcasting Co., Inc. (NBC), National Center for the Law and the Deaf and National Association of the Deaf (NCL), National Telecommunications and Information Administration (NTIA), Mark Pierce (Pierce), Evening News Association, Gannett Co., Inc., Gaylord Broadcasting Company, and Lee Enterprises, Incorporated (PBD), Post-Newsweek Stations, Inc. (PNS), Public Media Center (PMC), Telecommunications Research and Action Center, Black Citizens for Fair Media, Chinese for Affirmative Action, Committee for Community Access, National Association for the Advancement of Colored People, National Committee for Better Broadcasting, National Council of Laraza, and Citizens Communications Center (TRAC), Tribune Broadcasting Co. (Tribune), United Church of Christ (UCC), United States Catholic Conference (USCC), and WRBG, Inc. (WRBG).

² Formal reply comments in this proceeding were submitted by the following parties: ACT, ABC, Association of National Advertisers (ANA), COF, Detar, MWK, NAB, National Black Media Coalition (NBMC), NTIA, TRAC, and UCC.

comments.³ As discussed at greater length in the text below, commenters expressed preferences all along the regulatory continuum identified in our *Notice*. Generally speaking, industry commenters tended to favor deregulation while public interest groups supported retention of the existing structure. However, numerous other viewpoints were expressed and parties often recommended hybrid versions of the options proposed in the *Notice*, or supported deregulation in some areas while favoring continued regulatory intervention in others.

II. Programming Guidelines

A. Introduction

2. The *Notice* requested comment on two policy options to modify the non-entertainment programming guidelines. Under Option I, the non-entertainment guidelines would be deleted but the Commission would retain the obligation of licensees to address issues of concern in their communities. This programming obligation would parallel that adopted for commercial radio stations in the recent radio deregulation rule making. Under Option II, the Commission would retain current programming policies but amend the current delegations to allow broadcasters more programming flexibility.

3. Comments ranged from absolute support for Option I to complete rejection of any changes in the present regulations. Among those commenting in favor of Option I were ABC, ALF, CBS, PBD, MWK, NTIA, NAB, NBC, Tribune, PNS, and WRBG. Those filing comments generally against the proposals contained in the *Notice* were: ACT, COF, Eagle, Geller, UCC, TRAC, USCC, Pierce and PMC.

4. Several commenters took intermediate positions. For example, NTIA generally supported the elimination of programming guidelines except for those concerning local programming. DLA said that the proposed deregulation would be of minimal significance given the court's interpretation of our radio deregulation

³ The Commission received almost 400 informal comments in response to the *Notice*. Those which were relevant to our proposed action were considered accordingly. However, a substantial majority of the informal comments objected to this proceeding in the belief that this docket was designed to eliminate the Fairness Doctrine and the "rules of decency." While we recognize that one of the options proposed in the *Notice* may tangentially affect existing Fairness obligations, it should be noted that elimination of the Fairness Doctrine is not the focus of this proceeding. The Commission has recently adopted a *Notice of Inquiry* to consider the Fairness Doctrine. We believe it more appropriate to consider the issues raised by these pleadings in the context of the *Notice of Inquiry*.

order in *Office of Communication of the United Church of Christ v. F.C.C.*, 707 F.2d 1413 (D.C. Cir. 1983) (*hereinafter* "U.C.C. v. F.C.C.") Accordingly, DLA did not object to the existing guidelines provided the Commission reaffirmed the broad discretion of licensees to determine the manner of compliance. PNS generally supported deregulation, but sought a uniform and quantitative programming standard for renewal purposes. ABC and MWK, while generally supporting deregulation, also requested further proceedings to adopt an "optional programming standard" for purposes of license renewal.

5. No commenter specifically supported Option II as contained in the *Notice*. Parties supporting Option I generally took the position that Option II did not go far enough with respect to deregulating the industry. Alternatively, those opposing deregulation objected to Option II as merely reducing the efficacy of regulation that should instead be strengthened.

B. Marketplace Definition

6. The *Notice* requested specific comments on the relevant product and geographic markets. Many of the comments did not define explicitly the relevant product market. Most of these parties, however, implicitly defined such a market in discussing the amount of competition facing television. Parties finding a competitive market usually included new and emerging technologies such as cable, STV, MDS, LPTV and DBS in their analysis. Those parties finding a lack of competition generally considered only the television broadcast market.

7. Several parties adopted a broad definition of the relevant product market. CBS, for example, concluded that the Commission should include "all reasonably interchangeable entertainment/information products and services that strive for a fraction of consumers time." ABC basically adopted the Commission's definition of the marketplace but also included electronic publishing and the private operational fixed microwave service. Comments filed by Tribune and by PDB appear to have adopted the concept of a video marketplace which would include the new video technologies. NAB concluded that there is a "telecommunications marketplace" that consists of all electronic media including radio and the new technologies. NBC appears to have arrived at a similar conclusion by adopting a "media market approach."

8. Several parties urged a narrower definition of the relevant product

market. TRAC, for instance, defined the relevant market as the television broadcast market. In reaching this conclusion, TRAC found that the television market was unlike other services because: (1) Television programming is a "free" public good and not susceptible to substitution by other pay media, (2) television information is of a timely nature, (3) television broadcasting must be regulated in the public interest, and (4) television has no viable competition from the new technologies. Comments filed by the USCC, PMC, Geller and ACT also took the position that new video technologies were not viable substitutes for over-the-air broadcasting. Also, UCC said that the Commission's reliance on the *Report* prepared by The Office of Plans and Policy was not justified because the *Report* was not based on empirical measurement of any market. UCC suggested that the Commission stay the present proceedings in order to develop a proper marketplace measurement for video competition. TRAC said that there are no data measuring the "cross elasticity between television and its substitutes."

C. Competitive Incentives

9. Almost all of the parties favoring elimination of the programming delegations found that the marketplace provided adequate incentives for the production of informational, local and non-entertainment programming. Most of these parties relied on the data supplied by the Commission in its *Notice*. NAB provided its own data which suggested that in 1983, the total amount of non-entertainment programming was almost three times that recommended by the Commission's guidelines. Specifically, NAB found that in 1983, commercial television stations devoted 17.3%, 8.9% and 29.2% of their programming time to informational, local and non-entertainment programming respectively. With the exception of local programming, this represents an overall increase in such programming over the last decade. NAB data also indicated that commercial television broadcasters exceeded the non-entertainment programming guidelines in all markets. Thus, parties favoring elimination of the delegations concluded that competitive forces, and not Commission regulations, are responsible for the current levels of non-entertainment programming.

10. Several industry commenters said that the television industry itself was sufficiently competitive to allow deregulation. For example, NAB noted that between 90 and 97 percent of television households receive four or

more stations and at least 65 percent receive seven or more stations. ABC, citing the Commission's data from its "Financial Interest and Syndication" proceeding⁴ noted that the network share of the television audience declined in 1982 from 90% to approximately 80%. In addition to finding competition in television broadcasting, these parties suggested that new technologies, including cable TV, STV, MDS, SMATV, LPTV, DBS, MMDS, video disc players and video recorders will provide over-the-air commercial television with significant competition in the future.

11. The position of these parties was summarized by NAB as follows:

We do not contend that narrowcasting has completely taken hold in the over-the-air television market. But we concur with the Commission's conclusion that traditional television and the new players in the video marketplace have more than begun to compete for the same viewers. Under the pressure of heightened competition from a variety of sources, television licensees will be forced to take account of the diversity of their audience and the programming offered by other video delivery systems reaching their community.

12. Parties opposed to deregulation generally agreed that the existing television marketplace is not sufficiently competitive to support programming deregulation. Furthermore, they argued that many new and emerging technologies are not yet available in the marketplace, and their commercial viability is uncertain at best. TRAC warned that even if these new services achieve such viability, they will not be viewed by the public as substitutes for free television. Rather, TRAC argued, the new pay technologies will compete among themselves as a supplement, not an alternative, to commercial over-the-air television. Finally, PMC suggested that an economic marketplace is incapable of maintaining the marketplace of ideas necessary to the operation of a democratic society.

D. Alternative "Non-Market" Justifications for Elimination of Non-Entertainment Programming Delegations

13. The *Notice* propounded several non-market alternative justifications for deregulation. ABC and NTIA agreed that the Commission need not find a competitive market to justify the elimination of programming delegations.

14. Several alternative justifications were explored in the comments. Parties

favoring deregulation argued that television should be regulated in the same manner as the new technologies. CBS noted that, unlike the new competing technologies, over-the-air television stations are subject to government-imposed program regulation. CBS contended that this will discourage investment and innovation in television broadcasting, and Tribune said it could restrict television from competing with the new technologies. These commenters and others argued that the law requires the Commission to provide a reason for such disparate treatment.

15. Parties opposed to deregulation generally supported the distinction between regulation of television and of new technologies. TRAC argued that because the new technologies are not yet commercially viable their relative lack of programming regulation did not place television at a competitive disadvantage. TRAC also found that the lack of regulation of new technologies is based on their "unique attributes" and the need for flexibility in their initial stages of development. Geller also observed that cable TV, television's most significant competitor, is burdened by public service requirements resulting from the franchising process which are more burdensome than the programming delegations at issue herein.

16. Parties supporting deregulation agreed that the benefits of the programming guidelines did not outweigh their costs. In particular, these commenters identified societal costs associated with the infringement on the editorial discretion of broadcasters. These parties also noted the monetary costs associated with verifying compliance with these standards.

17. Opponents of the proposal noted the societal benefits associated with non-entertainment programming. ACT, for example, discussed the societal benefits of children's educational programming. One commenter said that the television broadcasters benefit from the guidelines because they provide some renewal certainty by defining what constitutes minimally acceptable programming in the public interest.

18. Several parties argued that the program delegations amounted to substantive regulations of content, thereby exacting First Amendment costs. At least one party noted that given the efficiency of the marketplace, the public interest was being met by less intrusive means. Accordingly, they argued that First Amendment concerns justified elimination of the delegations. Alternatively, those opposing deregulation argued that elimination of

⁴ Tentative Decision and Request for Further Comments in BC Docket No. 82-345. (Amendment of Syndication and Financial Interest Rules). 46 FR 36020 (Aug. 22, 1983).

the guidelines would violate listeners' First Amendment rights to hear diverse sources of information.

19. Most of the parties supporting the elimination of the programming delegations found that deregulation would further the policies of the *Regulatory Flexibility Act* (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*) and the *Paperwork Reduction Act of 1980* (Pub. L. 96-51, 44 U.S.C. 3501 *et seq.*) These commenters noted that elimination of the "unnecessary regulations" would provide greater flexibility to broadcasters to meet community needs and reduce paperwork burdens.

20. Opponents of deregulation argued that the regulations were necessary and therefore the elimination of the delegations would not further the goal of eliminating unnecessary regulations. TRAC argued that if broadcasters were already programming above the guidelines then the regulations were not too burdensome and broadcasters already had the flexibility to make appropriate editorial adjustments in their programming. UCC claimed that the goals of the Paperwork Reduction Act had already been met by the Commission.

E. Authority of the Commission To Eliminate Non-entertainment Programming Guidelines

21. Several commenters opposing deregulation argued that the Commission may not eliminate longstanding regulations unless it has taken a "hard look" at the material facts and issues involved. *U.C.C. v. F.C.C.*, *supra* at 1425. These parties argued that no hard data demonstrate that elimination of the programming delegations is in the public interest. Moreover, they observed that the television market cannot be compared to the radio market, because the level of competition in radio far exceeds that in television.

22. Parties supporting deregulation argued that while the radio market is different, there are sufficient competitive incentives in the video marketplace to justify deregulation of television. In addition, they noted that the Commission has the authority to rely on future projections of industry performance in formulating policy. *F.C.C. v. WNCN Listeners Guild*, 450 U.S. 582, 594 (1981).

F. Specific Types of Programming

23. Commenters supporting the elimination of the programming delegations argued that there would be no decline in news and informational programming. They stressed that broadcasters are now providing more

local news and informational programming due to increased competition. Parties opposing the elimination of the guidelines argued that news and informational programming will decline. These commenters said the guidelines, not the market, are primarily responsible for the current levels of news and informational programming.

24. Those parties supporting deregulation argued that there would be no decline in local programming. These parties noted that many of the new technologies are not local in nature. As a result, over-the-air broadcasters will shift to local programming, particularly in the area of news and informational programming, as a response to an increasing "nationally" oriented entertainment market.

25. Commenters opposing the elimination of these delegations said there has been a decline in local programming since 1973, and argued that the market will not ensure the production of sufficient amounts of local programming. For example, NTIA, which supports the elimination of the informational and non-entertainment guidelines, suggested retaining a local programming requirement. NTIA and Geller insisted that local programming is the foundation of the Commission's regulatory scheme.

26. Parties in favor of eliminating the programming delegations argued that programming to minority interests would not suffer any adverse consequences. NAB, for example, said that in typical markets with few television stations, licensees have a strong incentive to identify issues of concern to many different groups in order to attract broad audiences in their service area. CBS argued that all minority interests will be met and noted that the Commission did not dictate the content of broadcasters' non-entertainment programming under existing guidelines.

27. Commenters opposing the elimination of the guidelines argued that licensees will still attempt to maximize their audience at the expense of diverse interests. These commenters said that because there is no direct pricing mechanism in television, a licensee is unable to measure the intensity of viewer demand. As a result, no matter how intense the demand for minority programming, these interests will not be satisfied. ACT said there has been a complete market failure with respect to children's programming. TRAC argued that the problem is exacerbated by the fact that the new pay services, which would normally respond to intense demand, may be too expensive for middle and low income people. In sum,

these commenters took the position that marketplace incentives merely respond to consumer preferences and not to the needs of the community.

G. Alternate Proposals

28. Several industry commenters addressed the relationship between the programming delegations and renewal standards. Most of these parties requested the adoption of a policy either in this proceeding or in a separate renewal proceeding which would reduce the "uncertainty" surrounding the Commission's approach to renewal. Many favored a policy that would allow broadcasters to adhere to program guidelines on a "voluntary" basis if doing so would provide certainty in the renewal context.

29. PNS and CBS argued that the Commission should abolish comparative renewal. Absent elimination of comparative renewal, PNS argued for the adoption of a uniform standard which would apply to comparative renewal proceedings and petitions to deny. Meeting the proposed standard would give the licensee a presumption of sufficient programming service, and if the standard was not met a licensee still would be allowed to demonstrate if and why it is entitled to license renewal. If the Commission failed to adopt such a standard, PNS suggested that the Commission combine all non-entertainment programming categories and not distinguish among news, public affairs, and local programming. ABC and MWK said that if a renewal standard is not adopted, licensees, sensing renewal uncertainty, would merely adhere to existing guidelines, thereby negating the intended effect of deregulation. They said that the Commission would eventually be forced to return to some form of quantitative standard, perhaps even resurrecting *ad hoc* evaluation.

30. Several opposing commenters took the position that the guidelines were an integral part of the comparative renewal process and said that elimination of clear guidelines would amount to an abdication of the Commission's public interest obligation. These parties argued that the failure to consider programming in renewal violates the public interest requirement of Section 309(h) of the Act.

31. The Commission's proposal to regulate according to the "statutory basics" of the Act failed to generate significant support. Broadcasters were generally concerned with the renewal uncertainty surrounding this proposal and suggested that the Commission conduct a separate proceeding on this issue that would not interfere with the

current proposal to eliminate programming delegations. Citizen groups generally opposed this statutory approach, arguing that the Commission construed its statutory obligations too narrowly. These parties pointed out that the Communications Act mandates a consideration of the public interest and that the Commission is required to award licenses only to those who best serve the needs of their communities.

32. Several alternate proposals were offered. NTIA suggested that the Commission should conduct a periodic review of deregulation of licensees in various markets. COF suggested the adoption of citizen's viewer forums to provide broadcasters with community input into their programming choices.

H. Reply Comments

33. Eleven parties filed reply comments in this proceeding. NAB, ABC, and MWK restated their initial positions supporting the elimination of the programming guidelines. TRAC, UCC, ACT, COF and NBMC continued to oppose elimination of the programming delegations.⁵ NTIA continued to generally support elimination of the guidelines with the exception of a specific obligation to broadcast local programming.

34. Apart from the NAB filing, no new data were submitted relative to the proper product and geographic market. NAB submitted an additional study conducted by Glassman-Oliver Economic Consultants Inc., which concluded that the local market was the relevant product market. Parties opposing elimination of guidelines continued to limit the product market to over-the-air commercial television.

35. All parties reasserted their initial positions with respect to the existence of competitive incentives in the marketplace. NAB, however, submitted an additional study which examined the programming of 189 commercial and public television stations in 30 markets. The study concluded that the average commercial broadcast market aired 14.8 hours of informational 7.2 hours of local, and 32.5 hours of total non-entertainment programming per week. The study also found that cable television provided an additional 16.6 hours of informational and 30.5 hours of total non-entertainment programming.

36. Opponents of deregulation continued to argue that the television market was not sufficiently competitive to eliminate the guidelines. ACT and TRAC cited the NAB's own study for the proposition that public affairs

programming would decline with the elimination of the guidelines.

37. Commenters supporting deregulation took the position that a fragmented market, similar to that found in radio, was not a condition precedent to deregulation. Opponents of deregulation argued that a competitive market was a necessary prerequisite for the elimination of the guidelines. Supporters of deregulation also noted that the delegations were not statutorily based and therefore not essential to the Commission's obligation to regulate in the public interest.

38. Opponents of deregulation also questioned the costs associated with the current delegations. They noted that NAB data included the costs of producing and broadcasting public affairs and informational programming. These parties argued that if this type of programming was a product of the marketplace, then it should not be considered a part of the regulatory costs. Accordingly, they concluded that once this item is taken out of the cost equation, regulatory costs become de minimus. These commenters also noted that those supporting deregulation underestimated the substantial societal benefits associated with the guidelines.

39. Opponents of deregulation argued that minority interests would suffer with deregulation. NBMC argued that there is a segment of society, the "information poor", that depends on free over-the-air television. In the absence of regulation, the needs of these individuals would not be met since they cannot afford the "pay" alternatives. Commenters supporting deregulation argued that the market would supply programming to meet the needs of these people. Moreover, they noted that television broadcasters would still be obligated to broadcast in the public interest.

III. Ascertainment

A. Introduction

40. In the area of ascertainment, the *Notice* solicited comments on whether the competitive nature of the video marketplace has made the current level of regulation unnecessary. The *Notice* proposed two options and invited comments related to the options, as well as alternative proposals. Option I called for the complete elimination of formal ascertainment obligations. Option II called for the retention of an ascertainment obligation but would allow licensees to use any reasonable method in making their determinations. Commenters were additionally invited to comment on the costs and benefits of complying with the current requirements and, if some procedure is retained,

whether the licensee should be required to place its ascertainment efforts in a public file or submit them to the Commission.

41. Comments on the ascertainment proposals presented in the *Notice* ranged from support for its elimination to assertions that both the substantive and procedural ascertainment requirements be retained. Several commenters also presented alternate proposals. Many broadcasters supporting deregulation suggested creation of "voluntary" standards that could be relied upon in license renewal proceedings.

B. Arguments in Favor of Relaxation of Ascertainment Rules

42. Broadcasters presented strong support for elimination of the formal ascertainment requirement. Many such commenters said that ascertainment procedures have become an end in themselves, and contended their formalism and rigidity have had the opposite effect of that intended, actually obscuring the licensee's ability to be responsive to community issues. NAB, ABC and others, noted that broadcasters were able to respond to community needs for nearly forty years before any formal ascertainment procedures were adopted and there is no reason to believe that they would not continue to be responsive if such requirements were eliminated. Broadcasters also pointed out that formal ascertainment is not specifically required by the Communications Act, and thus can be eliminated by the Commission.

43. Many industry members contended that marketplace forces would provide an adequate substitute to ascertainment procedures and obligations. NAB submitted data developed by the NAB Research and Planning Department, to supplement data presented in the *Notice*, indicating that broadcasters present more informational, local, and non-entertainment programming than required by the Commission guidelines.

44. ABC, NAB, and NTIA cited these data as indicia of responsiveness to audience demand rather than to information gathered in ascertainment studies and thus concluded that this programming behavior is compelled by commercial necessity in a competitive marketplace. They also contended that the expanding video marketplace will continue to compel programming responsive to the community absent formal ascertainment. NAB stated that absent formal requirements, large stations will, out of necessity, continue

⁵ NBMC did not file an initial comment in this proceeding.

to engage in informal ascertainment in order to familiarize themselves with the broad array of interests characteristic of their communities of license. According to NAB, the fact that fewer television stations serve a community means that television stations aim to attract broader audiences, necessitating a continuing effort to identify issues of concern to the many groups each licensee seeks to serve. NTIA reasoned that since size and type of audience are directly related to station revenue, broadcasters have significant financial incentives to determine the needs and interests of the community.

45. While all commenters favoring the elimination of formal ascertainment procedures found them unnecessarily burdensome, most suggested retaining the substance of the requirement. CBS, for example, asserted that the purpose behind the rule—licensee responsiveness to issues of concern to the assigned community—should remain an element in reviewing the public interest value of a station's service. CBS urged adoption of a minimum record keeping requirement in the form of an issues/programs list annually placed in the public file. CBS further suggested that such a list utilize broader issue-responsive programming categories that would potentially include news inserts and entertainment programming which adequately address community needs and concerns. CBS also suggested that a station should be allowed to consider the programming offered by other stations in its community and assess the particular composition of its audience in determining what programming is desirable. NBC urged that broadcasters be allowed to use any reasonable method in determining audience needs and interests and asserted that if challenged, the licensee should be allowed to show any and all measures it has taken to ascertain community needs.

46. NTIA agreed that the Commission should eliminate the current formal ascertainment requirement but suggested that ascertainment be made voluntary. Broadcasters who choose to ascertain would then be allowed to use that fact in comparative hearings. Broadcasters facing a programming challenge would be granted a presumption of adequate programming after presenting evidence of having completed formal ascertainment. The burden would then shift to the challenger who then would have to "make a showing based on product, not process."

47. Similarly, ABC and MWK expressed concern with the interplay of deregulation and comparative hearings.

ABC asserted that deregulation should not be accomplished "without the concurrent development and adoption of a standard which, if voluntarily followed, would provide the licensee a basis for legitimate renewal expectancies." Without such guidance, ABC feared that renewal uncertainty would cause many licensees simply to adhere to existing requirements negating the purpose of deregulation.

48. While UCC generally questioned the rationality and timeliness of this proceeding, it supported the idea of retaining an ascertainment obligation but eliminating the specific procedures. UCC also urged that ascertainment documentation be kept on public file and be submitted to the Commission with license renewal applications.

C. Cost Data and Analysis

49. The cost of ascertainment relative to its benefit was cited as a major reason for the elimination of formal ascertainment procedures. For example, CBS reported that it recently spent over \$10,000 in connection with the preparation by an outside research firm of the general public survey for the renewal of WCAU-TV, Philadelphia, in spite of the fact that the general survey studies had yielded no new information to the station for many years.

50. The NAB commissioned a study in which station personnel from twelve commercial television stations in three different market types (top 50 markets, 51-100 markets, and 101 plus markets) were questioned. The interviews, conducted by telephone, posed various questions regarding the costs and benefits of formal ascertainment. In the three market types surveyed, the annual ascertainment cost was approximately \$9,000 in the top 50 markets, \$2,400 in the 51-100 market, and \$4,000 in the 101 plus markets. The projected annual cost for an average television station of meeting the ascertainment requirements in 1983 was estimated at \$2,690. When asked about the likelihood of continuing some type of ascertainment if the formal requirements were eliminated, most stations said that some type of community outreach would occur because it was sound business practice and of value to the station's public image. However, four of the five top 50 market stations conceded that they would not do a general public survey.

51. Stations gave the following estimates of cost savings if the formalized ascertainment requirement was eliminated. The average station in the top 50 markets estimated it would spend 27% less money and 29% less time in ascertaining community needs; the average stations in the 51-100 markets

estimated spending 25% less money and 18% less time; and the average station in the 101 plus markets estimated spending 29% less money and 23% less time. Seven stations indicated the reduction in costs and time would result from fewer leaders being surveyed; one station planned to eliminate ascertainment entirely; and two stations indicated the reductions would primarily result from the elimination of the need for legal counsel to review ascertainment materials.

52. Aside from actual dollar costs, the NAB study asserts that there are other costs related to ascertainment. Several stations indicated that the general regulatory burden and the fear of being penalized for failure to fulfill aspects of ascertainment are also costs of ascertainment. Stations also said that they would be better able to "customize" their own community outreach programs and thus reduce the costs if formal ascertainment requirements were eliminated. Although some stations conceded that ascertainment may heighten awareness of community problems and increase the public's access to the media, the NAB study concluded that the benefits are quite small since market forces would continue to assure that some form of ascertainment is perpetuated.

D. Arguments Opposing the Relaxation of Ascertainment Rules

53. A number of commenters opposed any reduction in current ascertainment requirements and procedures. The substance of this opposition stemmed primarily from the following contentions: 1) the marketplace is an inherently inappropriate substitute for regulation of the broadcast industry; 2) the television market is not sufficiently competitive to support deregulation at this time; and/or 3) the Commission's cost/benefit analysis of ascertainment undervalues the benefits of ascertainment. A few commenters questioned the propriety of a television deregulation proceeding at this time and suggested alternatives to the present ascertainment requirements.

54. Several commenters contended that the market does not necessarily respond to the public interest requirements of the Communications Act or the policies of the Commission. PMC and TRAC contended that in the past the Commission recognized the difference between community problems, needs, and interests and "program preferences" and that this distinction should not now be eliminated. Removal of regulations like ascertainment, they argued, moves

Commission policymaking away from the public interest and public trusteeship theories and toward a finding that licensees hold a vested property right in the license. PMC reiterated that the license is a public resource, and that affirmative public interest obligations and licensee accountability to the viewing public are required by the Act. Further, it said that entertaining a broad audience and serving the community are two distinct goals, and that the Commission has a clear role to insure that the latter goal is met by each licensee.

55. In addition, these commenters said that the Commission analysis of the television marketplace is insufficient to support a significant relaxation of the ascertainment requirement. Specifically, PMC argued that insufficient empirical data had been presented to permit the assumption that broadcasters would behave competitively under the marketplace approach. TRAC observed that the market reaction in television will likely be quite different from that in radio. In radio, TRAC asserted, there are many stations, discrete audiences and therefore less need for formal ascertainment. In contrast, TRAC contended, the market structure in television allows for fewer stations and a potentially "captive audience." This allows broadcasters to be successful in broadly addressing audience desires without specific familiarity with the problems, needs and interests of the community. TRAC thus concluded that is only through some positive effort, like ascertainment, that the licensee can fulfill its public interest obligations to its community of license. While supporting some modification in ascertainment procedures, UCC agreed that the television marketplace is generally not sufficiently mature to rely upon market forces.

56. Other commenters contended that reliance upon market forces in the past has not proven reliable. ACT said that the continuing market failure in the children's television market has proved that reliance upon self-regulation and market forces is not a viable alternative, at least for children's programming. Similarly, NCL alleged that the marketplace has failed to supply adequate service to the 16 million hearing-impaired Americans. They cited the continuing refusal of some licensees and one network to "close caption" as proof that market forces are not reliable. In addition, NCL noted that although the Commission has determined that the handicapped must take the initiative in present ascertainment procedures, this poses particular problems for the

hearing-impaired because this public input is often accomplished by telephone surveys and call-in shows.

57. In assessing ascertainment on cost/benefit grounds, commenters opposing elimination contended that costs only exceed benefits when the benefits are undervalued. UCC said that significant benefits are acquired from the current procedures by the Commission in its statutory oversight function, by the broadcaster in indicating what sorts of procedures and programming will earn a renewal expectancy, and by the public in acquiring the means to measure and assess the broadcaster's service. TRAC asserted that while ascertainment has some costs it should simply be characterized as part of the cost of doing business using a public good.

E. Alternatives

58. Many commenters opposing the elimination of formal ascertainment suggested alternatives to the present procedures. TRAC suggested a return to reliance on the general policy as stated in the Commission's 1960 *Policy Statement*, using the procedure in the *Primer* as an example of how to comply with that policy. TRAC said that retaining the *Primer* as a guide would stress the importance of discovering and responding to problems, and would allow the broadcasters the opportunity to fine tune the procedure. Eagle argued that adoption of either option in the *Notice* would absolve broadcast licensees of any responsibility to their communities. Instead of eliminating ascertainment, Eagle suggested that the requirement be made "more realistic and helpful to members of the community who are concerned about the media." COF proposed that broadcasters be required, on a rotating basis, to provide an hour of prime time per month for "citizen-viewer forums" where citizens could directly voice their program needs and interests to broadcasters.

F. Reply Comments

59. Several reply comments were received by the Commission. NAB again cited a market structure which received little benefit from formal ascertainment. In a further economic study commissioned by NAB, broad product cross-elasticity, significant competition within local geographic markets, and above guideline performance were seen as persuasive evidence that licensees have incentives to ascertain.

60. NTIA, ABC, and MWK renewed their support for the elimination of formal ascertainment requirements. So long as the public interest standard is

retained, ABC and MWK contended that public interest programming would continue. ABC and MWK also supported the development of an optional definition of "operation in the public interest." ABC suggested that among the factors to be considered should be the amount of non-entertainment programming presented (a single category), and the quantification of "substantial service." ABC and MWK suggested the development of this standard should be dealt with in a separate proceeding. NTIA reiterated its support for the continuation of voluntary ascertainment and the use of such voluntary documentation at renewal.

61. Other commenters reiterated their opposition to any action. Responding to NAB, TRAC said that the cost of ascertainment hardly seemed burdensome and pointed out that figures from other parts of the station budget were not presented to demonstrate the relative cost of ascertainment. TRAC further alleged that NAB figures were developed by non-random telephone interviews which, by NAB's own admission, are unrepresentative of the commercial television population as a whole.

62. Both TRAC and NBMC pointed out the difficulty of making an accurate cost/benefit analysis where costs are easily quantifiable and benefits are difficult to value. NBMC said the Commission has ignored the needs of the information poor, those unable to afford pay services, by relying upon a broader program delivery marketplace to create the impetus to ascertain fully community needs. NBMC further said that television stations are responsible for serving widely diverse groups whose needs they cannot possibly ascertain without formal requirements.

63. UCC stated that it continued to believe there is no need for formal ascertainment procedures, but they also supported the alternative suggested by TRAC—to return to the original requirement of the 1960 *Policy Statement* and retain the present rules as an optional guideline for broadcasters in meeting their ascertainment obligation.

IV. Commercial Guideline

A. Introduction

64. In the area of commercial practices, the *Notice* solicited comments on whether the increasingly competitive nature of the television marketplace has made the present level of regulation unnecessary. Commenters were asked specifically to consider both the product market (i.e. substitutable alternatives)

and the spacial or geographic market. The *Notice* proposed two options, invited comments on action anywhere along the regulatory continuum the options defined, and invited alternative proposals. The proposed options were: I) the elimination of all rules and policies restricting the amount of commercial time and reliance on marketplace forces to regulate levels of commercialization; and II) the amendment of the commercial time restrictions to give broadcasters more discretion and encourage experimentation but retention of some oversight authority.

65. Comments submitted expressed preferences all along the regulatory continuum defined by the *Notice*. The determining factor in each case was usually dependent upon how the commenter defined the relevant market and associated assumptions on the level of competition within that market.

B. Comments Supporting Elimination of the Guideline

66. The elimination of all consideration of commercialization and reliance on regulation through the operation of the marketplace, Option I in the *Notice*, received the unanimous approval of broadcasters submitting comments in this rule making and the endorsement of a majority of commenters overall. Parties supporting the adoption of Option I tended toward a broad definition of the video marketplace, including commercial broadcast television, cable television, STV, MDS and video cassette recorders and disc players. Many commenters felt the fledgling LPTV, DBS and MMDS services should be included in the competitive matrix as well. CBS and ALF encouraged an even broader definition of the relevant market to include all entertainment and information alternatives on the theory that broadcast television competes against every alternative form of leisure activity available to a potential viewer. Commenters supporting the adoption of Option I claimed that competition in the video marketplace would effectively control the level of commercialization and prevent abuses. NTIA suggested that competition need only function as well as government regulation to be preferred while CBS claimed that any alleged benefit of the guideline was illusory absent a finding of harm from specific levels of commercialization. Tribune stated that the "right" level of commercialization should be determined by the video marketplace and not the Commission, and that different stations could serve the public interest and the needs of a specific audience at different levels of commercialization.

67. In addition to marketplace factors, several commenters also suggested that the commercial guideline and policies should be eliminated because they violate the First Amendment protection of commercial speech and force the Commission to become over-involved in the regulation of program content.

68. CBS, NTIA, and AAAA raised the possible effects of increased commercial "clutter" in response to elimination of the processing guideline. CBS and NTIA asserted that marketplace forces would protect the public while AAAA suggested the need for monitoring by the Commission to insure that excessive clutter would not adversely affect the public interest.

69. Several commenters supported the idea that Option I would give broadcasters increased flexibility to experiment with new or unconventional advertising formats. NAB suggested that broadcasters' current inability to present innovative and detailed commercials has placed them at a significant disadvantage to competing video services.

70. Finally, a few comments warned that the commercial guidelines and policies are anticompetitive. Specifically, CBS claimed that they potentially depress available commercial time below advertiser demand thus driving up its cost and ultimately resulting in increased consumer prices and the inability of smaller business concerns to afford the purchase of broadcast time.

71. Several commenters specifically noted that the elimination of the guideline should include elimination of the Commission's ban of program length commercials.⁶ Some suggested that the ability to more fully inform consumers is in the public interest, whether or not the information is technically an advertisement. The comments filed by DLA suggested that program length commercials might help minority-owned stations to obtain a secure revenue base. Some commenters noted that to avoid confusion, the *Order* should specifically address this issue.

C. Comments Supporting Retention of the Guideline

72. The prevalent theme of those commenters supporting retention of the commercial guideline, either in its present form⁷ or with some modification,⁸ was that the market is

not as competitive as the *Notice* suggests. Many of these parties asserted that the relevant market should be narrowly defined as commercial broadcast television. They observed that new services such as DBS, LPTV and MMDS are not yet viable and may never be a significant factor in the video marketplace. For example, TRAC questioned whether any of the alternative modes of program delivery would ever compete with the networks, and said it is more likely that new media would compete among themselves "for the right to provide the consumer with discretionary viewing services beyond traditional network programming."

73. The idea that cable television should be included in the definition of the relevant market was advanced by several commenters. However, these parties warned that cable would not reduce network dominance sufficiently to make the market workably competitive. In addition to the concentration of ownership in cable, they emphasized that increasing the number of outlets would not necessarily similarly increase the number of voices.

74. Many commenters, endorsing continued regulation, said that the relevant video market, unlike radio, was not sufficiently competitive to operate in the public interest without Commission regulation of commercialization. The study analyzing commercial behavior by licensees, reported in the *Notice*, drew criticism from these parties because it covered a period when the NAB Code was still in effect. ACT also alleged that the use of statistical averages concealed commercial abuses among a significant minority of licensees. PMC contended that if, as the study suggested, most licensees now operate below the 16 minute commercial guideline, then the guideline posed little regulatory burden. ACT agreed, noting the absence of any evidence that compliance with the guideline was attributable to the effect of market forces rather than to the standard.

75. Parties opposing elimination of the commercialization guideline argued that market forces cannot assure that the public interest will be served. TRAC suggested that because of the role of advertising in commercial television there is no direct relationship between the buyer and seller, i.e. the viewer and licensee, and thus there is no effective demand mechanism for public interest programming. The guideline, they said, provides a ceiling so licensees won't waste a valuable public resource by engaging in over-commercialization. ACT stressed that the public interest generally focuses on programming and

⁶ ABC, Detar, DMA, DLA, MWK and NBC.

⁷ Eagle UCC, ACT, and Pierce.

⁸ TRAC, UCC, USCC and PMC.

that eliminating the guideline would allow licensees to increase commercials at the expense of programmed time. Several commenters agreed that fostering increases in commercialization would subordinate the public welfare to the financial gain of licensees, particularly in the absence of any showing of a positive correlation between commercial time and public service.

76. Commenters opposing elimination of the commercial guideline predicted increased commercialization on all broadcast television stations. They charged that present abuses occurring with the guideline in effect, particularly in the area of program length commercials directed at children, would be greatly magnified without it.

77. Thus, those commenters favoring retention of some form of commercial guideline, concluded that commercial regulation facilitates the Commission's public interest determination without violating the licensee's First Amendment rights. They asserted that the market is not sufficiently competitive to regulate itself, and that complete broadcaster control of commercialization is not otherwise warranted, thus Option I of the *Notice* should be rejected.

78. In addition to the above-noted comments, ACT urged special consideration of the issues unique to children's programming. It said that complete market failure in that area mandates special treatment of commercialization. Specifically, ACT charged that the "change-the-dial" theory of viewer control cannot be applied to children who often don't understand the "selling" purpose of advertisements. Furthermore, ACT charged that Option I, by its failure to differentiate children from adults with reference to its treatment of commercialization, is inconsistent with the fiduciary's duty of care owed to children and therefore violative of the public trust. ACT recommended a reduction in the level of commercialization directed at children, and further regulation of whatever commercialization is permitted. They also urged reaffirmation of the prohibition against program length commercials for children.

D. Alternate Proposals

79. Several commenters proposed additional alternatives or partial variations to the proposals considered in the *Notice*. TRAC suggested retention of the 16 minute commercial ceiling as a daily average but proposed allowing 25% of programming to include up to 20 minutes of commercials as long as that

25% was not during children's or public service programming. NTIA suggested requiring a party filing a petition to deny or a competing applicant to bear the burden of proof that a renewal applicant's commercial time record is inconsistent with the public interest. PNS emphasized the need for quantitative renewal standards to create a legitimate renewal expectancy. Finally, UCC argued that since the role of the Commission is to assist Congress, the Commission should simply refrain from any action herein until Congress has concluded its legislative revisions in broadcasting.

E. Reply Comments

80. Reply comments submitted in this proceeding reflected the same consensus as the comments discussed above. Most parties simply reiterated their earlier stated position on commercial practices. NBMC, which did not submit an earlier pleading, endorsed the elimination of commercial time standards. NBMC suggested that the guidelines prevent the broadcast of programming which might benefit minorities, such as job-a-thons, because they are considered to be program length commercials. They noted, however, that the market definition should not include pay video as a substitute for free television and should not equate television and radio because unlike radio, no commercial television stations are primarily programmed to serve black audiences and none of the eight Black-owned television stations is in a Top 50 market.

81. In addition to NBMC, NAB also endorsed Detar's request for the explicit elimination of the Commission's ban on program length advertisements while NTIA suggested that such action should be considered in a separate proceeding.

82. Several parties addressed the concerns of AAAA. UCC agreed as to the danger posed by excessive clutter and the need it created for a monitoring mechanism, while MWK argued that clutter is not a legitimate concern of the Commission. TRAC noted its agreement with AAAA that market forces could not prevent excessive commercialization and chastised broadcasters for seeking a scheme which would include regulation by marketplace plus a guaranteed renewal expectancy. Finally, ACT claimed that the Commission needed to obtain reliable data on whether the public wants limits on commercials before it could properly regulate in this area.

V. Program Logs

A. Introduction

83. On the program log issue, the Commission noted that the program record keeping requirements adopted here would relate directly to substantive changes adopted in this docket. The *Notice* solicited comments on the specific program record keeping requirements adopted in the radio deregulation *Report and Order* and considered in the *Further Notice* in that docket and the propriety of applying those to television licensees.⁹ Alternatively, commenters were asked to address whether a revised program logging rule, by itself, would satisfactorily meet the Commission's information collection needs. Commenters were asked to assess the Commission's information needs in light of the various substantive proposals in the *Notice*, taking fully into account the cost of imposing specific requirements. In this regard, commenters were asked to tailor their recommendations to assure the retrieval of only truly needed information in order to minimize the burden imposed on licensees.

84. Commenters fell into roughly two broad categories of interests and approaches. The first group included a large number of industry members who advocated a streamlined approach to reporting and emphasized the need to give licensees the greatest possible flexibility in determining the reporting format.¹⁰ The second, somewhat smaller, group consisted of public interest groups and other organizations that generally supported a status quo approach and emphasized the public's interest in monitoring station activity through data produced by the current logging requirements.¹¹

B. Comments Supporting a Streamlined Reporting Requirement

85. All of the commenting broadcasters, and NAB, NTIA, and ALF agreed on two preliminary issues: (1) That the current logging requirements are too burdensome to justify the small benefits derived, and (2) that television

⁹ The radio deregulation proceeding required a yearly issues/programs list to be on public file. However, *UCC v. FCC*, supra, remanded the case to the Commission on the logging issue and instructed the Commission to reassess its information needs. Thus, the Commission issued a *Further Notice of Proposed Rulemaking* ("Further Notice"), BC Docket No. 79-219, adopted June 29, 1983, to reconsider this matter.

¹⁰ For example: NAB, PNC, Tribune, ABC, CBS, NBC, PBD, WRGB, CFG, NTIA, DLA, and ALF.

¹¹ For example: AAAA, CCC, UCC, ACT, Geller, USCC, Eagle, and LIC.

and radio should have the same reporting requirements.

86. NAB's comment included a study, the Wirth Report, which found that the logs are primarily a tool for tracking commercial spots and, thus, the most important benefit from current logging practices accrues to the stations themselves. The Wirth Report also found that there is an "overwhelming disinterest" by the public in the logs and cited the Commission's own minimal use of the data. Broadcasters said that the high level of competition in the television market makes any regulatory distinction between radio and television inappropriate for reporting requirements. Those in favor of a streamlined approach also advocated greater licensee flexibility in reporting and most advanced the proposition that the Commission accept information from readily available sources such as *TV Guide*, newspaper listings and slow speed video tapes.

87. Broadcasters addressing the two-tier logging proposal in the *Further Notice* generally disagreed with the proposition that such detailed reporting is required by *U.C.C. v. F.C.C. supra*. The *Further Notice* outlined a system requiring a yearly exemplary issues/programs list with at least 5-10 issues which would be supplemented by a quarterly list of all issue-responsive programming aired including the time, date, length, and the issue addressed in each program. ABC, NBC, CBS and other commenters argued that this approach goes too far and that less burdensome alternatives would satisfy the Court of Appeals. ABC said:

While it may be necessary to develop a slightly more detailed record of issue-oriented programming than the annual issues/programs list, the court's order plainly does not require an effective reinstitution of daily logging. If the court was critical of the Commission's sole reliance on the issues/programs list it was only because that list is limited to highlighting 5-10 issues per year. The court did not disapprove of the concept, only the relatively limited nature of the existing requirement.

88. Broadcasters also argued that the detailed quarterly report and the annual exemplary log considered in the *Further Notice* would constitute a duplicative exercise, a "regulatory overkill." WRGB maintained that the status quo would be preferable to this alternative. The television networks said that the running tabulation of a quarterly issues/programs log would be particularly burdensome to those stations that devote large blocks of time to news and information features because they would have to identify each issue covered during long programs such as

"Good Morning America" and the "Today Show."

89. Most of the commenting broadcasters suggested that the Commission adopt a slightly expanded version of the issues/programs list originally considered in the radio deregulation docket. They suggested that this be issued annually or, at most, semi-annually. PBD and DLA proposed a record of all issue-oriented programming, giving the time, date, duration and issue addressed with no requirement to log commercials. DLA said that this would actually increase the amount of program information available to the Commission and the public since the current requirements do not call for any program content information. ALF urged the Commission to require licenses to include in their public files only information showing that they have identified and addressed issues of concern in their communities, leaving the licensee free to determine the format best suited to their individual needs. NAB agreed with the two-tier record keeping approach of the *Further Notice* but suggested that the report be required semi-annually instead of quarterly. It agreed that licensees should have maximum flexibility in recording this information to minimize regulatory costs and to enable licensees to tailor the method to suit their own business purposes. NTIA, consistent with their proposal to require local programming, would require a record of such programming.

C. Comments Supporting Continued Logging Requirements

90. The "public interest" category of commenters unanimously agreed that logging requirements play a critical role in the public's ability to participate in the licensing process and that the contemplated two-tier "streamlined" logging requirements would be inadequate for such purposes. Most said that the burden of logging on licensees is minimal because broadcasters would maintain logs for their own purposes, regardless of the Commission's requirements. These commenters weighed this minimal licensee burden of maintaining the logs against their public interest value in monitoring station performance and concluded that logging should be maintained.

91. Many of these commenters, including Geller, ACT, UCC, and USCC, analyzed the question using a public trustee theory of regulation and thus found that the logs are necessary for the public to measure the performance of licensees. They argued that the logging requirements are statutorily grounded because individual station

accountability is required to meet the public interest standards in the Act, including especially Sections 307 and 309 governing license renewals. Several of these commenters said that the Commission justified the short form renewal decision by relying on public participation to inform the Commission of public interest violations, and that without logging there is no way for the public to do so effectively. Similarly, PMC asserted that logging is critical in light of the heavy reliance on the petition to deny process in identifying licensees not fulfilling their public interest obligation. It also said that the lack of comprehensive programming information would be even more important if ascertainment guidelines are eliminated because the cumulative effect of adopting both proposals would be to place a station's performance beyond public reach. UCC said that it is impossible to analyze the logging issue until the programming requirements are determined, therefore logging should be considered in a subsequent proceeding.

92. Other commenters had additional reasons to maintain the logs. AAAA, representing the interest of advertisers, said that the logging rules should be maintained to provide "proof of performance" and to supply the Commission with reliable data for making policy judgments. ACT said that the Commission should require an annual chart that would report the amount and target age of programming designed for children. Geller argued in favor of logging all critical public interest programming in categories that would reduce the burden on the public of analyzing the current "raw logs."

D. Reply Comments

93. In reply, proponents of television deregulation once again argued that the current program logging requirements are unnecessary as well as overly burdensome and should be reduced. They contended that a limited record keeping procedure tied to community issue programming is all that is needed and favored on issues/programs list. A few commenters submitted, however, that some form of logging should be maintained so that the Commission can determine if a station is using its license in the public interest. In this regard, NTIA commented favorably on NBC's suggestion that a "slow tape" be considered an acceptable program record whereas NAB stated that an illustrated complement of issue-responsive programming should supplement the issues/programs list. In response to the allegation made by some commenters that the FCC program

logging rules provide a wealth of information concerning a station's responsiveness to the community, NAB argued that these regulations actually require nothing concerning program content.

94. NAB, as well as other commenting parties, particularly opposed UCC's suggestion that a new program record keeping requirement not be considered until after the completion of the Commission's determination as to what program requirements will be placed upon television broadcast licensees. NAB contended, as did NTIA, that any program record keeping requirement should be relevant to a television station's programming responsibility. They submitted, however, that a two-step approach was not necessary to accomplish these related goals and that UCC's suggestion of a separate proceeding to resolve this matter was impractical. NTIA commented that the alteration of the logging requirements would flow directly from changes made in the guidelines and logically should be implemented at the same time the pertinent regulations are changed.

95. There was also concurrence with NTIA's recommendation that program record keeping requirements be made as simple as possible. NAB commented favorably on NTIA's suggestion that a station be allowed to furnish, as documentation of public interest performance, a listing of program clippings from a local newspaper program guide, as long as the station were to verify the accuracy of such listings. It was thought that supplemental program records of broadcast licensees should be able to include newspaper and "TV Guide-type" listings.

96. Those opposing the deregulation of television commented, in respect to the program log issue, that the courts have repeatedly recognized the underlying obligation of broadcasters to address community needs in programming. Therefore, they asserted, the Commission must continue to collect information necessary to further this statutory requirement. They also argued that the FCC must retain sufficient program log requirements to protect the public's right to participate in broadcast licensing and to allow the Commission to evaluate the effect of its regulatory revisions on the television industry. ANA found it to be inconsistent to award the exclusive use of a frequency to a television broadcaster on the condition that the public interest standard be observed without at the same time requiring that the broadcaster maintain, for public inspection,

reasonable and reliable evidence of what the broadcaster actually aired. NBMC argued that because the monitoring of station imposes costs which are extraordinarily high, the NBMC argued logging in some form is essential. Indeed, it submitted, the petition to deny process would be meaningless without logs. NBMC contended that if the public is to be relied upon to initiate all complaints resulting in heightened scrutiny by the Commission of licensee performance, it must at least be provided with the basic information required for making the reasoned analysis of compliance with the statute and the Commission's rules. A related problem, NBMC noted, could arise in the case of a challenged station which would be unable to defend itself against a challenge because it maintained no records. Such a licensee could, NBMC argued, justifiably accuse the Commission of allowing it to feel that keeping records was unnecessary since none had been required.

97. NBMC concluded that a log containing information on programs and announcements which are non-entertainment in nature, with their dates, times, durations and issues discussed, would be sufficient if it also included information on the spokespersons appearing in the programs. Without this information, it was asserted, it would be impossible to determine whether a station had excluded Blacks and other minorities from discussion of public issues. Commenters suggested that this information should be retained for at least two license terms in the public file, segregated from information on commercials and entertainment programming so as to facilitate non-burdensome access by the public.

98. As to whether a log is burdensome to broadcasters, NBMC responded in the negative. It submitted that this information is already regularly maintained by program producers so there is no additional burden to broadcasters. Furthermore, TRAC argued that NAB's study indicated that an average station in a Top-50 market would reduce its logging expense by only .06 percent if current logging requirements were eliminated. TRAC indicated it was at a loss to understand how elimination of a regulation which broadcasters would allegedly continue to follow could result in a meaningful cost savings. However, TRAC alleged that unless logging requirements are maintained, licensees will not maintain logs for sufficient time to allow public or Commission monitoring of overall performance over a license term. ACT

supported TRAC's contentions and argued that trivial savings would result from eliminating logging rules.

99. ACT submitted that our present logging requirements should be retained to further the statutory goal of standardization of paperwork. It argued that program logs are maintained, in large part, for public use and the public use of any informational system is plainly facilitated by standardization of paperwork. Also, ACT disputed NAB's conclusion that the public is benefitted by the Commission's logging requirements in only a small way, noting that NAB's conclusion is not based on any data from members of the public or from regular public users of program logs.

100. UCC reiterated its belief that the logging component of this proceeding should follow any final action regarding non-entertainment programs, commercial guidelines and ascertainment rules. Only then, it argued, would commenters and the Commission be able to assess this issue, taking into account the record-keeping requirements relative to the Commission's changes.

Appendix C—Analysis of Video Marketplace

1. During the past decade there has been tremendous growth in the video marketplace. Rapid development has occurred not only in over-the-air television, but also in cable television and new video technologies.¹ Currently, approximately 90 percent of all television households receive four or more television signals² and 65 percent of television households receive seven or more signals.³ This is a dramatic increase in signal availability since 1964 when only 26 percent of television households received seven or more signals and only 78 percent received four or more signals.⁴ When the

¹ See Stern, Krasnow and Senkowski, "The New Video Marketplace and The Search for a Coherent Regulatory Philosophy," 32 *Cath. U. L. Rev.* 529 (Spring 1983) (for a thorough discussion of the emerging video marketplace.)

² F.C.C. Staff Report on Cable TV Cross Ownership Policies, November 17, 1981, pp. 62-64. Tables 1 and 2 report this figure as 90.26 and 89.75 depending on assumptions. Table 3 states 90 percent receive 3 or more television stations, again using different assumptions.

³ Notice of Proposed Rule Making in MM Docket No. 83-670 (Revision of Programming and Commercialization Policies, Ascertainment Requirements and Program Log Requirements for Commercial Television Stations) 48 FR 37239, 37243 (August 17, 1983) (hereinafter "Notice").

⁴ *Id.*

contribution of cable television is considered, the average household now receives approximately 9.8 signals, an increase of 44 percent since 1970.⁵ The following discussion is intended to provide a brief outline of both the current video marketplace and our expectations as to future development. We shall analyze the market by focusing on the three major participants in the current video marketplace (1) over-the-air television, (2) cable television and (3) the new video technologies.

(a) Over-the-Air-Television

2. Over-the-air television broadcasting, both commercial and non-commercial, has continued to expand since the adoption of the guidelines in 1973. There are currently 178 more commercial television stations than in 1973, representing an increase of 25 percent from 700 to 878 as of March 31, 1984.⁶ Equally significant has been the overall expansion of non-commercial television stations. The number of non-commercial television stations increased from 229 in 1973 to 285 as of March 31, 1984.⁷

3. Of particular significance has been the growth of independent television stations which have increased from only 90 stations in 1970 to 179 in 1983.⁸ The most rapid expansion has been in the number of UHF independents from 59 stations in 1970 to 154 stations in 1983.⁹ Independent stations are currently located in 86 different television markets accounting for 78 percent of all television households.¹⁰

4. The growth in over-the-air television is expected to continue, as there is additional room for expansion in the industry. There are currently 39 vacant commercial VHF channels and 90 vacant UHF channels.¹¹ Eleven of the commercial VHF vacancies and seventeen of the commercial UHF vacancies are in the top 50 markets.¹²

⁵ Tentative Decision and Request for Further Comments in BC Docket No. 82-345 (Amendment of Syndication and Financial Interest Rules), 48 FR 38020 (August 22, 1983) (hereinafter "Tentative Decision").

⁶ See Notice at 37251 (1973 data); 1984 data taken from "Broadcast Station Totals for March 1984", F.C.C. News Release April 18, 1984. There are currently 344 commercial UHF stations and 534 commercial VHF stations.

⁷ Id. 1984 data include 112 VHF and 173 UHF non-commercial stations.

⁸ See, Tentative Decision, at 38025, citing Television Factbook, Services Volume 50, 1981-82, pp. 75-a, 83-a; Cablevision, April 11, 1983, p. 69.

⁹ Id.

¹⁰ Id.

¹¹ Television Channel Utilization, FCC Release No. 2266 (February 8, 1984).

¹² Id.

At least one estimate has stated that the number of television households will reach 97 million by 1990.¹³

5. The rise of independent television stations, coupled with an increase in the absolute number of television stations, offers a more competitive environment than existed at the time we adopted our delegations. Network dominance has been seriously challenged. In 1982, the network's share of the audience fell from 90 percent to 80 percent.¹⁴ During this time period, independent television stations captured a 17 percent share of the audience.¹⁵ In addition, the networks currently account for only 54 percent of the total video product purchased for television.¹⁶

6. Consideration must also be given to the rapid rise of non-commercial television. A majority of the nation's families now watch public television with a weekly audience of 43 million families in 1983.¹⁷ The percentage of families viewing public television is 69 percent higher than it was five years ago.¹⁸ At least one estimate has placed non-commercial television's potential growth at approximately 10 percent of the overall audience share.¹⁹

(b) Cable Television

7. In addition to the net increase in competing television stations, over-the-air commercial television broadcasters must take into account the rapid growth in the cable television industry. In 1952 there were only 70 operating cable systems with an estimated 14 thousand subscribers. In 1973, the year we adopted the delegations, there were 2,991 operating systems with an estimated 7.3 million total subscribers.²⁰ Recent Arbitron data places cable penetration at 39 percent or slightly more than 32.5 million homes while Neilson's most recent estimate places penetration at 40.5 percent or approximately 34.1 million homes.²¹ At least one estimate has placed subscribership at approximately 29 million homes.²² Future projections of growth in the cable industry estimate that penetration will reach 60 percent by 1990 with basic subscribership at approximately 58 million.²³

¹³ See Tentative Decision at 38037.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ FCC Report, Temporary Commission on Alternative Financing for Public Telecommunications, Appendix V, October 1983.

¹⁸ Id.

¹⁹ Broadcasting, February 20, 1984, p. 66.

²⁰ Notice, at 37252, App. A Table 3.

²¹ Broadcasting, March 5, 1984, p. 11.

²² Cablevision, December 5, 1983, p. 134.

²³ Tentative Decision, at 38036.

8. Some commenters have argued that subscription rates rather than cable penetration rates should be the proper measure of the growth of cable television. Such a distinction ignores the most important aspect of the industry's development. Cable is already affecting the programming menu of over-the-air television to the extent that broadcasters are already altering their programming to prevent erosion of their audience.²⁴ It has been estimated that all other factors being equal, cable growth alone could reduce the total network dominance from 78 percent of the audience to 72 percent by 1990.²⁵ Moreover, cable television has become a significant component in the further distribution of non-commercial public television.²⁶ It appears therefore, that over-the-air commercial television will continue to face significant competition from the cable television industry. The substitutability of cable television for over-the-air television will not only increase the number of viewing options, but it will also affect the type of programming that appears in over-the-air advertiser supported commercial television.²⁷

(c) Alternative Video Technologies

9. While cable currently provides the most significant competitive spur to over-the-air television, new and developing technologies such as STV, MDS, SMATV, LPTV, DBS and Multi-Channel MDS will play a significant role in the programming decisions of commercial television broadcasters in the future. The following table provides a reasonable estimate of the contribution of these technologies in the near future.

AVAILABILITY OF VIDEO OPTIONS ²⁸

	[In millions]			
	1970	1975	1983	1990 estimate
Broadcast TV (TV HHs).....	59	70	83	97
Cable TV (subscribers).....	5	10	28	58
Pay Cable (subscribers).....		0.5	23	45
STV (subscribers).....			1.4	5
MDS (subscribers).....			0.5	3.2
SMATV (subscribers).....			0.15	0.5-0.8
LPTV (TV HHs).....				10
DBS (subscribers).....				11

²⁴ Broadcasting, March 5, 1984, pp. 56-57.

²⁵ Broadcasting, December 12, 1983, p. 35.

²⁶ Report, Temporary Commission on Alternative Financing for Public Telecommunications, Appendix V, October 1983.

²⁷ See, Levy and Pitsch Statistical Evidence of Substitutability Among Video Delivery Systems, April 1984, p. 30. The study, while focusing on the substitutability of VCR's, television and cable television, concludes that over-the-air television and pay cable systems are substitutes.

AVAILABILITY OF VIDEO OPTIONS ²⁸—

Continued

(In millions)

	1970	1975	1983	1990 estimates
Multichannel MDS (subscribers)				6-12

²⁸ Tentative Decision at 38037

As the above data demonstrate, these alternate video technologies, excluding cable, will account for approximately between 25.7 million to 42 million subscribers by 1990. Therefore, these technologies will comprise anywhere between 11.38 percent to 17.35 percent of the viewing audience.

10. These new technologies are already asserting themselves in the marketplace. For example, there are currently 272 low power television stations (LPTV) in operation.²⁹ Moreover, the Commission has received more than ten thousand applications for these stations. Thus far approximately 356 applicants have been licensed or granted construction permits. When fully developed this service could add an additional 4000 new television stations.³⁰ Because of their inexpensive nature, we expect these stations to develop in areas that have heretofore been unserved.

11. Another new technology beginning to emerge into the marketplace is Direct Broadcast Satellite service. This service has already commenced operation in some areas of the country. It is estimated that there are currently 500,000 backyard earth stations and that number is increasing at a rate of 30,000 per month.³¹

12. In addition, Multipoint Distribution Service (MDS) is making significant inroads into the video marketplace. There are currently approximately 530,000 subscribers to this system and it could potentially reach a subscriber base of over 15 million.³² As of June 1983, there were approximately 103 MDS systems in operation.³³

13. We believe that these technologies will provide a competitive spur to existing video markets that are primarily composed of television and cable television services.³⁴ It is of course

difficult to predict with any degree of certainty the precise market structure of the future video marketplace. We believe however, that the additional competition provided by the new technologies, as well as continued growth in both traditional over-the-air and cable television, will ensure the continued presentation of programming that responds to community needs.

An Empirical Study of the Determinants of News and Public Affairs and Local Programming Choices of Commercial Television Broadcasters

May 1984.

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Table of Contents

- I. Introduction
- II. Background
 - (1) Industry Structure and Performance
 - (2) Broadcasters' Programming Decision-Making
- III. The Empirical Study
 - (A) The Model and the Data
 - (B) Version I
 - (C) Version II
 - (D) Version III
 - (E) Robustness of Results
- IV. Policy Implications of Empirical Study
 - (A) The Efficacy of Commission Guidelines
 - (B) Scale Economies
 - (C) The Role of Competition
 - (D) Market Size
 - (E) Network Affiliation

I. Introduction

1. For nearly four decades, the programming choices of commercial television broadcasters have been the object of concern for the Federal Communications Commission. In a 1946 internal Commission document, *Report on Public Service Responsibility of Broadcast Licensees*, public interest and local interest programming were identified as primary responsibilities of television broadcasters. However, no quantitative standards were established at that time. In 1961, the Commission adopted formal processing guidelines for license applications which included quantitative standards on such programming as commercial, local live, network, and public affairs. These delegations, as they were termed, were codified and published in *Delegations of Authority*, 43 FCC 2d 638 (1973), and in *Delegations of Authority*, 59 FCC 2d 491 (1976).¹ In the latter, two new categories were added to the extant delegations:

into the marketplace. There are approximately 10 million VCR's now in the market. This figure is expected to triple by 1988. See *Broadcasting*, February 6, 1984, pp. 12, 38.

¹ For a full historical account of these Commission actions as well as the appropriate

In addition to the nonentertainment programming standard, the guidelines provide that applications proposing less than 5% local programming and less than 5% informational programming will be referred to the full Commission. The local guideline was added in recognition of the importance of every broadcast facility's function as a locally oriented transmission service. The informational guideline was meant to reaffirm the special contribution to an informed public opinion made by news and public affairs broadcasts * * *. Unaffiliated UHF stations are exempt from the programming guidelines.²

While arguments were presented supporting the importance of both News and Public Affairs [NPA] and local programming, no reasons were cited as to why the Commission would expect broadcast markets to (in at least some instances) provide insufficient programming of these types.³

2. Since both Local and NPA programming are presumably of positive value to the viewer, a broadcaster would rationally provide both in order to maximize viewership. The need for Commission intervention in these regards must therefore rest implicitly, if not explicitly, on some presumption of market failure. A number of such market failures are possible. For example, the average viewer's valuation of these programming types might be less than that of society's, perhaps due to viewer tastes or ignorance. (We note, however, that such efforts to encourage additional provision of these fares could be easily thwarted by viewer censorship.) Alternatively, market power may exist to varying degrees across local markets, however, it has not been established that the exercise of such power would necessarily result in less public interest programming. None of these examples of market failure have been shown to be relevant in this industry. It is perhaps for this reason, i.e., no apparent market failure, that elimination of the guidelines is presently being considered by the Commission. While the case for doing so may appear otherwise sound, it is still important to consider the analytical aspects of the issue so as to permit the Commission to make a more informed and justifiable decision.

3. Accordingly, this study was undertaken for the purpose of better understanding and thereby accurately

citations see *Notice of Proposed Rule Making* in MM Docket 83-870, 48 FR 37239 (August 17, 1983), at 37240-37242, (hereinafter, "Notice").

² *Id.*, at 37240.

³ In fact, the Commission found that for 1973 data, the newly established guidelines were being met by 93% of all VHF affiliates, 83% of all VHF independents, and 78% of all UHF affiliates. (*Id.*, at 37240).

²⁹ Broadcast Station Total for March 1984, FCC News Release No. 3690, April 18, 1984.

³⁰ Notice at 37245.

³¹ *Broadcasting*, February 20, 1984, p. 67. See also, *Direct Broadcast Satellite Television Corporation*, 91 F.C.C. 2d 953 (1982); and *CBS, Inc. et al.*, 92 F.C.C. 2d 64 (1982).

³² Paul Kagan Associates, Inc., *Census of MDS TV* (June 30, 1983) (August 24, 1983).

³³ *Id.*

³⁴ In addition to these technologies, video cassette recorders are making significant inroads

predicting the public interest programming choices made by commercial TV broadcasters under various conditions. This is accomplished by first formulating a theoretical model of the typical broadcaster's programming decision-making, and then using that as a basis for empirically determining the relative importance of various factors, including the Commission's programming guidelines. Several alternative estimations are performed using 1980 data on 594 broadcast stations, of which 44 are UHF-independent stations. It is the latter subset of guideline-exempt stations which permits the empirical determinations that: (1) the 5% guideline on local programming has a small (but statistically significant) positive impact on the provision of such fare, and (2) the 5% NPA guideline is statistically insignificant in its influence on the provision of news and public affairs programming. Furthermore, the research allows one to predict that the complete elimination of the guidelines will create virtually no danger that either of these programming quantities will fall below the current 5% standard.

4. The remainder of this paper is organized as follows: Section II will provide background information on the commercial television broadcasting industry, as well as develop a theoretical framework which is descriptive of the typical broadcaster's decision-making process with regard to public interest programming. In Section III, a general regression equation will be formulated for both Local and NPA programming, as functions of several independent variables which are descriptive of the firm or its market. The remainder of that section will present and contrast the results of several alternative specifications of the regression equation, as well as discuss the robustness and confidence that can be attached to these results. Finally, in Section IV, the policy implications of the previous section are evaluated with regard to the guidelines, economies of scale, and the role of competition.

II. Background

A. Industry Structure and Performance

5. The commercial television broadcast industry is one which has been characterized by substantial growth in the last three decades. In 1955, there were 439 commercial stations, 294 VHF and 117 UHF.⁴ As of April 1984, there were 537 VHF, 347 UHF and 884 total broadcast licenses (excluding 272 low power outlets), according to

Commission reports. For the 1980 sample employed in this paper, there are 434 VHF and 160 UHF outlets. Out of the total of 594 stations, only 65 are independents while 44 are UHF-independents.

6. With regard to public interest programming, the national averages of Local and NPA programming for all 663 commercial stations in 1979 were 10.1% and 13.9%. These values are well above the Commission's 5% guideline for each.⁵ For the 1980 data sample used in this paper, the corresponding Local and NPA figures were 9.5% and 15.3%, which differ from the 1979 figures (cited above) primarily due to the omission of 29 specialty (e.g., religious) stations from the sampling. Indeed, there is relatively little volatility in these national averages in the 1973-1979 period, with local programming varying between 9.9% and 10.6% and NPA varying 13.0% to 14.5%.⁶

7. Upon disaggregating these stations into sub-categories, one sees patterns which are of particular interest. With regard to Local programming, network affiliates generally provide less than independent stations, while on average, VHF's provide more than UHF's. This

pattern is changed somewhat for NPA programming, where network affiliates provide more than independents, although VHF's provide more than UHF's.

8. With regard to compliance of stations with the programming guidelines, Table I presents 1980 frequency data by type of stations according to percent of broadcast time devoted to public interest programming. Since this was a composite-week sampling (i.e., one Monday, Tuesday, etc. taken randomly during the year), the variances of the frequency distributions can be expected to be higher than for comparable distributions of annual averages, hence, it probably depicts an exaggeration of the incidence of guideline violations. Such violations occurred in 6.5% of all stations for Local Programming and in less than 1% for NPA. Of the 97 stations which were UHF independents (and hence exempt) at least 30% were below the 5% guideline in each category. Note that all station types were above guidelines on average, though the margin of excess (over the 5%) varied from a low of 1.9% for UHF network stations providing Local programming to a high of 11.8% for VHF network stations providing NPA.

TABLE I—1980 FREQUENCY DISTRIBUTION OF LOCAL AND NPA PROGRAMMING BY TYPE OF STATION¹

Percent of broadcast time	Local programming (type of station)				News and public affairs (type of station)			
	VHF Net	VHF Ind	UHF Net	UHF Ind	VHF Net	VHF Ind	UHF Net	UHF Ind
0 to 5.....	5.3	6.5	16.0	30.9	0.2	6.5	1.6	33.0
5 to 10.....	53.1	32.3	74.4	30.9	1.4	54.8	2.4	41.2
10 to 15.....	30.2	25.8	8.0	14.4	28.3	32.3	56.8	14.4
15 to 20.....	9.5	12.9	1.6	8.2	54.8	6.5	37.6	8.2
20 to 25.....	1.6	6.5	0	4.1	14.4	0	1.6	0
>25.....	0.2	16.1	0	11.3	0.9	0	0	3.1
Mean ²	10.2	15.3	6.9	12.8	16.8	8.8	14.4	8.1
Number of violations ³	23	2	20	(30)	1	2	2	(32)
Total stations.....	431	31	125	97	431	31	125	97

¹ Source: Programming data supplied by broadcast licensees on FCC Form 303-A for 1980.

² These calculations were performed on an incomplete sampling of the data used in the remainder of the table (i.e., 570 out of 684 observations) due to a random computer omission.

³ UHF independent stations cannot technically violate the guideline since they are exempt.

B. Broadcasters' Programming Decision-making

9. Like any other firm, a broadcaster seeks to maximize its present and future profits. Any decision variable, such as entertainment programming, quality of picture or sound, locally-oriented programming, or NPA, will be chosen so as to maximize profits (by equating the marginal return to the marginal cost of the last unit). Presumably, each of the above variables will boost viewership and hence, advertising revenues, but of

course will do so only at a cost. In addition, public interest programming such as local and NPA directly affects the probability of winning license renewal, and so is likely to receive an added emphasis in the broadcaster's decision-making.

10. Theoretically, a broadcaster can be assumed to face a simple (undiscounted) time stream of profits:

$$[R_0(x,y) - C_0(x,y)] + u_1(y)[R_1(x,y) - C_1(x,y)] + \dots + u_n(y)[R_n(x,y) - C_n(x,y)]$$

⁴ See Notice at 37251.

⁵ *Id.* at 37252.

⁶ *Id.* at 37254.

where the R_i represents advertising revenue in the i^{th} period and C_i represents the associated level of total cost, where both R_i and C_i are functions of the decision variables, x and y . While x is comparable to such decisions as the mix of entertainment programming, the holding of promotional contests, and the quality of the video or aural signal, y can represent such attributes as the quantities of local, NPA, and children's

programming which not only would affect profit but would contribute to u_i , the probability of gaining renewal for the i^{th} period. Simplifying the above profit stream expression to

$$\pi = \pi_0 + u_1\pi_1 + \dots + u_n\pi_n$$

and performing a maximization with respect to x and y , one obtains first-order conditions

$$\frac{\partial \pi}{\partial x} = \frac{\partial \pi_0}{\partial x} + u_1 \frac{\partial \pi_1}{\partial x} + \dots + u_n \frac{\partial \pi_n}{\partial x} = 0$$

$$\frac{\partial \pi}{\partial y} = \frac{\partial \pi_0}{\partial y} + u_1 \frac{\partial \pi_1}{\partial y} + \dots + u_n \frac{\partial \pi_n}{\partial y} + \pi_1 \frac{\partial u_1}{\partial y} + \dots + \pi_n \frac{\partial u_n}{\partial y} = 0.$$

Solving these equations simultaneously yields the profit-maximizing levels of both x and y . It can be easily verified using the traditional second-order conditions for this maximization and the assumption that y contributes positively to renewal probability (*i.e.*,

$$\frac{\partial u_i}{\partial y} > 0),$$

that while the broadcaster will rationally choose x so that the marginal revenue equals marginal cost on the last unit, the regulated attribute y will be chosen such that the marginal cost of the last unit is greater than the marginal revenue. Not surprisingly, the regulation effectively brings about a provision of y above that which would otherwise maximize profit.

11. In extending this abstract theory to a model to be empirically estimated, one needs first to identify all "exogenous" firm, market and regulatory factors which contribute to revenue, cost or the renewal probability. (These factors or variables are exogenous and not endogenous in the sense that they are not determined by the broadcaster as were x and y in the above example.) Examples of appropriate firm and market variables which are exogenous are UHF/VHF status and size of the local market, respectively. Upon determining those exogenous variables which seem relevant (and for which reliable data exists), individual regressions are then performed on each of the endogenous variables under study, in this case, the amounts of local and NPA programming. The results can then be utilized to not only ascertain which factors are in fact influential in the broadcaster's programming

decisions, but also to predict the broadcaster's response to an altered regulatory environment.

III. The Empirical Study

A. The Model and the Data

12. One of the first tasks in performing an empirical study such as this is to identify those exogenous variables which can be expected to be influential in the determination of the endogenous variables of interest. The absence (or unreliability) of data for some variables can then impose restrictions on the number of variables employed and the number of observations, thereby potentially reducing the significance of the results.

13. In general, the amounts of local programming (LOCPRG) and News and Public Affairs (NEWSPUBA) provided by a given station are hypothesized to be functions of the following variables:

MKTNWC=largest net weekly circulation in the market of the station (in 1000's of TV households)

NLOCSTN=number of stations in the local market

NCOMPSTN=number of competing stations (local plus distant signals)

UHFVUM=dummy variable (VHF=0; UHF=1)

INDDUM=dummy variable (network affiliate=0; independent=1)

GUIDEDUM=UHFVUM * INDDUM=dummy variable (UHF independent=1; otherwise=0)

STNREV—station revenue (in \$1000).

The dependent variables, LOCPRG and NEWSPUBA, are measured in terms of percent of total broadcast time (6AM to midnight) for each of the 594 stations in this cross-section sampling. The exact definitions of these programming

categories are found on the FCC reporting form (#303-A) from which the two data sets were obtained. Specifically, each category is described as follows:

A *Local Program* is any program originated or produced by the station, or for the production of which the station is primarily responsible, employing live talent more than 50% of the time. Such a program, taped, recorded or filmed for later broadcast shall be classified as local. A local program fed to a network shall be classified by the originating station as local. All non-network and non-syndicated news programs may be classified as local. Programs primarily featuring syndicated or feature films, or other non-locally recorded programs shall not be classified as local, even though a station personality appears in connection with such material. However, identifiable units of such programs which are live and separately logged as such may be classified as local (e.g., if during the course of a feature film program a non-network 2-minute news report is given and logged as a news program, the report may be classified as local).

News includes reports dealing with current local, national and international events, including weather and stock market reports, and commentary, analysis, or sports news when they are an integral part of a news program.

Public Affairs Programs are programs dealing with local, state, regional, national or international issues or problems, including, but not limited to, talks, commentaries, discussions, speeches, editorials, political programs, documentaries, mini-documentaries, panels, roundtables and vignettes, and extended coverage (whether live or recorded) or public events or proceedings, such as local council meetings, congressional hearings and the like.⁷

The 594 observations were drawn from the 48 continental states (plus Anchorage, AK), and excluded subscription stations, satellite stations, and stations which were on-air only part of the year or for which financial reports were delinquent. The delineation of the "local market" for each observation (station) conformed for the most part with the Arbitron classification of television markets.⁸

14. The independent variable, MKTNWC, is included as an explanatory variable of the regression as a proxy for size of market in terms of potential viewing population. Several rationales for this inclusion can be cited, including simple casual empiricism that more of this programming seems to occur in larger markets. Alternatively, it can be hypothesized that there are more opportunities (if not interest as well) for

⁷ See FCC 1980 Annual Programming Report, Form #303-A, October 1980.

⁸ See Arbitron's 1980-81 Television Markets and Rankings Guide.

local entertainment, local news, and local public affairs programming in large as opposed to small broadcasting markets. The actual measure for market size chosen was the largest net weekly circulation figure of all stations in the local market; this is effectively the total number of television households which view the most popular station for at least 5 minutes in a given week.

15. The next two variables, the number of local stations (NLOCSTN) and the number of competing stations (NCOMPSTN), are alternative measures of commercial television competition where the latter differs from the former by the number of distant signals which are significantly viewed. In particular, a station was counted as a competing station if its net weekly circulation in the observation station's home county constituted 50% or more of all television households of that county.⁹

16. Dummy variables are used to distinguish UHF from VHF stations (with UHFDUM) and to distinguish network affiliated stations from independents (with INDDUM). In addition, a third dummy, GUIDEDUM, is introduced to distinguish independent UHF stations from those stations which are subject to public interest programming guidelines. It is this latter variable which allows determinations of the efficacy of these regulations.

17. Finally, the variable, station revenue (STNREV), serves as a proxy for scale of public interest programming activity, or, alternatively, for size of the broadcasting firm. The inclusion of this proxy is justified *a priori* because of the expectations (1) that unit costs of producing such material would decline with the quantity produced and broadcasted, or (2) that such programming (to be of good quality) would require large fixed costs which are best afforded by larger stations.¹⁰

B. Version I

18. The primary specification (Version I) of the regression equations for both LOCPRG and NEWSPUBA has the general form:¹¹

⁹ For data source of NLOCSTN, see Arbitron's 1980-81 Television Markets and Rankings Guide. In addition, for data source of NCOMPSTN, see Arbitron's 1980 County Coverage Report, (except Georgia observations which used 1979 report).

¹⁰ Admittedly, a potential econometric problem arises in utilizing this proxy as an exogenous variable, as is discussed and analyzed more extensively below in the presentations of Versions II and III of the estimation.

¹¹ The natural logs of MKTNWC and STNREV were used due to the *a priori* expectation that the marginal influence of each variable would decline with the magnitude of each. This was given support upon regressing the alternative specifications (with and without logs) and comparing the results.

$$a + b \cdot \ln(\text{MKTNWC}) + c \cdot \text{NLOCSTN} + d \cdot \text{NCOMPSTN} + e \cdot \text{UHFDUM} + f \cdot \text{INDDUM} + g \cdot \text{GUIDEDUM} + h \cdot \ln(\text{STNREV}) + u.$$

Upon performing an ordinary least squares estimation, the following result is obtained for local programming:

$$\begin{aligned} \text{LOCPRG} = & -7.61 + 0.716 \cdot \ln(\text{MKTNWC}) \\ & (2.25) \\ & -0.0317 \cdot \text{NLOCSTN} \\ & (0.19) \\ & +0.342 \cdot \text{NCOMPSTN} \\ & (2.45) \\ & -1.23 \cdot \text{UHFDUM} \\ & (3.13) \\ & -0.346 \cdot \text{INDDUM} \\ & (0.42) \\ & -2.03 \cdot \text{GUIDEDUM} \\ & (2.08) \\ & +1.445 \cdot \ln(\text{STNREV}) \\ & (4.99) \end{aligned}$$

[R²=0.40; F=58.2; mean=9.52; S.E.=3.33]

Note that t-statistics are reported in parentheses beneath their respective coefficients. The t-statistics for the NLOCSTN and INDDUM coefficients suggest that the two are not statistically different from zero. Reestimating the equation without NLOCSTN, but retaining INDDUM¹² yields:

$$\begin{aligned} \text{LOCPRG} = & -7.49 + 0.693 \cdot \ln(\text{MKTNWC}) \\ & (2.35) \\ & +0.325 \cdot \text{NCOMPSTN} \\ & (3.04) \\ & -1.23 \cdot \text{UHFDUM} \\ & (3.15) \\ & -0.367 \cdot \text{INDDUM} \\ & (0.45) \\ & -2.02 \cdot \text{GUIDEDUM} \\ & (2.07) \\ & +1.44 \cdot \ln(\text{STNREV}) \\ & (5.00) \end{aligned}$$

[R²=0.40; F=68.0; mean=9.52; S.E.=3.33]

Note that all coefficients are of the expected sign and (except for INDDUM), are significantly different from zero at a 2.5% level.

19. Repeating the same procedure for news and public affairs, one obtains

¹² The omission of INDDUM changes the magnitude of the GUIDEDUM coefficient by an amount (approximately 0.32) comparable to the INDDUM coefficient. Since GUIDEDUM is the interaction of UHFDUM and INDDUM and since GUIDEDUM and INDDUM are highly correlated, this is not surprising. For these reasons, INDDUM is not omitted in this re-estimation.

$$\begin{aligned} \text{NEWSPUBA} = & +5.77 - 0.160 \cdot \ln(\text{MKTNWC}) \\ & (0.70) \\ & +0.0450 \cdot \text{NLOCSTN} \\ & (0.38) \\ & +0.215 \cdot \text{NCOMPSTN} \\ & (2.15) \\ & -0.877 \cdot \text{UHFDUM} \\ & (3.11) \\ & -9.92 \cdot \text{INDDUM} \\ & (16.96) \\ & -0.248 \cdot \text{GUIDEDUM} \\ & (0.35) \\ & +1.27 \cdot \ln(\text{STNREV}) \\ & (6.14) \end{aligned}$$

[R²=0.67; F=176.3; mean=15.26; S.E.=2.39]

One cannot reject the hypothesis that the coefficients of $\ln(\text{MKTNWC})$, NLOCSTN and GUIDEDUM are (each) equal to zero at even a 10% level of significance.

20. Upon re-estimating the above equation without these variables, one obtains:

$$\begin{aligned} \text{NEWSPUBA} = & +5.75 + 0.233 \cdot \text{NCOMPSTN} \\ & (3.15) \\ & -0.960 \cdot \text{UHFDUM} \\ & (3.72) \\ & 10.14 \cdot \text{INDDUM} \\ & (27.97) \\ & +1.18 \cdot \ln(\text{STNREV}) \\ & (9.86) \end{aligned}$$

[R²=0.68; F=309.5; mean=15.26; S.E.=2.38]

Note that while the independent dummy and the UHF dummy variables are respectively the most and the third most significant explanatory variables, the guidelines dummy (which is the interaction of these two) proves to be not statistically significant in the estimation. Hence, the guidelines, while exerting some influence on local programming, have virtually no discernible impact on news and public affairs.

C. Version II

21. The use of station revenue proxy for scale in order to account for economies of scale may potentially introduce an econometric methodological error. While STNREV is being treated as an exogenous variable in the determination of LOCPRG and NEWSPUBA, it is in fact endogeneously determined to varying extents by all of

the other variables in the two regression equations.¹³

22. One solution to this problem is to simply delete the variable STNREV from the regression. Doing so for local programming yields:

$$\begin{aligned} \text{LOCPROG} = & -2.17 + 1.86 * \ln(\text{MKTNWC}) \\ & (8.32) \\ & + 0.0374 * \text{NLOCSTN} \\ & (0.22) \\ & + 0.359 * \text{NCOMPSTN} \\ & (2.52) \\ & - 2.05 * \text{UHFDM} \\ & (5.62) \\ & - 0.651 * \text{INDDUM} \\ & (0.78) \\ & - 2.63 * \text{GUIDEDUM} \\ & (2.66) \end{aligned}$$

[R²=0.38; F=61.2; mean=9.52; S.E. 3.40]

Upon eliminating NLOCSTN, none of the coefficients reported above change appreciably, although the t-statistics on NCOMPSTN and ln (MKTNWC) both increase in magnitude by about one third. In either regression form, the GUIDEDUM coefficient is now significant at a .005% level.

23. Estimating news and public affairs without STNREV yields:

$$\begin{aligned} \text{NEWSPUBA} = & +10.56 + 0.851 * \ln(\text{MKTNWC}) \\ & (5.25) \\ & + 0.106 * \text{NLOCSTN} \\ & (0.86) \\ & + 0.230 * \text{NCOMPSTN} \\ & (2.23) \\ & - 1.60 * \text{UHFDM} \\ & (6.05) \\ & - 10.18 * \text{INDDUM} \\ & (16.95) \\ & - 0.778 * \text{GUIDEDUM} \\ & (1.09) \end{aligned}$$

[R²=0.65; F=187.6; mean=15.26; S.E.=2.46]

Upon eliminating NLOCSTN from the estimation, the coefficient of GUIDEDUM becomes -0.829 with a standard error of 0.71. This implies that the coefficient is significantly different from zero only at a level of 12.5%.

24. Therefore, in estimating Version II of the regression specification, one finds

¹³ For the purpose of investigating the efficacy of the guidelines, this issue may not be a serious problem, since upon regressing STNREV on all other variables, the coefficient of GUIDEDUM was not found to be statistically different from zero. This indication is borne out by the results of the Version II and III estimations.

that the Commission guidelines are indicated to be somewhat more effective in both local and NPA programming relative to the results obtained in the Version I estimation.

D. Version III

25. The solution to the simultaneity problem of Version I which was incorporated into the latest version could potentially contribute to yet another econometric problem, that of an omitted variable. For example, if scale were a significant variable in these estimations, its omission could bias the coefficient of any exogenous variable with which it is correlated.¹⁴

Accordingly, an alternative approach to overcoming the potential simultaneity problem of Version I will be described here. This involves: (1) regressing ln (STNREV) on all exogenous variables, (2) calculating predicted values of ln (STNREV) for each observation, (3) defining and calculating a new variable, INSLREV, to be the difference of the actual and predicted ln (STNREV), and (4) employing INSLREV as a proxy for "scale" in the LOCPROG and NEWSPUBA regressions. This approach reduces the simultaneity problem as well as any multicollinearity among the explanatory variables, since INSLREV is by construction uncorrelated with these other variables.

26. The estimation of local programming employing the proxy variable, INSLREV, results in:

$$\begin{aligned} \text{LOCPROG} = & +0.642 + 1.22 * \ln(\text{MKTNWC}) \\ & (4.23) \\ & + 0.339 * \text{NLOCSTN} \\ & (1.80) \\ & + 0.322 * \text{NCOMPSTN} \\ & (2.28) \\ & - 2.16 * \text{UHFDM} \\ & (5.96) \\ & - 0.579 * \text{INDDUM} \\ & (0.70) \\ & - 2.47 * \text{GUIDEDUM} \\ & (2.52) \\ & + 0.956 * \text{INSLREV} \\ & (3.46) \end{aligned}$$

[R²=0.39; F=55.2; mean=9.52; S.E.=3.37]

Both the coefficients and the associated econometric statistics in this version are for the most part intermediate between those obtained in the two previous versions.

¹⁴ See Kmenta, J., *Elements of Econometrics*. (New York: the MacMillan Co., 1971), pg. 393.

27. The estimation of NPA using Version III's specification yields:

$$\begin{aligned} \text{NEWSPUBA} = & +13.29 + 0.229 * \ln(\text{MKTNWC}) \\ & (1.10) \\ & + 0.339 * \text{NLOCSTN} \\ & (2.94) \\ & + 0.194 * \text{NCOMPSTN} \\ & (1.91) \\ & - 1.71 * \text{UHFDM} \\ & (6.55) \\ & - 10.11 * \text{INDDUM} \\ & (17.12) \\ & - 0.624 * \text{GUIDEDUM} \\ & (0.89) \\ & + 0.928 * \text{INSLREV} \\ & (4.68) \end{aligned}$$

[R²=0.67; F=169.7; mean=15.26; S.E.=2.42]

Once again the results obtained in this version appear to be for the most part intermediate between those of the previous two versions.

E. Robustness of Results

28. From the above estimations, it would appear that the potential simultaneity problem of Version I and the potential "omitted variable" problem of Version II do not appear in retrospect to deserve much concern. Predictions and policy implications based on these three versions can be expected to be roughly comparable. Furthermore, even upon expanding the data set to include 29 specialty stations (e.g., religious), the results were not appreciably different. Upon revising the local programming regression of Version I to exclude NLOCSTN but include a new dummy variable for these specialty stations, the new coefficient on GUIDEDUM was -2.24 with a t-value of 1.76. This compares with the -2.02 coefficient and 2.07 t-statistic obtained originally with the smaller data set.

IV. Policy Implications of Empirical Study

A. The Efficacy of Commission Guidelines

29. All of the regressions, when taken together, suggest that the guidelines: (1) Contribute about 2 percentage points to the average (non-exempt) station's level of 9.8% local programming, and (2) have little if any significant impact on the level of news and public affairs programming aired. The elimination of the guidelines (for the approximately 90% of industry broadcasters who are

currently non-exempt can be predicted to result in industry averages (including specialty stations) of about 7.5-8% Local programming and 15% News and Public Affairs. Both of these are appreciably above the 5% levels specified by the guidelines.

B. Scale Economies

30. A formal econometric test for scale economies is not possible without production or cost data which were not available. However, to the extent that station revenue is a reliable proxy for scale, the regressions are supportive of the expectation that such economies exist and are significant for these types of programming.

31. Assuming that such economies do indeed exist, the Commission's programming guidelines impose costs on small and/or entering non-exempt broadcasters which are disproportionately high relative to the stations' larger (or exempt) rivals. Accordingly, the elimination of the guidelines could potentially result in more stations on-air, and would certainly allow small (non-exempt) broadcasters the option of investing in other activities which are more competitively effective. While this is somewhat more than mere speculation, it is not possible on the basis of this study to even estimate the benefits of this deregulatory action.

32. Furthermore, due to the strong significance of revenue (*i.e.*, station size) as a determinant for each of these programming types, it becomes likely that any policy (for example, the awarding of low power TV licenses) which increases the number of small broadcasters will also lower the average market performance in these regards. This is so, even though total broadcast time of these programming types will increase for the market.

C. The Role of Competition

33. This study strongly supports the contention that competition exists among rival stations in the provision of public interest programming. However, the marginal contribution of one more station in a market to the average provision of such local and NPA in that market is less than one-half of one percentage point for both programming types; this is true for all alternative specifications estimated. Another conclusion of this research is that the total number of competing stations (and not just the number of local signals) appears to be the relevant competition measure for programming. In all but Version III of the NPA estimation, NLOCSTN is overshadowed in significance by NCOMPSTN. Accordingly, a broad definition of the market seems not only justified but appropriate in addressing these

particular performance aspects of the broadcaster.

D. Market Size

34. While this market characteristic is closely correlated with that of competition (discussed above), the regressions indicate that potential audience size is still an important determinant of the amount of local programming aired. This is not the case of NPA.¹⁵ The fact that small markets can be predicted to have less local programming may not be a serious policy concern, since such market might be rationally expected to have less local issues or talent on which to focus.

E. Network Affiliation

35. Finally, it is apparent from this study that the status of being an unaffiliated or independent broadcaster reduces the predicted level of local programming only slightly but reduces the level of NPA greatly. Therefore, any developments which promote the establishment of a viable fourth major network can be expected to have a favorable and significant impact on the broadcasting industry's provision of NPA.

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¹⁵ The sole exception occurs when MKTNWC reflects the influence of the omitted variable STNREV in Version II.