

country, the priorities in section 2005(a) and the factors in section 2005(b) of Title XX of the Public Health Service Act and other factors, focusing on:

- (1) The reasonableness of the estimated cost to the government considering the anticipated results;
- (2) The incidence of adolescent pregnancy and the availability of services in the geographic area to be served;
- (3) The community commitment to and involvement in planning and implementation of the demonstration project;
- (4) The nature of the organization applying;
- (5) The population to be served;

(6) The organizational model(s) for delivery of service;

(7) The usefulness for policymakers and service providers of the proposed project and its potential for complementing existing AFL demonstration models;

(8) The applicant's proposed plans to access continued community funding as Federal funds decrease and end; and

(9) The applicant's capacity to administer funds responsibly.

OAPP does not release information about individual applications during the review process until final funding decisions have been made. When these decisions have been made, applicants will be notified by letter of the outcome

of their applications. The official document notifying an applicant that an application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, and the amount of funding to be contributed by the grantee to project costs.

Dated: January 4, 1989.

Nabers Cabaniss,

Deputy Assistant Secretary for Population Affairs.

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Register

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Part V

Environmental Protection Agency

40 CFR Part 149

**Criteria for Identifying Critical Aquifer
Protection Areas; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 149

[FRL-3373-2]

Criteria for Identifying Critical Aquifer Protection Areas

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is issuing a final rule which revises the Agency's existing regulations for identifying a Critical Aquifer Protection Area (CAPA). In general, a CAPA is an area which is particularly vulnerable to contamination, in which contamination is reasonably foreseeable unless a control program is implemented, in which contamination would cause significant economic, environmental or social costs, and which is all or part of a Sole Source Aquifer. CAPA designation is a requirement for an area to be eligible to receive grants under section 1427 of the Safe Drinking Water Act (SDWA) pertaining to the Sole Source Aquifer Demonstration Program.

DATE: The rule is effective on March 16, 1989. In accordance with 40 CFR 23.7, this regulation shall be considered final Agency action for purposes of judicial review at 1:00 p.m., Eastern Standard Time on February 28, 1989.

ADDRESS: The docket for this rule is available for public inspection at: Public Reference Unit, U.S. Environmental Protection Agency, Room M2404, 401 M Street, SW., Washington, DC 20460, and all ten of the EPA Regional Office Libraries during operating hours.

FOR FURTHER INFORMATION CONTACT: Charles Job, Office of Ground-Water Protection, (WH-550G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-7077.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 1427 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300h-6, establishes a program to demonstrate techniques for protecting Critical Aquifer Protection Areas (CAPA) within sole or principal source aquifers (SSA) and authorizes grant funds through a grant application procedure for this purpose.

SDWA section 1427 also requires that demonstration projects must meet certain criteria to be eligible for funding. EPA promulgated regulations in 1987 establishing such criteria pursuant to

section 1427(d). Today's rulemaking action amends those regulations based on public comments received in response to the publication of the rules in 1987.

A. Legal Background

To be eligible for a grant under SDWA section 1427, the statute requires that a demonstration program must be located in a CAPA of a sole or principal source aquifer. The term, sole or principal source aquifer, means an aquifer which the Agency has determined under SDWA section 1424(e) "is the sole or principal drinking water source for [an] area and which, if contaminated, would create a significant hazard to public health." In February 1987, the Agency issued a document entitled the "Sole Source Aquifer Designation Petitioners Guidance" which describes the procedures and criteria that EPA will use in determining whether to designate an aquifer as a sole or principal source aquifer.

Section 1427(b) of the SDWA defines the term Critical Aquifer Protection Area to mean either of the following:

(1) All or part of an area located within an area for which an application or designation as a sole or principal source aquifer pursuant to section 1424(e), has been submitted and approved by the Administrator not later than 24 months after June 19, 1986, and which satisfies the criteria established by the Administrator under subsection (d) of this section.

(2) All or part of an area which is within an aquifer designated as a sole source aquifer as of June 19, 1986, and for which an areawide ground-water quality protection plan has been approved under section 208 of the Clean Water Act prior to June 19, 1986.

Section 1427(d) states that not later than June 19, 1987, the Administrator shall, by rule, establish criteria for identifying CAPAs. Such criteria would be used in identifying CAPAs under section 1427(b)(1). Section 1427(d) further provides that in establishing such criteria, the Administrator shall consider each of the following:

(1) The vulnerability of the aquifer to contamination due to hydrogeologic characteristics.

(2) The number of persons or the proportion of population using the ground water as a drinking water source.

(3) The economic, social and environmental benefits that would result to the area from maintenance of ground water of high quality.

(4) The economic, social and environmental costs that would result from degradation of the quality of the ground water.

The Agency has determined that this regulation is not subject to the notice and comment rulemaking requirements of section 553 of the Administrative Procedure Act (APA). In enacting

SDWA section 1427 Congress did not intend to establish a Federal regulatory program. Rather, the legislative history demonstrates that Congress intended to authorize EPA to provide grant funding for demonstration programs to protect CAPAs. As stated by Senator Durenberger in consideration of the Conference Report of the 1986 Safe Drinking Water Act amendments, the Sole Source Aquifer Demonstration Program is "[a] grant program. It authorizes assistance to State and local governments to plan and implement programs that will protect sole source aquifers." 132 CONG. REC. S6289 (Daily ed. May 21, 1986). Accordingly, since the purpose for determining whether an area is a critical aquifer protection area is to establish eligibility for the awarding of sole source aquifer demonstration grants, this regulation falls within the scope of APA section 553(a)(2). That provision exempts rules from notice and comment requirements "to the extent there is involved * * * a matter relating to * * * public property, loans, grants, benefits or contracts." Further, there are no independent procedural requirements contained in SDWA section 1427 which would supersede the section 553(a)(2) grants exemption and require the Agency to go through notice and comment rulemaking. Finally, the Agency notes that it has, in effect, conducted notice and comment rulemaking by issuing this final regulation after taking public comment on the June 26, 1987, interim final rule.

B. Procedural Background

On June 26, 1987, EPA issued an interim final rule which established criteria for determining whether to designate an area as a CAPA under SDWA section 1427. 52 FR 23982 (Codified at 40 CFR 149.1-3 and referred to hereafter as the 1987 CAPA rule.) Although the Agency's 1987 CAPA rule was final and became effective immediately upon publication, the Agency solicited public comments. During the 90-day comment period, the Agency received comments from 11 groups, including four environmental organizations, two professional societies, and two companies.

In addition, on August 10, 1987, the Natural Resources Defense Council, Inc., the Environmental Defense Fund, and the Environmental Policy Institute filed a petition for review of the 1987 CAPA rule in the U.S. Court of Appeals for the Second Circuit, *Natural Resources Defense Council, Inc., et al. v. EPA*, No. 87-4100. The petitioners identified three issues for judicial review: (1) Whether issuance of the CAPA rule as an

"interim final" rule violated the procedural requirements of the APA and SDWA; (2) whether consideration of the cost of replacement of a drinking water supply was appropriate under the SDWA in making CAPA determinations; and (3) whether EPA established an appropriate formula of assessing the percentage of a population dependent on the CAPA as a source of drinking water. These issues were identical to concerns expressed by the petitioners in their comments on the rule. By stipulation dated September 9, 1987, the parties agreed to withdrawal of the petition for review.

The Agency has re-examined the positions taken in the 1987 CAPA rule in light of the public comments. For reasons explained in section II of this preamble, EPA has decided to make certain changes in the criteria for determining whether to designate an area as a CAPA and is amending its regulations accordingly. The Agency, however, does not agree with all of the comments it received and has declined to make certain suggested modifications. The reasons for the Agency's positions are discussed more fully in section III of the preamble. Section IV of the preamble discusses EPA's plans for implementing the grant program when funds are made available for demonstration projects.

II. Summary of the 1987 CAPA Rule and Explanation of Modifications made in the 1989 Rule

A. Summary of the 1987 CAPA Rule

The 1987 CAPA rule describes a CAPA to be, in general, a major vulnerable recharge area to a sole or principal source aquifer (SSA) of particularly high value. The 1987 rule also established a set of minimum criteria for identifying a CAPA which required that the proposed aquifer or segment of an aquifer be more valuable and more vulnerable to contamination than is required for SSA designation. The 1987 rule established the following requirements for CAPA designation:

- (1) The sole source aquifer is particularly vulnerable to contamination due to the hydrogeologic characteristics of the unsaturated or saturated zone;
- (2) The sole source aquifer is the source of drinking water for at least 75% of the persons in the aquifer service area; and
- (3) The cost of replacing the water supply from the sole source aquifer would cause water supply cost to exceed 0.7 percent of mean annual household income.

See 40 CFR 149.3(a) (1)-(3) (1987).

In addition, the 1987 CAPA rule provided for consideration of "evidence that ground water in the suggested

CAPA discharges into an area containing valuable ecological systems, ecological areas protected by Federal or State laws, which are dependent on ground water, or that there would be significant environmental or social costs, or health risks, if the area were contaminated * * *." This evidence, however, would not be sufficient to support a CAPA determination by itself. See *id.*

The preamble to the 1987 rule contained descriptions of areas which EPA would generally consider to be vulnerable to contamination. See 52 FR 23984 (June 26, 1987). The preamble also described the kinds of information such as maps and hydrogeologic data (See *id.* at 23985), that would be useful for assisting EPA in the evaluation of the application. This preamble discussion continues to be valid for the purposes of the 1989 rule.

Finally, the 1987 CAPA rule codified the provision of SDWA section 1427(b)(2). Under this provision of the statute, EPA must automatically determine that an area is a CAPA if the applicant can show that the proposed area is all or part of an area designated as a sole or principal source aquifer pursuant to section 1424(e) by June 19, 1986, and that an areawide ground-water quality protection plan was approved for the area under section 208 of the Clean Water Act by that date.

B. Modifications to the 1987 CAPA Rule

EPA has made four significant changes in the CAPA rule being promulgated today:

- (1) EPA deleted the requirement that 75% of the persons in the aquifer service area be supplied with drinking water from the sole source aquifer.
 - (2) EPA deleted the requirement that the cost of replacing the water supply from the sole source aquifer would cause water supply costs to exceed 0.7 percent of mean annual household income.
 - (3) EPA revised the rule to allow for the consideration of social and environmental costs, as well as economic costs, in the assessment of the cost of contamination of an SSA. The Agency's major emphasis, however, will remain on the protection of drinking water sources; and
 - (4) EPA incorporated into the rule a consideration of the likelihood of contamination of the proposed CAPA.
- The reasons for these changes are set forth below.

1. Population Requirement

The purpose of the 75% criterion was to limit CAPAs only to those aquifers for which a substantial portion of the

population was dependent upon ground water. It also was another tool in deciding which CAPAs are potentially more valuable. The Agency has subsequently analyzed data on populations served by SSAs and has found that most of the SSAs serve 100% of the population in the aquifer service area. In fact, this 75% criterion would have excluded only three of the current SSAs from eligibility for CAPA designation. The Agency therefore believes, for the purposes of this rule, this criterion need not be more stringent than that required for sole source aquifer designation (i.e., the aquifer must serve at least 50% of the population). Although the practical result of this change is to enlarge the number of areas potentially eligible for CAPA grants, we note that a proposed CAPA must still constitute part of or all of an SSA. Since the SSA criteria require that an aquifer serve at least 50% of the population in the aquifer service area, the change does not eliminate entirely the consideration of the extent of dependence on the aquifer as a source of drinking water.

2. Economic Replaceability

The purpose of the specific income test, which required that the cost of replacing the water supplies from the sole source aquifer exceed 0.7 percent of mean annual household income, was to exclude areas from being CAPAs if the local population had the ability easily to pay for an alternative source of drinking water in the event the aquifer should become contaminated. The greater the expense of replacing the drinking water provided by the aquifer, the higher the value for a demonstration project. The 0.7 threshold was chosen to represent a slightly higher figure than what might be considered to be representative of the average (i.e., 0.4 to 0.6 percent of mean annual household income) paid for water in the U.S. The Agency intended to use this slightly more restrictive figure as another means of identifying potential CAPAs as a special subset of SSAs.

The Agency studied more recent data compiled on household costs and future replacement costs compiled as a part of Regulatory Impact Analyses being performed for ongoing rulemaking activities related to the Safe Drinking Water Act Amendments of 1986. These data indicate that water supply costs will increase in the future as the result of additional regulatory requirements and that the future costs of water supply are likely to exceed 0.7 percent of mean annual household income in many public water systems. Because the 0.7

percent threshold may not identify areas that are particularly valuable under such new criteria, the Agency is dropping the specific 0.7 percent threshold in the revised final rule. In its place, EPA is including a criterion that the costs resulting from foreseeable contamination would be "significant." By using the term "significant," EPA intends to allow itself some discretion in deciding which areas should be designated as CAPAs. EPA expects to consider a variety of ways of evaluating the significance of replacement costs, such as the increase in the absolute cost of supplying drinking water if water were obtained from a replacement source, the cost of replacement water relative to the cost of supplying water elsewhere in the region, and the increased cost expressed as a percentage of mean annual household income.

3. Consideration of Economic, Social and Environmental Costs

The Agency has also revised the way in which it considers economic, social, and environmental costs. Rather than treat environmental and social costs as a factor that is considered only when the replaceability cost criterion is inconclusive, EPA has decided to review all potential types of costs resulting from contamination of a proposed CAPA. This analysis may include consideration of health risks and social costs related to contamination incidents. This change is being made to recognize the multiple uses of ground water and thus the possibility that contamination may have important impacts without affecting a drinking water supply significantly. Moreover, the statute implies in SDWA section 1427(d) that EPA should consider each of the different kinds of costs that may result from contamination.

Thus, EPA will determine whether, taken together, the economic, environmental, and social costs resulting from foreseeable contamination are significant. In making this judgment, EPA will continue to place its primary emphasis on the protection of valuable drinking water supplies. Consistent with this emphasis, the Agency anticipates that only in very unusual situations will the environmental or social costs of contamination be sufficiently great, by themselves, to support determination that an area is a CAPA.

4. Likelihood of Contamination

Finally, EPA has clarified in the revised CAPA rule that only those costs that are reasonably foreseeable will be considered in determining whether an

area is a CAPA. This rule was revised to make clear the Agency's intention to limit eligibility for CAPA designation and eventual grants to areas which face some realistic threat of contamination. In addition to being responsive to a public comment, this revision is a logical outgrowth of using the CAPA determination as an eligibility criterion for a demonstration grant. Obviously, a demonstration program is most useful when it addresses a real, immediate contamination threat; conversely, the effectiveness of a ground-water protection project which is designed to prevent contamination by a source that does not exist will be open to question, since the adequacy of the control measures in the protection program will not have been tested.

Therefore, the Agency wishes to stress that extremely improbable threats will not be sufficient to justify CAPA designation. For example, if the area were located in a rural setting tens of miles from the nearest population centers, the Agency might agree that contamination of relatively clean ground water by urban hazardous waste might cause significant economic, social or environmental costs. Nevertheless, the likelihood of such contamination would be quite low, and probably would not be considered as a reasonable ground for determining that the area is a CAPA.

III. Public Comments on the 1987 CAPA Rule and EPA's Responses

A. Introduction

This section of the preamble will describe in detail the public comments that the Agency received on the 1987 CAPA rule during the comment period from June 26, 1987, through September 24, 1987. Also included in this section are EPA's responses to the comments.

EPA received 12 sets of comments. Although most comments suggested changes and deletions to the 1987 CAPA rule, several comments supported the rule. Commenters particularly expressed support for the 75% population threshold and the discussion contained in the preamble of different hydrogeological conditions which are vulnerable and therefore conducive to leaching.

B. Criteria for CAPA Designation

Comment: One commenter recommended that EPA establish an additional criterion for CAPA designation which considered whether the water sources that would be used for replacing an existing ground-water supply are affected by droughts.

EPA Response: The Agency believes that the criteria in both the 1987 CAPA rule and this rule are adequate to

address this concern. The preamble to the 1987 rule explains the criteria that the Agency considers for evaluating the adequacy of alternative water sources. See 52 FR 23985. As implied in the preamble, EPA expects that alternative sources must be at least as reliable as the original source. Therefore an applicant for a grant under the Safe Drinking Water Act section 1427 may exclude from consideration as a possible source of replacement water any source which is known to be significantly less reliable than the original source of supply.

Comment: A commenter said that coordination of "controls" over CAPA areas may be difficult because of overlapping jurisdictions.

EPA Response: EPA agrees that a particular CAPA may be geographically defined in a way that crosses political boundaries (e.g., city limits, county lines) and that there may be greater difficulty in coordinating a program to protect ground water than if the CAPA lay entirely within a single jurisdiction.

The statute, however, indicates that an application for a CAPA demonstration grant must be submitted by a governmental entity or group of entities which have the legal authority to implement a proposed protection plan in a CAPA. See SDWA sections 1427 (c) and (f)(1)(E). Thus, before EPA approves any grants for CAPA demonstration programs, the Agency will require the applicant or applicants to have the necessary legal authority and jurisdiction for coordinating activities to make the program effective. In some cases, it may be necessary that two or more governmental entities join in one application.

Comment: One commenter, who apparently believed that EPA had (or would establish) a fixed limit on the size of a CAPA, objected to such a position because it failed to recognize the impact of hydrogeologic factors on the extent of ground-water contamination.

EPA Response: EPA does not have a policy on the maximum size of a CAPA. EPA agrees that establishing a fixed limit on the size of a CAPA would be inappropriate because of the variability of hydrogeologic conditions that can affect the nature of ground-water contamination. EPA expects that some CAPAs could be small and others could be quite large, perhaps as big as the SSA itself. Under both the 1987 and 1989 rules, the size of the CAPA will be determined by hydrogeologic characteristics relating to the recharge characteristics of the particular area. Therefore, EPA will not specify any particular type or amount of data

necessary to demonstrate that an area is hydrogeologically vulnerable or to define the boundaries of a recharge area. Once EPA establishes its grants application procedures, EPA will judge these matters on a case-by-case basis in the review of applications.

Comment: One commenter questioned the definition of an aquifer and particularly the minimum yield criteria.

EPA Response: Section 149.2 of the 1987 CAPA rule defined an aquifer as a geologic formation, group of formations or part of a formation that is capable of yielding a significant amount of water to a well or spring. The SSA Designation Guidance used the same terminology to define an aquifer and offered guidance on how EPA would interpret the phrase "yielding a significant amount of water." Specifically, the SSA Designation Guidance indicated that EPA would consider a yield of 150 gal/day as enough to satisfy the yield criterion for SSA designation. This commenter also suggested that the Agency should set a minimum production level for water-bearing zones to qualify as an aquifer and recommended a sustainable yield of a gallon per minute over a year.

The SDWA requires that an area proposed for a CAPA designation must be all or part of an SSA. In other words, before the Agency is ever called upon to determine whether an area satisfies the criteria for a designation, EPA will have decided that the geological formation involved has sufficient yield to be an SSA. Therefore, the CAPA grant program does not raise the issue of how sufficient yield is evaluated, and the comment is, strictly speaking, irrelevant to the 1987 CAPA rule. Nonetheless, EPA has considered the commenter's suggestion to replace the 150 gal/day with sustainable yield of a gal/min over a year guideline and concludes that it would be inappropriate. A yield of 1 gal/min is equivalent to a yield of 1,440 gal/day, almost ten times the value in EPA's SSA Designation Guidance. EPA believes that an aquifer which yields 150 gal/day—enough to satisfy the average daily needs of a family of three, would satisfy the yield requirements, and be eligible for designation under the SSA program, if other criteria are met. There is no compelling reason to exclude such low yield aquifers from grants under SDWA section 1427.

Comment: A commenter questioned EPA's explanation of the relationship between an SSA and CAPA designation. Specifically, the commenter referred to EPA's explanation in the preamble that "the CAPA criteria would generally require that the sole source aquifer in question be more valuable and

vulnerable that is minimally required for SSA designation." See 52 FR 23983.

EPA Response: EPA meant that to be designated as a CAPA an area must meet stricter criteria than those needed to receive SSA status. As a result, CAPAs would consist of areas that are a subset of SSAs.

In the 1989 CAPA rule, the Agency has made the criteria for CAPA determination more flexible; EPA believes, nonetheless, that CAPAs should still constitute a special subset of SSAs, and emphasizes that CAPAs will be the areas that are most vulnerable and most susceptible to contamination as well as being most "useful" for a demonstration.

C. Vulnerability To Contamination

Comment: Two commenters requested clarification of some terminology in the preamble to the 1987 CAPA rule referring to the vulnerability of aquifers. Specifically, the commenters asked EPA to explain the phrases—"particularly valuable," "particularly vulnerable to contamination," and "highly permeable unsaturated soils." See 52 FR 23984. The commenters suggested using standard geologic definitions with acceptable/unacceptable ranges of permeability.

EPA Response: These comments are directed to the preamble of the rule and not the rule itself. EPA intended that the wording of the rule and the preamble allow the Agency flexibility in determining whether an area is vulnerable, without giving specific numbers to adhere to. This approach is based on the suggestions of a technical workgroup which was established during the interim final rulemaking process. The group, which also provided suggestions on the wellhead protection program, consisted of representatives from EPA's Headquarters and Regional offices, the U.S. Geological Survey, and five State geological and environmental protection organizations. Members of the group had expertise in both technical and programmatic aspects of hydrogeology and ground-water protection. The group was asked to evaluate whether specific values should be placed on vulnerability. The group suggested that for the purposes of this rule, specific numbers need not be placed on parameters, in recognition of both the wide range in hydrogeologic factors affecting the vulnerability of sole source aquifers, as well as the wide range in possible contamination threats to be addressed by a Comprehensive Management Plan. The Agency accepted these suggestions.

Comment: One commenter said that consideration of vulnerability should also include discussion of land use

factors and development pressure. As an example, the commenter pointed out that an industrial park would be more likely to cause contamination of an aquifer than a national or State park.

EPA Response: EPA generally agrees with the commenter. As explained in Section II of this preamble, the Agency has revised the 1987 CAPA rule to require consideration of the likelihood of contamination of a proposed CAPA. Thus, an applicant will be expected to demonstrate that contamination of an aquifer is a foreseeable possibility and to explain how such contamination would result in economic, environmental and social costs.

Comment: One commenter expressed concern about how the presence of a limited area, characterized by soil of high permeability, within a larger, generally less vulnerable area might affect EPA's decision to designate the larger area as a CAPA.

EPA Response: The commenter was apparently concerned that EPA would base its evaluation of vulnerability of a proposed CAPA on the permeability of the most vulnerable part of the proposed CAPA. EPA recognized that there are wide variations in hydrogeological characteristics within a small geographical area. As a result, some portions of a proposed CAPA may be significantly more vulnerable to contamination than other parts. Although the Agency is interested in the degree of variability, it does not see the benefit from specifying exact relative ratios of "more vulnerable" to "less vulnerable" areas, because the Agency is interested in the overall vulnerability of the proposed CAPA. If a proposed CAPA includes some areas that are not highly vulnerable, the Agency may decide to exclude those areas from a CAPA designation.

D. Population Served

Comment: Three commenters found the terminology that was used in referring to population served, specifically, the words "population," "persons," and "aquifer service area," to be confusing. See 52 FR 23986. These commenters requested clarification of these terms because of their concern that a particular recharge area, which would otherwise qualify for CAPA designation, might not qualify because that area failed to meet the population criterion.

EPA Response: As a point of clarification, it should be noted that the population dependence criterion (50% in this rule or 75% in the 1987 rule) refers to the population dependency of the SSA itself rather than to population

dependence within a CAPA or subset of CAPA. The terms "persons" and "aquifer service area" are defined and explained in the SSA Designation Guidance. The "population criterion" in the 1987 rule referred to the proportion of "persons" dependent on ground water within both the "aquifer service area" and the area above the SSA itself. The term "person" is defined in the SSA Designation Guidance as: individual, corporation, company, association, partnership, State, municipality or Federal Agency (and includes officers, employees, and agents of any corporation, company, association, State, municipality, or Federal Agency). The term "aquifer service area" is also defined in the SSA Designation Guidance as the area above the aquifer and including the area where the entire population served by the aquifer lives. The population criterion is not applied within the CAPA or a component of the CAPA such as a part of the recharge area, but rather to the entire aquifer service area and area above the SSA. Further information on performing these calculations appears in the SSA Designation Guidance. It should be noted, however, that the 75% population criterion has been deleted from this rule.

Comment: Two commenters said that there is no statutory basis for requiring that a CAPA serve 75% of the population.

EPA Response: As explained earlier, EPA has deleted the 75% criterion in the final rule. EPA, however, disagrees with the contention that it does not have statutory authority to establish such a criterion, since section 1427(d) of the SDWA specifically directs the Administrator to consider "the proportion of population using the ground water [aquifer] as a drinking water source."

Comment: Two commenters said that the determination of "population served" needs to incorporate projected population growth.

EPA Response: Since EPA has eliminated the 75% population criterion in the final rule, future population growth would become relevant under the CAPA rule only in the following ways: (a) Whether future population growth would increase the threat of contamination to the SSA and (b) whether existing threats to the SSA would possibly affect future growth. In either case, the applicant for a demonstration grant has the responsibility of providing information which is sufficient to support predicted changes in future population levels and to show how such changes are related to the threat of contamination. A variety of types of information could satisfy the

applicable criteria. For example, an applicant could show that a public rail system is scheduled to open a new station and that new housing development plans have been filed and will likely be approved. If the aquifer were to become contaminated due to proposed septic tank fields, the resulting impacts could cause significant economic and social costs to the existing and future residents.

E. Economic Replaceability

Comment: Four commenters objected strongly to the economic replaceability criterion in the 1987 CAPA rule, arguing both that there was no statutory basis for the criterion and that it was inconsistent with the statutory purpose. Specifically, one commenter argued that SDWA section 1427(d) listed the only criteria which EPA could consider in deciding whether an area was a CAPA and that the cost of replacing a drinking water supply could not be used as a criterion because it was not listed in the statute. Other commenters made similar arguments and also claimed that the use of the replacement cost criterion conflicted with the basic purpose of SDWA section 1427, which they described as "protecting vulnerable ground water against contamination" and "prevent[ing] degradation" of "high quality ground water."

EPA Response: EPA is deleting the requirement in the 1987 CAPA rule that replacement costs must exceed 0.7% of mean annual household income. EPA will consider whether the cost of replacing a contaminated drinking water supply, together with other economic, environmental, and social costs, would be significant. See 40 CFR 149.3(a)(3). EPA believes that both the replacement cost criterion in the 1987 CAPA rule and the revised criterion are consistent with the statute. The statute provides that, in establishing criteria for identifying CAPAs, the Administrator shall consider "the economic costs * * * that would result from degradation of the quality of the drinking water." See SDWA section 1427(d)(4). The cost of supplying alternate water is clearly a possible economic cost that could result from contamination of an SSA. Obviously, there would be little or no point in considering various costs unless the Agency distinguished between areas proposed as CAPAs based on the magnitude of such costs. Thus, it is consistent with the statute for the Agency to establish a criterion which identifies an area as a CAPA only if contamination would cause "significant" costs. EPA thinks that the replacement cost criterion in the 1987 CAPA rule was

similarly consistent with the statutory scheme.

EPA disagrees with the commenter who argued that the replacement cost criterion was illegal because it was not listed in SDWA section 1427(d). Even if it were not, the Agency is not limited to the four factors listed in SDWA section 1427(d) in establishing criteria for identifying CAPAs. SDWA section 1427(d) provides in part that "[i]n establishing * * * criteria (for identifying CAPAs), the Administrator shall consider each of the following" factors. The statute does not restrict the Administrator to consideration of these factors alone, nor does it prohibit consideration of other factors. Moreover, the statute only requires the Administrator to "consider" these factors, but it does not mandate their use in establishing the CAPA criteria. Thus, the Agency believes that SDWA section 1427(d) gives EPA authority to establish and use any additional reasonable criteria in determining which areas are CAPAs.

Finally, EPA disagrees with the commenter's characterization of the purpose of SDWA section 1427, and rejects the view that the criteria are inappropriate in light of the statutory purpose. As noted in section IIB, the only purpose of determining that an area is a CAPA is to establish eligibility for a grant program. The grant program is for the purpose of demonstrating how to protect human health, the environment, and ground-water resources. See SDWA section 1427 (a) and (f)(1). As demonstration projects, the activities funded under SDWA section 1427 are merely examples of programs that could be implemented elsewhere in the country. Indeed, by setting a ceiling on the funds that may be spent annually on an aquifer or under the entire program, the statute makes clear that the grants program is limited in scope. See SDWA section 1427 (j) and (k). In short, it is clear from the statute that Congress did not intend to create a comprehensive grant program to fund protection projects at each SSA. Rather, Congress' goal was more modest—to encourage the development of measures that effectively protect vulnerable SSAs and to promote their application in other areas. See SDWA section 1427(l).

The criteria in today's rule, like the criteria in the 1987 CAPA rule, are fully consistent with the statutory purpose. The criteria aid EPA in identifying the areas which should be CAPAs and should, therefore, be eligible for one of a limited number of demonstration grants. It is entirely appropriate therefore that the criteria operate selectively, leading

to the identification of a special subset of SSAs as CAPAs in which demonstration programs will be carried out most productively.

Comment: One commenter suggested that, in some cases, the distance to alternative water sources is so great that economic infeasibility is obvious without further analysis. The commenter requested that the Agency should specify a maximum distance beyond which consideration of alternatives would not be required.

EPA Response: EPA is changing the economic cost criterion in the rule so that the applicants are free to provide any evidence that shows "significant" economic damages that would result from contamination of the aquifer. Unusually long distance to alternative sources of water supply (i.e., via pipelines) could be used as evidence of irreplaceability. EPA does not want to restrict the allowable analysis by specifying particular maximum distances on a national level because a fixed distance number would not apply uniformly nationwide (e.g., a pipeline distance of ten miles in certain Eastern States might be considered unreasonable, whereas the same distance might be considered reasonable for pipelines in certain Western States.)

Comment: One commenter objected that the 1987 CAPA rule failed to specify any level for the quality of the water used to replace drinking water from a contaminated SSA.

EPA Response: EPA has decided not to revise the rule to specify a certain quality for the replacement of the water. EPA intends, at a minimum, that replacement water be potable at the time of delivery to the consumer and that this water meet all applicable water quality requirements under the Safe Drinking Water Act.

EPA recognizes that contamination of an SSA could force users to rely on a potable replacement source which may be of lower quality than water from the SSA. In such a situation, the loss of quality would represent environmental, social or economic cost resulting from the contamination. Such a potential loss would be considered by EPA in deciding whether costs of contamination are sufficiently "significant" that the area should be determined to be a CAPA.

Comment: One commenter objected to the economic replaceability test because it could fail to adequately recognize economic impacts on populations supplied by regional ground-water systems. In such systems, the costs of replacing water are distributed among a large number of users and thus replacement costs would be less likely

to exceed the 0.7% threshold than in smaller supply systems.

EPA Response: The commenter's concern is addressed in the 1989 rule with the deletion of the 0.7% criterion. The new language in the final rule requires that replacement costs be "significant." Evaluation of whether the cost would be considered significant would take such local factors into account. In such situations EPA would be willing to consider other ways of evaluating the cost, such as the absolute cost of replacing the water supply.

Comment: One commenter said the economic replaceability criterion may not always be an appropriate test of value, particularly if the CAPA comprises the entire SSA. Provisions should be made for a more flexible cost test in this regard.

EPA Response: EPA agrees that, for the purpose of the CAPA rule, the test should be made more flexible and as mentioned in earlier responses to comments, the Agency will be deleting the 0.7% criterion and will be allowing for a more flexible test in the language in this final rule.

F. Ecological and Social Value

Comment: One commenter recommended that the rule be revised so that ecological and social values should be weighed on an equal basis with economic costs.

EPA Response: As explained earlier, EPA has revised the 1987 CAPA rule to provide greater flexibility by consideration of not only economic replacement costs but also other economic costs and environmental and social costs of reasonably foreseeable contamination in every application for a demonstration grant (see Section II of this preamble). EPA intends to be most concerned with the protection of aquifers as sources of drinking water, the primary goal of the Safe Drinking Water Act.

Comment: One commenter said an SSA of unusual ecological or social value should be eligible for designation as a CAPA, even if other criteria are not met.

EPA Response: In light of the revisions made to the 1987 CAPA rule, EPA will consider all potential types of costs that could result from contamination: economic, environmental and social costs. EPA agrees that, in the absence of any economic impacts, if contamination would cause an unusual or particularly severe social or environmental cost CAPA designation may be justified. For instance, a CAPA could be designated based in part on a showing that (1) ground water recharged in the CAPA discharges to a national

park or wetland, or the habitat of an endangered species, (2) there are demonstrable contamination threats, and (3) if such contamination were to result, a vital natural resource or species could be destroyed.

Comment: One commenter recommended that the criteria for determining that an area is a CAPA should include consideration of impacts that the CAPA determination may have on farmers.

EPA Response: EPA does not accept the recommendation. The commenter apparently is concerned that a CAPA designation might impede farming activities or affect property owners engaged in productive enterprise on land designated as a CAPA.

EPA believes that a CAPA determination, by itself, would have no impact on farmers. A protection program carried out under a CAPA grant might affect farmers either by limiting allowable land use or by providing increased protection of their ground water or both. Until EPA receives applications for such grants, it is impossible to predict whether any protection programs would affect farmers adversely. At this time it does not seem appropriate to consider possible future effects of a program on farmers in deciding whether an area is a CAPA.

G. Information Requests

Comment: One commenter said hydrogeologic assessment information in addition to that suggested may benefit the CAPA review process.

EPA Response: EPA agrees with this comment, and an applicant may choose to submit any additional hydrogeologic data that will enhance the understanding of the vulnerability and recharge characteristics of the proposed CAPA.

Comment: A commenter said clarification is needed regarding the identification of potential pollution sources; specifically, with respect to the ability of the soils and the unsaturated zone to moderate contamination from potential pollution sources and whether landowners, competent agricultural specialists and soil scientists would have input into such analysis.

EPA Response: EPA does not expect submission of data regarding potential pollution sources, except as necessary for assessing the likelihood of contamination. Regarding the hydrogeologic criteria, an applicant is free to submit any data that could enhance the Agency's understanding of the vulnerability and recharge characteristics of the proposed CAPA.

EPA encourages competent scientific data to be made a part of an application and that this information come from appropriate specialists.

H. Procedural Requirements

Comment: Three commenters said that EPA's view that the CAPA criteria are interim final rules and exempted from the requirements of the APA because they are "grant related" is wrong.

EPA Response: EPA disagrees with commenters who argued that EPA should have gone through the APA notice and comment rulemaking when it issued its June 26, 1987 interim final rule. As explained earlier, Congress enacted SDWA section 1427 to establish a Sole Source Aquifer Demonstration Grant Program. Therefore, the purpose of determining whether an area is a critical aquifer protection area is to establish eligibility for awarding demonstration grants. Accordingly, EPA believes that the June 26, 1987 interim final rule falls within the scope of the grants exception to APA notice and comment rulemaking found in APA section 553(a)(2). Additionally, although SDWA section 1427(d) directs the Agency to establish criteria for identifying CAPAs by rule, it contains no independent requirement for notice and comment rulemaking in establishing such criteria.

I. Definition of "Major Recharge Area"

Comment: A commenter suggested a revision to the definition of "recharge area" in 40 CFR 149.2; specifically, to change the second "the" to "a" in the sentence explaining what constitutes a major recharge area.

EPA Response: The definition presented in the 1987 CAPA rule describes a major recharge area as "the area where the major part of the recharge to an aquifer occurs through infiltration of precipitation or surface water." EPA agrees that the change recommended by the commenter is technically valid and has made the suggested correction in the 1989 final rule. The reason for this change is to recognize that an SSA may contain more than one distinct area through which a significant share of the recharge moves into the sole source aquifer.

J. Background

Comment: One commenter said that in order to encourage local government participation, the CAPA program needs to have minimal red tape and informational requirements.

EPA Response: EPA agrees that unnecessary information requirements should be avoided. If and when funding becomes available, EPA plans to issue

guidance on how to prepare applications. The Agency will attempt to provide clear and simple instructions, concentrating on the items necessary for a complete application.

Comment: One commenter said to stimulate CAPA program effectiveness and to benefit as many jurisdictions as possible, grants should be provided to fund a wide variety of aquifer protection management techniques.

EPA Response: EPA believes this comment has merit and will address this issue when the Agency issues grants guidance. The comment, however, does not require any revision in the 1987 CAPA rule.

Comment: One commenter asked to equate the CAPA criteria to such concepts as ground-water classification, zones of contribution and sensitive areas.

EPA Response: EPA believes that they are related but different. EPA believes that the statute is clear in the definition and purpose of a CAPA. Such definition and purpose do not necessarily replace, equate, or overlap with definitions and purposes of the other ground-water protection terms mentioned by the commenter. Some wellhead protection programs of the States, including those developed pursuant to section 1428 of the SDWA, do include portions of "zones of contribution." The designation of specific classes of ground water by the States often considers hydrogeologic and water use concepts quite different than those of either CAPAs or wellhead protection areas. State classification systems may consider different ground-water quality and other beneficial use characteristics. EPA emphasizes however, that an applicant is free to submit information on such relationships between these ground-water protection concepts and demonstrate how these concepts would support the technical information in a demonstration application.

Comment: One commenter said that the role of the State in the CAPA petition process needs to be included in the criteria.

EPA Response: The statute is clear about the role of States in the process of applying for demonstration grants. SDWA section 1427(c) indicates that if a jurisdiction other than a State applies for a grant, the applicant must have the Governor as a co-applicant when applying for SSA demonstration grant funds. In view of the clear statutory provisions, EPA does not believe any additional guidance in the CAPA rule is needed.

IV. Implementation

The SSA Demonstration Program is a limited one, which may entitle successful applicants to receive matching grants. The total amount of the grant cannot exceed \$4 million per aquifer per year. As part of the demonstration program, any State, municipal or local government, or political subdivision thereof or any planning entity (including any interstate regional planning entity) that identified a CAPA over which it has authority or jurisdiction within an already designated SSA, may apply for the demonstration program. For fiscal years 1988 and 1989, Congress has not appropriated funds for demonstration program grants. Detailed information on applying for demonstration grant funds including procedures, application materials, and review criteria will be released by EPA if funds are appropriated for demonstration program grants in the future. A notice of availability of these application materials would be published in the Federal Register.

The Sole Source Aquifer Demonstration Program will not affect or inhibit Agency regulatory programs. The Agency does not intend to establish an administrative program strictly to define and delineate CAPAs, but only as one "screening" step in the context of the demonstration program. The actual selection process will be addressed by the Agency when it issues CAPA grants guidance.

V. Regulatory Impact Analysis

Under Executive Order 12291 (46 FR 13193, February 9, 1981), EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis.

A major rule is defined as a regulation which is likely to result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers; individual industries; Federal, State, and local government agencies; or geographic regions; or
- (3) Significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule to define critical aquifer protection areas is not major since it has no effect on the overall cost and economic impact of EPA's sole source aquifer regulations. Therefore, the Agency has not conducted a regulatory impact analysis. The draft of this rule

was cleared by the Office of Management and Budget (OMB) pursuant to Executive Order 12291. A summary of comments from OMB to EPA and EPA's response to these comments will be available for viewing at the Environmental Protection Agency, Room 801 East Tower, 401 M Street, SW., Washington, DC 20460.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities. This regulation will impose no significant costs on any small entities. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this regulation will not have a significant impact on a substantial number of small entities. The regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

The Information Collection Requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the *Federal Register*.

This rule in and of itself does not create any public reporting burden. Should funds be appropriated for the SSA Demonstration Program, EPA will issue Grants Guidance. As part of their application package pursuant to such Grant Guidance, it is anticipated that applicants will need to assert that all CAPA criteria established in this rule are met. The public burden associated with asserting CAPA criteria are believed to represent perhaps 10 to 25

percent of the 1040 hours of total burden associated with completing an SSA Demonstration Program application. These estimates are considered preliminary in nature (pending Grant Guidance issuance), and include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

An Information Collection Request document (ICR No. 1431) has been prepared by EPA and a copy may be obtained from: Carla Levesque, Information Policy Branch, EPA, 401 M Street, SW. (PM-223), Washington, DC 20460 or by calling (202) 382-2740.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, "Attention: Timothy Hunt."

List of Subjects in 40 CFR Part 149

Critical aquifer protection areas, Reservoirs, Water pollution control.

Date: February 7, 1989.

Jack Moore,
Acting Administrator.

Accordingly, Part 149 is amended as follows:

PART 149—SOLE SOURCE AQUIFERS

1. The authority citation for Part 149 continues to read:

Authority: Sec. 1424(e), Safe Drinking Water Act (42 U.S.C. 300h-3(e); sec. 1427 of the Safe Drinking Water Act (42 U.S.C. 300h-6)).

2. Section 149.2 is revised to read as follows:

§ 149.2 Definitions.

(a) *Aquifer* means a geological formation, group of formations, or part of a formation that is capable of yielding

a significant amount of water to a well or spring.

(b) *Recharge* means a process, natural or artificial, by which water is added to the saturated zone of an aquifer.

(c) *Recharge Area* means an area in which water reaches the zone of saturation (ground water) by surface infiltration; in addition, a "major recharge area" is an area where a major part of the recharge to an aquifer occurs.

(d) *Sole or Principal Source Aquifer* (SSA) means an aquifer which is designated as an SSA under section 1424(e) of the SDWA.

3. Section 149.3 is revised to read as follows:

§ 149.3 Critical Aquifer Protection Areas.

A Critical Aquifer Protection Area is either:

(a) All or part of an area which was designated as a sole or principal source aquifer prior to June 19, 1986, and for which an areawide ground-water quality protection plan was approved, under section 208 of the Clean Water Act, prior to that date; or

(b) All or part of a major recharge area of a sole or principal source aquifer, designated before June 19, 1986, for which:

(1) The sole or principal source aquifer is particularly vulnerable to contamination due to the hydrogeologic characteristics of the unsaturated or saturated zone within the suggested critical aquifer protection area; and

(2) Contamination of the sole or principal source aquifer is reasonably likely to occur, unless a program to reduce or prevent such contamination is implemented; and

(3) In the absence of any program to reduce or prevent contamination, reasonably foreseeable contamination would result in significant cost, taking into account:

(i) The cost of replacing the drinking water supply from the sole or principal source aquifer, and

(ii) Other economic costs and environmental and social costs resulting from such contamination.

[FR Doc. 89-3386 Filed 2-13-89; 8:45 am]

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Registered Partner

**Tuesday
February 14, 1989**

Part VI

Department of Education

Office of Vocational and Adult Education

Cooperative Demonstration Program; Notice of Proposed Priority, Required Activities, and Selection Criteria for Fiscal Year 1989; Notice

DEPARTMENT OF EDUCATION**Office of Vocational and Adult Education****Cooperative Demonstration Program****AGENCY:** Department of Education.**ACTION:** Notice of proposed priority, required activities, and selection criteria for fiscal year 1989.

SUMMARY: The Secretary of Education proposes to establish an absolute priority for a fiscal year 1989 grant competition under the Cooperative Demonstration Program. Under the priority, funds would be reserved for applications proposing to conduct high technology training projects in vocational education that involve cooperation between the private sector and public agencies in vocational education. The Secretary also proposes to require applicants to submit certain written assurances, as described under the Activities section of this priority, as part of their applications for this program and to prohibit the use of Federal funds to cover the costs of equipment used for project activities. Lastly, the Secretary proposes to use new selection criteria in evaluating applications submitted for this competition only.

DATE: Comments must be received on or before March 16, 1989.**ADDRESS:** Comments should be addressed to Richard F. DiCola or Robert L. Miller, Program Improvement Branch, Division of National Programs, Office of Vocational and Adult Education (Room 4512, Switzer Building), 400 Maryland Avenue SW., Washington, DC 20202-7242. Telephone (202) 732-2362 or 732-2428.**SUPPLEMENTARY INFORMATION:****Program Information**

Recent data compiled by the Bureau of Labor Statistics indicate faster than average growth in the demand for skilled technicians in high technology fields through the year 2000. The data also indicate that these emerging technologies will have a significant impact on the efficiency and flexibility of a well-trained work force.

High technology training can be conducted most effectively with the active involvement and cooperation of the private sector. Effective partnerships between the private sector and public agencies in vocational education are an important aspect of the Cooperative Demonstration Program which is designed, in part, to demonstrate ways in which public agencies in vocational education and the private sector can

work together to assist students to attain the advanced level of skills needed to make the transition from school to work.

Priority

In accordance with Department of Education General Administrative Regulations at 34 CFR 75.105(c)(3), the Secretary proposes to establish an absolute priority for the fiscal year 1989 grant competition under the Cooperative Demonstration Program for projects that focus on high technology training efforts that are also models of cooperation between the private sector and public agencies in vocational education. In order to maximize the use of Federal funds for the direct training of students, the Secretary proposes that no Federal funds be used to purchase or lease equipment to conduct project activities. Any necessary equipment costs may be counted toward the cost-sharing requirement for this program.

Specifically, the Secretary proposes to support projects that—

(1) Train persons to become skilled workers or technicians in high technology occupations (including providing related instruction to individuals undergoing apprenticeship training) or to become skilled workers or technicians involved in the production, installation, operation, and maintenance of high technology equipment, systems, and processes;

(2) Are examples of successful cooperation between the private sector (including employers, consortia of employers, labor organizations, building trade councils, and other private agencies, organizations, and institutions) and public agencies in vocational education (including State and local educational agencies, postsecondary educational institutions, institutions of higher education, and other public agencies, organizations, and institutions). For the purpose of this competition the military and publicly funded laboratories are considered employers that could be used as private sector partners in a proposed project; and

(3) Expend no Federal funds for equipment, as defined in 34 CFR 74.132.

Activities

In support of this priority, an applicant would be required to submit, as part of its application, a written assurance that it will cooperate, if selected, with a planned national evaluation study of projects funded under this competition.

An applicant would also be required to submit, as part of its application, written assurances from each public

agency in vocational education and each private sector entity that they will participate in the planning and operation of the proposed project as described in the application.

Criteria for Evaluating Applications

For the Fiscal Year 1989 grant competition under the Cooperative Demonstration Program, the Secretary proposes to use the following selection criteria and to assign points to the selection criteria as indicated:

(a) Need. (15 points)

(1) The Secretary reviews each application for information that shows the need for and the soundness of the rationale for the project.

(2) The Secretary looks for information that shows—

(i) A clear description of the need for the proposed project;

(ii) Specific evidence of the need for the project;

(iii) A description of any ongoing and planned activities in the community relative to the need, including, if appropriate, the relationship of any local, regional or State economic development plan;

(iv) Evidence that demonstrates the vocational training to be provided is designed to meet current and projected occupational needs;

(v) A clear statement of what the project seeks to demonstrate; and

(vi) Evidence that the project is likely to serve as a model in the future.

(b) Plan of Operation. (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of Key Personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and Cost Effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation Plan.* (10 points)

The Secretary reviews each application to determine the quality of the project's evaluation plan for the project, including the extent to which—

(1) The plan includes activities during the formative stages of the project to help to guide and improve the project, as well as a final evaluation that includes summary data and recommendations; and

(2) The plan includes, at a minimum, a description of the participant data to be collected based on the project objectives; tracking and follow-up of progress by all project participants throughout the project period; and outcome measures to be used for each objective.

(f) *Adequacy of Resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies the applicant plans to use are adequate.

(g) *Private Sector Involvement.* (10 points)

(1) The Secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—

(i) Private sector involvement in the planning of the project; and

(ii) Private sector involvement in the operation of the project.

(h) *Employment Opportunities.* (5 points)

The Secretary looks for information and documentation to the extent to which trainees, upon completion of their training, will be either employed in jobs related to their training or enrolled in postsecondary vocational education programs related to the training received during the project. Acceptable documentation includes letters of commitment from employers to hire training completers or descriptions of postsecondary vocational education programs that would be appropriate for subsequent training.

(i) *Dissemination.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant has an effective and efficient plan for disseminating information about the demonstration project, including the results of the project and any specialized materials developed by the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(ii) A description of the types of materials the applicant plans to make available and the methods for making the materials available;

(iii) Provisions for demonstrating the methods and techniques used by the project;

(iv) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project; and

(v) Provisions for publicizing the findings of the project at the local, State or national level.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding (a) the proposed priority for high technology projects that involve cooperation with the private sector and prohibit the expenditure of Federal funds for equipment and related requirements; and (b) the proposed selection criteria.

All comments submitted in response to this notice will be available for public inspection during and after the comment period in Room 4512 Switzer Building, 330 C Street SW., Washington, DC, between the hours of 9:30 a.m. and 3:00 p.m., Monday through Friday of each week except Federal holidays.

Authority: 20 U.S.C. 2411

Dated: February 2, 1989.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89-3470 Filed 2-13-89; 8:45 am]

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