

(2) Special Service Award recommendation—92-007 G for Employees in the Chicago, Illinois District Office.

(3) State Wage Matching Program—Commonwealth of Massachusetts.

(4) Medical Contract.

(5) Medical Fee Schedule.

(6) Regulations—Part 203, employees Under the Act.

(7) Regulations—Part 230, Reduction and Non-Payment of Annuities by Reason of Work.

(8) Final Rule—Part 255, Recovery of Overpayments.

(9) Regulations—Parts 202 and 301, Employers Under the Railroad Retirement Act and Railroad Unemployment Insurance Act.

(10) Board Order (Approved 12-17-91) Setting Forth Board's Policy on Disability Annuity Applications for Employees in Compensated Service.

(11) 1992 Railroad Retirement Handbook (Blue Book).

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 386-4920.

Dated: February 7, 1992.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 92-3596 Filed 2-11-92; 11:23 am]

BILLING CODE 7905-01-M

UNITED STATES DEPARTMENT OF AGRICULTURE

RURAL TELEPHONE BANK, USDA

ACTION: Regular Meeting of Board of Directors.

TIME AND DATE: 9:15 a.m., Tuesday, February 25, 1992.

PLACE: The Renoir Room, 2nd Floor, Loew's L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC.

STATUS: Open.

CONTACT PERSON FOR MORE

INFORMATION: Blaine D. Stockton, Jr., Assistant Secretary, Rural Telephone Bank, (202) 382-9552.

AGENDA:

- I. Call to Order
- II. Report of Board Member Election Results
- III. Swearing-in of New Board Members

IV. If necessary, provide procedures for valid election and resolve any tie votes

V. Approval of Minutes of the October 30, 1991, RTB Board Meeting

VI. Loans Approved in the first quarter of FY 1992

VII. Financial Statements for the first quarter of FY 1992

VIII. Report on Requests for Waiver of Prepayment Premiums

IX. Summary Report on McDermott, Will & Emery Presentation to Privatization Committee and Applicability of the Sunshine Act to Committee Operations

X. Role of Counsel to the RTB

XI. Federal Credit Reform Applicability to the RTB

XII. RTB Meetings

a. Schedule for 1992

b. Location for the next meeting

XIII. Adjournment.

Dated: February 11, 1992.

Michael M.F. Liu,

Acting Governor.

[FR Doc. 92-3609 Filed 2-11-92; 1:09 pm]

BILLING CODE 3410-15-M

Corrections

Federal Register

Vol. 57, No. 30

Thursday, February 13, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 91-123]

Veterinarians Accredited by the Mexican Government

Correction

In proposed rule document 92-2011 beginning on page 3145 in the issue of Tuesday, January 28, 1992, make the following correction:

§ 92.429 [Corrected]

On page 3147, in the second column, in § 92.429, in the second line, after "veterinarian" insert "of the Mexican Government" would be removed and the phrase "certificate".

BILLING CODE 1505-01-D

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052-AB25

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Management of Investments; Liquidity; Interest Rate Risk; Eligible Investments

Correction

In proposed rule document 91-30015 beginning on page 65891 in the issue of Wednesday, December 18, 1991, make the following corrections:

1. On page 65891, in the 2nd column, under **FOR FURTHER INFORMATION CONTACT:**, in the 5th line, after "4231" insert a "," and in the 12th line, after "4444" insert a ".".

2. On the same page, in the third column, in the second full paragraph, in the ninth line, "profolios" should read "portfolios".

3. On page 65892, in the first column, in the first line, "the" should read "to".

4. On page 65893, in the 2nd column, in the 14th line, "to" should read "so".

5. On the same page, in the same column, in the first full paragraph, in the 14th line, "loads" should read "loans".

6. On page 65894, in the 2nd column, in the first full paragraph, in the 9th line, "not" should read "now" and in the 12th line, "for" should read "from".

7. On page 65897:

a. In the first column, in the third line, "for" should read "For".

b. In the same column, in the second full paragraph, in the tenth line, "bands" should read "banks".

c. In the second column, in the second full paragraph, in the seventh line, after "existing" insert "§ 615.5140(a)(11) and (12) into a single provision,".

d. In the third column, in the ninth line, after "commercial" insert "and finance".

e. In the same column, in the third full paragraph, in the fifth line "diversity" should read "diversify".

8. On page 65898, in the first column, in the first full paragraph, in the first line, "§ 615.5140(a)(13)" should read "§ 615.5140(a)(13)" and in the eighth line, "Fram" should read "Farm".

9. On the same page, in the second column, in the third full paragraph, "BX" should read "BC".

10. On page 65899, in the first column, in the third line, "1986" should read "1987".

§ 615.5131 [Corrected]

11. On page 65700, in the first column, in § 615.5131(k), in the sixth line, "specified" should read "specific".

12. On the same page, in the second column, in § 615.5131(r), in the third line, § 615.5201(1) should read "§ 615.5201(l)".

§ 615.5134 [Corrected]

13. On the same page, in the third column, in § 615.5134(c), in the ninth line, "exits" should read "exists".

§ 615.5135 [Corrected]

14. On page 65701:

a. In the first column, in § 615.5135(d) in the second line from the bottom, "or" should read "of".

b. In the same column, in the amendatory instruction 7., in the fifth line, "paragraph" should read "paragraphs".

§ 615.5140 [Corrected]

c. In the second column, in § 615.5140(a)(2)(ii), in the fifth line, "fixed" should read "fixed-rate".

d. In the same column, in § 615.5140(a)(2)(iii), in the seventh line, "purpose" should read "purposes".

e. In the same column, in § 615.5140(a)(5), in the 11th line, "services" should read "service".

§ 615.5141 [Corrected]

15. On page 65702, in the first column, in § 615.5141, in the second line, "of" should read "or".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meeting

Correction

In notice document 92-1601 appearing on page 2752 in the issue of Thursday, January 23, 1992, in the first column, in the file line at the end of the document, "FR Doc. 92-1602" should read "FR Doc. 92-1601".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 85F-0469]

Indirect Food Additives: Polymers

Correction

In rule document 92-2403 beginning on page 3938 in the issue of Monday, February 3, 1992, make the following corrections:

1. On page 3938:

a. In the first column, under **SUMMARY:**, in the fourth line, "resin" should read "resins".

b. In the second column, under **SUPPLEMENTARY INFORMATION:**, in the eighth line, "(21 CFR 177.1850)" should read "(21 CFR 177.1580)", and in the 10th line, after "by" insert "the".

c. In the third column, in the first full paragraph, in the eighth line, after

"establishes" insert "that", and in the ninth line, "the" should read "that".

d. In the same column, in the same paragraph, in the 14th line, after "from" insert "the".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Change of Sponsor

Correction

In rule document 92-1741, appearing on page 2837, in the issue of Friday, January 24, 1992, make the following corrections:

1. On page 2837, in the first column, under **SUPPLEMENTARY INFORMATION**, in the tenth line, delete "91-705".

PART 522—[CORRECTED]

2. In the same column, at the end of the authority citation, replace the colon with a period.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N-0016]

Drug Export; Optiray 240 (Ioversol Injection 51%), Optiray 300 (Ioversol Injection 64%), Optiray 350 (Ioversol Injection 74%)

Correction

In notice document 92-1552, appearing on page 2558, in the issue of Wednesday, January 22, 1992, in the first

column, under **SUMMARY**, in the third line, "Mallinckrodt" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-4214-10; GP2-089; OR-22029-C(WASH), et al.]

Proposed Continuation of Withdrawals; Washington

Correction

In notice document 92-1599 beginning on page 2777 in the issue of Thursday, January 23, 1992, make the following corrections:

1. On page 2778, in the first column, in the fourth line, "N." should read "W".

2. On the same page, in the same column, in the fourth full paragraph, in the fifth line, "Cost" should read "Coast".

3. On the same page, in the same column, in the 6th full paragraph, in the 13th line, after "will" insert "be published in the Federal Register. The existing withdrawals will".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30153; File No. SR-NYSE-91-37]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Arbitration Procedures

Correction

In notice document 92-723 beginning on page 1292 in the issue of Monday, January 13, 1992, make the following correction:

On page 1292, in the third column, paragraph 6. should read as set forth below:

6. Rule 627: Awards

The NYSE proposes to amend rule 627(e) to require that an arbitration award include, in addition to the information required by the current rule, the names of counsel representing the parties and the type of product or security involved in the arbitration. The NYSE also proposes to amend rule 627(g) to consolidate current rules 627(g) and (h) and to clarify when interest is payable on an award. The current rule provides that arbitrators may award interest as they deem appropriate. The rule also provides that all awards shall bear interest from the date of the award until payment. Amended rule 627(g) would continue to require payment of awards within thirty days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. The proposed rule change, however, would revise the rule's current requirement for payment of interest on awards from the date of the award. The rule would provide that an award shall bear interest from the date of the award if: (1) The award is not paid within thirty days of receipt; (2) the award is the subject of a motion to vacate which is denied; or (3) the arbitrators otherwise so specify in the award.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Air Traffic Subcommittee; Unmanned Aerospace Vehicle Operations Working Group

Correction

In notice document 91-25851, appearing on page 55520, in the issue of Monday, October 28, 1991, in the third column, in the file line at the end of the document, "FR Doc. 91-25881" should read "FR Doc. 91-25851".

BILLING CODE 1505-01-D

Register Federal Register

Thursday
February 13, 1992

Part II

Commission on National and Community Service

45 CFR Chapter XXV

National and Community Service Grant
Program; Final Rule

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

45 CFR Chapter XXV

National and Community Service Grant Program

AGENCY: Commission on National and Community Service.

ACTION: Final rule.

SUMMARY: The Commission on National and Community Service is issuing this final rule concerning the programs authorized by the National and Community Service Act of 1990, as amended. These programs are intended to promote national and community service among the citizens of the United States to help meet human, educational, environmental and public safety needs, particularly those related to poverty. This rulemaking is intended to govern the awarding of grants under the programs authorized by the National and Community Service Act, to delineate the requirements that must be met by recipients of funds, and to describe the activities that may be conducted under these programs.

EFFECTIVE DATE: February 13, 1992.

FOR FURTHER INFORMATION CONTACT:

Anyone wishing further information concerning this rulemaking should contact: Terry Russell at 202-724-0600.

SUPPLEMENTARY INFORMATION:

Background

On November 8, 1991, the Commission on National and Community Service published a proposed rule implementing the National and Community Service Act of 1990, as amended. In response to the notice of proposed rulemaking, the Commission received over 100 comments from States, Indian Tribes, schools, higher education institutions, youth corps program sponsors, Older American Volunteer Program sponsors, and private nonprofit organizations concerned with youth, senior citizens, and volunteer service. The Commission has reviewed these comments, and made revisions to the proposed rule in response.

Summary of Comments

The Commission found comments on the proposed rule to be extremely helpful in identifying areas where greater clarity is needed, and recommending policy and technical revisions. In addition, numerous comments suggest changes that may be made only if the National and Community Service Act is amended. For example, comments suggested that living allowances and postservice

benefits provided under the Act should not be allowed to affect means-tested benefits under the Social Security Act; that 14-year-olds should be included as eligible participants under the American Conservation and Youth Service Corps program; that summer programs should be expanded to include programs beginning in May; and that the Tort Claims Act should cover all participants and staff in funded programs.

Several comments suggested that the Comprehensive State Plan requirement could prove burdensome to States, and make it difficult for States just starting out to apply. Therefore, the final regulations allow States to meet the Comprehensive State Plan requirement by submitting a description of planning efforts to be conducted during the term of the grant, including a timetable for completion of the Comprehensive State Plan. Indian Tribes, which are treated as States in many provisions of the Act, will not be required to submit a Comprehensive State Plan.

Comments also suggested that provisions regarding the appointing of a State Advisory Board for National and Community Service should be revised to accommodate States that already have similar boards in place, and States that prefer other strategies for soliciting input from a broad-based group. The final regulations require all States to solicit broad-based and local input in developing the Comprehensive State Plan in a bipartisan or nonpartisan manner, through any appropriate means, including the appointment of a State Advisory Board.

Comments from both State and local organizations requested clarification of rules governing States in allocating Serve-America and American Conservation and Youth Service Corps funds to local applicants. The final regulations clarify that a State is not required to issue a formal request for proposals, but should solicit applications from a broad-based group of public and private nonprofit organizations. Under the Conservation Corps program, a State is asked to use a "reasonable" portion of its funds to make grants within the state (substate grants). The Commission declined to set a fixed percentage of funds that must be used for substate grants. The Commission anticipates that circumstances will vary from State to State depending on the cost of the State-operated program, the number of qualified local applicants within the State, and the amount of the award to the State.

Numerous comments suggested that the intergenerational focus of programs should be strengthened in the

regulations. In response, the final regulations include as a purpose, "to expand full-time and part-time service opportunities for all citizens, particularly youth and older Americans." In addition, the Comprehensive State Plan was amended to include efforts to accomplish this goal.

Comments also asked for more detail regarding what is included in the five percent cap on administrative costs. As a result, we have revised the definition to provide added clarity, by first providing examples of administrative costs that will be included in the 5% cap. We have then provided examples of costs that are not administrative, but rather fall within the direct service category. Finally, we have set forth some general rules as to how, under certain circumstances, expenses should be prorated.

Several comments asked for more information about the Commission's plans for evaluation. Information about evaluation may be found in the applications and in additional written guidelines to be issued by the Commission at a later date.

Comments also requested information about the required three-week training program under part 2504. The Commission expects to design the training for full-time, part-time and special senior service participants in consultation with each grantee receiving funds under part 2504. The costs of the training need not be reflected in applications for fiscal year 1992 funds.

Comments indicated that there is confusion regarding roles for senior citizens in the Youth Corps and National and Community Service Programs.

Under the Youth Corps program senior citizens may be involved in three ways, at the discretion of the grantee. First, they may serve as Special Corps Members, as provided for in § 2503.21(c). As Special Corps Members, they will be subject to the same requirements and receive the same benefits as regular corps members. Second, they may serve as mentors for youth participants through a joint project between a youth corps and senior citizens organization, as provided for in § 2503.23. Nonparticipant volunteers may assist with the operation of the program—helping to train, supervise, or recruit participants, for example—or may work alongside participants on a project.

Under the National and Community Service program, senior citizens may be involved in three ways, again at the discretion of the grantee. First, they may be enrolled as regular full-time or part-

time participants. As full-time or part-time participants, the senior citizens would be subject to the same requirements and receive the same benefits as other participants. Second, they may be enrolled as Special Senior Service participants, who may serve for any number of hours over any period of time specified by the grantee. Special Senior Service participants do not receive post-service benefits. However, they will receive a living allowance (for part-time Special Senior Service participants, the living allowance will be prorated based on number of hours served). Third, they may serve as nonparticipant volunteers.

Additional Considerations

In an effort to ensure that funded programs are those best suited to advance the goals of the Act, the final rules add four key elements to the criteria that will be used to determine whether a proposal receives funding. These criteria are quality (of program, leadership and management); innovation; replicability; and sustainability, and are amplified in the regulations. In all cases, the final regulations retain criteria for funding specified in the statute. The key elements discussed above expand, rather than modify, those statutory criteria.

Potential applicants should be aware that they will be required to comply with the nondiscrimination provisions of the Act. These provisions provide that programs receiving assistance will not discriminate against participants or staff on the basis of race, color, national origin, sex, age, disability, or political affiliation. In addition, the statute bars religious discrimination against participants or project staff paid with funds received under the Act. Finally, the Act provides that assistance provided under its provisions constitutes Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (which bars discrimination based on race, color, or national origin), title IX of the Education Amendments of 1972 (which bars discrimination on the basis of sex), the Rehabilitation Act of 1973 (which bars discrimination on the basis of disability), and the Age Discrimination Act of 1975 (which bars discrimination on the basis of age). Regulations implementing these will be published prior to the awarding of grants.

Applicants should further be advised that Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, Administrative Requirements for Grants and

Cooperative Agreements to other than State and Local Governments, and regulations for the Privacy Act, Freedom of Information Act, Sunshine Act, Government-wide Debarment and Suspension, and Government-wide Requirements for Drug-Free Workplace will also be published prior to awarding of grants.

As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects

45 CFR Part 2500

Grant programs—Social programs, Organization and functions.

45 CFR Part 2501

Grant programs—Social programs, Elementary and secondary education.

45 CFR Part 2502

Grant programs—Social programs, Colleges and Universities.

45 CFR Part 2503

Grant programs—Social programs, Youth.

45 CFR Part 2504

Grant programs—Social programs, Community development block grants, Community action programs.

45 CFR Part 2505

Grant programs—Social programs, Community development.

45 CFR Part 2506

Grant programs—Social programs, Grants administration.

For the reasons set forth in this preamble, the Commission on National and Community Service is hereby establishing a new chapter XXV, consisting of parts 2500–2506, in title 45 of the Code of Federal Regulations to read as follows:

CHAPTER XXV—COMMISSION ON NATIONAL AND COMMUNITY SERVICE

Part

2500—General.

2501—Serve-America: programs for students and out-of-school youth.

2502—Higher Education Program: innovative projects for community service.

2503—American Conservation and Youth Service Corps Programs.

2504—National and Community Service Programs.

2505—Innovative and Demonstration Programs.

2506—Administrative Requirements.

PART 2500—GENERAL

Sec.

2500.1 Purposes and goals.

2500.2 Definitions.

2500.3 Consolidated applications.

2500.4 Development of the Comprehensive State Plan.

Authority: 42 U.S.C. 12501 et seq., as amended.

§ 2500.1 Purposes and goals.

The purposes and goals of this chapter are:

(a) To renew the ethic of civic responsibility in the United States;

(b) To encourage citizens, regardless of age, income or ability, to engage in full-time or part-time service to the Nation;

(c) To involve youth in programs that will benefit the Nation and improve their own lives;

(d) To enable young adults to make a sustained commitment to service by removing barriers created by high education costs, loan indebtedness and the cost of housing;

(e) To build on the network of existing Federal, State, and local programs and agencies to expand full-time and part-time service opportunities for all citizens, particularly youth and older Americans;

(f) To involve participants in activities that would not otherwise be performed by paid workers;

(g) To generate additional volunteer service hours to help meet human, educational, environmental and public safety needs, particularly those relating to poverty;

(h) To encourage institutions to volunteer their resources and energies and encourage service among their members, employees, and affiliates;

(i) To identify successful and promising community service initiatives and disseminate information about them; and

(j) To discover and encourage new leaders, especially youth leaders, and to develop individuals and institutions that demonstrate that a successful life includes serving others.

§ 2500.2 Definitions.

(a) As used in this chapter:

(1) *Act* means the National and Community Service Act of 1990 (Pub. L. 101-610, as amended).

(2) *Administrative costs or expenses* include: Costs associated with overall program administration; salaries and benefits for director and administrative staff of existing organizations that sponsor a funded program; and insurance that protects the grantee (e.g., liability insurance). Non-administrative

(direct service) Costs include: Costs relating to service delivery (services that directly benefit participants); salaries and benefits of staff who train, place, and supervise such staff; costs of providing living allowances and usual in-service education and training for participants; insurance that benefits participants; and evaluation of the program as required by the terms and conditions of the grant. Of course, particular costs charged to the proposed program might be pro-rated (with documentation) between direct services and administration. If personnel, equipment, or other resources are shared between the proposed program and unrelated programs, the costs must be pro-rated.

(3) *Adult volunteer* means:

- (i) An individual who is beyond the age of compulsory schooling, including an older American, an individual with a disability, or a parent;
- (ii) An employee of a private business;
- (iii) An employee of a public or nonprofit agency; or
- (iv) Any other individual working without financial remuneration in an educational institution to assist students or out-of-school youth.

(4) *Commission* means the Commission on National and Community Service established under section 190 of the Act.

(5) *Community-based agency* means a private nonprofit organization that is representative of a community or a significant segment of a community and that is engaged in meeting human, educational, or environmental community needs, including churches and other religious entities, public safety organizations and community action agencies.

(6) *Crew* means a team of youth corps participants organized to work jointly on a project or to engage in team activities even if participants do not work jointly on service projects.

(7) *Crew Leader* means a participant assigned to a position of responsibility or leadership over a crew of participants.

(8) *Crew Supervisor* means the adult staffperson who is responsible for supervising a crew of participants, including the crew leader.

(9) *Disability* has the same meaning given such term in section 3(2) of the Americans with Disabilities Act (42 U.S.C. 12101, et seq.).

(10) *Economically Disadvantaged* with respect to youth has the same meaning given such term in section 4(8) of the Job Training Partnership Act (29 U.S.C. 1503(8)).

(11) *Elementary School* means a day or residential school which provides

elementary education, as determined under State law.

(12) *Indian* means a person who is a member of an Indian tribe.

(13) *Indian Lands* means any real property owned by an Indian tribe, any real property held in trust by the United States for Indian tribes, and any real property held by Indian tribes that is subject to restrictions on alienation imposed by the United States.

(14) *Indian Tribe* means an Indian tribe, band, nation, or other organized group or community, including Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) that is recognized by the United States as Indians because of their status as Indians.

(15) *Institution of Higher Education* has the same meaning given such term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

(16) *Local Applicant* means any eligible applicant other than a State or Indian tribe.

(17) *Local Educational Agency* has the same meaning given such term in Section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12)).

(18) *Local Government Agency* means a public agency that is engaged in meeting human, social, educational, or environmental needs, including public safety agencies.

(19) *Non-Participant Volunteer* means an individual who is not a participant enrolled in a program but who assists a program funded under this Chapter by providing volunteer services.

(20) *Out-Of-School Youth* means an individual who:

- (i) Has not attained the age of 27;
- (ii) Has not completed college or the equivalent thereof; and
- (iii) Is not enrolled in an elementary or secondary school or institution of higher education.

(21) *Participant* means an individual enrolled in a program that receives assistance under this Chapter. Participants shall not be considered employees of the program.

(22) *Partnership Program* means a program through which adult volunteers, public or private agencies, institutions of higher education, or businesses assist a local educational agency.

(23) *Placement* means the matching of a participant with a specific project.

(24) *Program* means an activity carried out with assistance provided under this Chapter.

(25) *Program Agency* means:

(i) A Federal or State agency designated to manage a youth corps program;

(ii) The governing body of an Indian tribe that administers a youth corps program; or

(iii) A local applicant administering a youth corps program.

(26) *Project* means an activity that results in a specific identifiable service or product that otherwise would not be done with existing funds, and that does not duplicate the routine services or functions of the employer to whom participants are assigned.

(27) *Public Lands* means any lands or waters (or interest therein) owned or administered by the United States or by an agency or instrumentality of a State or local government.

(28) *Secondary School* means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(29) *Service-Learning* means a method:

(i) Under which students learn and develop through active participation in thoughtfully organized service experiences that meet actual community needs and that are coordinated in collaboration with the school and community;

(ii) That is integrated into the students, academic curriculum or provides structured time for a student to think, talk, or write about what the student did and saw during the actual service activity;

(iii) That provides students with opportunities to use newly acquired skills and knowledge in real-life situations in their own communities; and

(iv) That enhances what is taught in school by extending student learning beyond the classroom and into the community and helps to foster the development of a sense of caring for others.

(30) *Service Opportunity* means a program or project, including service-learning programs or projects, that enables participants to perform meaningful and constructive service in agencies, institutions, and situations where the application of human talent and dedication may help to meet human, educational, linguistic, public safety, and environmental community needs, especially those relating to poverty.

(31) *Special Senior Service Participant* means an individual who is age 60 or over and willing to work full-time or part-time in conjunction with a full-time national service program.

(32) *Sponsoring Organization* means an organization, eligible to receive assistance under this chapter, that has been selected to provide a placement for a participant.

(33) *State* means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Palau, until such time as the Compact of Free Association is ratified.

(34) *State Educational Agency* has the same meaning given such term in section 1471(23) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(23)).

(35) *Student* means an individual who is enrolled in an elementary or secondary school or institution of higher education on a full- or part-time basis.

(36) *Summer Program* means a youth corps program authorized under this chapter that is limited to the months of June, July, and August.

(37) *Youth Corps Program* means a program, such as a conservation corps or youth service corps program, that offers full-time, productive work (to be financed through living allowances) with visible community benefits in a natural resource or human service setting and that gives participants a mix of work experience, basic and life skills, education, training, and support services.

(b) *Authority To Make State Grants.* The Commission may, in accordance with the provisions of this chapter, make grants to States, Indian Tribes, and local applicants, to enable them to carry out programs under parts 2501, 2502, 2503, 2504, and 2505 of this chapter.

§ 2500.3 Consolidated applications.

(a) *General.* The Commission shall not award more than one grant during each fiscal year to each State under this Chapter. The grant will be designated for use in accordance with one or more parts of this chapter.

(b) *Number of Applications.* A State may apply for a grant to operate one or more of the programs described in parts 2501 through 2505 of this chapter and shall consolidate all of its applications for the conduct of programs under parts 2501 through 2505 into a single application that meets the requirements of this chapter.

(c) *Multiple Use.* A grant awarded to a State shall be used by the State in accordance with the applications consolidated, submitted, and approved under the parts. A State may, for example, apply to operate programs under two of the programs authorized under this chapter, but might receive

funds for only one of the two programs. States may not shift funds from one program to another, and must use its grant for the program or programs designated in the application and the grant award.

(d) *Comprehensive Service Plan.* All applications submitted by States shall include a service plan that includes information about the programs proposed to be conducted with funds under this chapter, as well as information related to the applicant's overall strategy for expanding commitment to service. The plan shall describe:

(1) Critical human, educational, environmental, and public safety needs, particularly those needs relating to low-income communities and people, that will be addressed through institutions and individuals engaging in community service;

(2) Efforts to generate additional community service hours each year and to encourage additional individuals to engage in community service;

(3) Efforts to discover and encourage new leaders, especially youth, develop individuals and institutions that serve as strong examples of a commitment to service, and convey to all Americans the importance of serving others;

(4) Efforts to encourage young people to serve in programs that will benefit the Nation, and eliminate barriers to full- and part-time service, especially for low-income individuals;

(5) Efforts to build on the existing organizational framework of Federal, State, and local programs and agencies to expand service opportunities, particularly for youth and older Americans;

(6) Efforts to encourage institutions, such as government, business, nonprofit organizations, and religious and educational institutions, to volunteer their resources, and encourage and facilitate community service among their members, employees, affiliates and others involved with the institution;

(7) The interrelationship among programs proposed to be funded under the Act;

(8) Joint planning efforts and partnerships undertaken to develop this plan, including any involvement of local public and private organizations, youth, low-income communities and people, or a State Advisory Board; and

(9) Such other information as specified by the State.

(e) If a State cannot complete the Comprehensive State Plan in time to submit the Plan with its application, the State may submit a plan that describes planning efforts to be conducted during the term of the grant, including a

timetable for completion of a plan that covers the information required in § 2500.3(d).

§ 2500.4 Development of the Comprehensive State Plan.

(a) *General.* Each State that applies for assistance under this Part is required to solicit broad-based and local input in developing the Comprehensive State Plan in a bipartisan or nonpartisan manner. A State might, for example, establish a State Advisory Board, assign an existing bipartisan or nonpartisan committee to perform an advisory function, or hold public hearings on the plan.

(b) *Formation of a State Advisory Board.* Each State that applies for assistance under this part is encouraged to establish a bipartisan and nonpartisan State Advisory Board for National and Community Service.

(c) *Appointment of a State Advisory Board.* If a State elects to appoint a new State Advisory Board: (1) The chief executive officer shall appoint members to the State Advisory Board of National and Community Service from among:

(i) Representatives of State agencies administering community service, youth service, and job training programs;

(ii) Youth and low-income individuals; and

(iii) Representatives of labor, business, agencies working with youth, community-based organizations such as community action agencies, students, teachers, Older American Volunteer Programs as established under title II of the Domestic Volunteer Service Act of 1973, full-time youth service corps programs, school-based community service programs, higher education institutions, local educational agencies, volunteer public safety organizations, educational partnership programs, and other organizations working with volunteers.

(2) To the extent possible, the membership of the Advisory Board shall be balanced according to race, ethnicity, age, gender, and political party, and shall include individuals with disabilities.

(d) *Duties of the Board.* If the State elects to appoint a state advisory board, the Board shall assist the State agency administering a program under this chapter in:

(1) Developing the Comprehensive Service Plan described in § 2500.3(d);

(2) Coordinating programs receiving assistance under this Chapter and related programs within the State;

(3) Disseminating information concerning service programs that receive assistance under this chapter;

(4) Recruiting participants for projects that receive assistance under this chapter;

(5) Developing programs, training methods, curriculum materials, and other materials and activities related to programs receiving assistance under this chapter; and

(6) Developing an evaluation plan for the proposed program regarding its effectiveness and the achievement of proposed goals and predicted outcomes.

PART 2501—SERVE-AMERICA: PROGRAMS FOR STUDENTS AND OUT-OF-SCHOOL YOUTH

Sec.

2501.1 Eligibility to receive grants.

General Application Provisions and Procedures

2501.2 State application.

2501.3 Local application.

2501.4 Assurances.

2501.5 State Serve-America Proposal.

2501.6 Local Serve-America Proposal.

2501.7 Distribution of funds.

2501.8 Approval.

2501.9 Uses of funds.

2501.10 Planning grants.

2501.11 Term of grant.

2501.12 Federal share.

2501.13 Reservation of funds.

2501.14 Authorized uses of funds.

2501.15 Participation of children and teachers from private schools.

2501.16 Criteria for funding.

Authority: 42 U.S.C. 12501 et seq.

§ 2501.1 Eligibility to receive grants.

(a) States and Indian Tribes whose applications are approved by the Commission are eligible to receive Serve-America operating or planning grants.

(b) Local applicants meeting the requirements in paragraph (c) of this section are eligible to receive Serve-America operating grants to conduct activities described in § 2501.9 (b), (c), and (d):

(1) From the State in which they are located, subject to the approval of the State Educational Agency; or

(2) Directly from the Commission, if the local applicant is located in a State that has not submitted an application for a Serve-America operating or planning grant.

(c) Eligibility for Serve-America grants. (1) To implement, operate, or expand a school-based service-learning program described in § 2501.9(b) of this part, a local applicant must be:

(i) A local educational agency working in partnership with one or more public or private nonprofit organizations that will make service opportunities available for participants; or

(ii) A public or private nonprofit organization that will make service

opportunities available for participants, working in partnership with one or more local educational agencies;

(2) To implement, operate, or expand a community service program described in § 2501.9(c) of this part, a local applicant must be:

(i) A public or private nonprofit organization that works with disadvantaged youth working in partnership with one or more public or private nonprofit organizations that will make service opportunities available for participants; or

(ii) A public or private nonprofit organization that will make service opportunities available working in partnership with one or more public or private nonprofit organizations that work with disadvantaged youth;

(3) To implement, operate, or expand an adult volunteer or partnership program described in § 2501.9(d) of this part, a local applicant must be:

(i) A local educational agency working in partnership with one or more public or private nonprofit organizations or private for-profit businesses; or

(ii) A public or private nonprofit organization working in partnership with one or more local educational agencies;

(4) For the purposes of this section, the term "partnership" means pursuant to a written agreement specifying the responsibilities of each partner with respect to the development and operation of the program proposed to be conducted under this part.

General Application Provisions and Procedures

§ 2501.2 State application.

(a) An application for Serve-America funds may be made by the State, acting through the State Educational Agency. The application must contain:

(1) The amount of funds requested for each fiscal year during the period covered by the State plan described in § 2501.5;

(2) An assurance that the State will comply with the requirements of this chapter;

(3) A budget of expenditures, which provides an estimate of the use and distribution of Serve-America funds during the period covered by the application consistent with the provisions of § 2501.5 of this part;

(4) An assurance that the State will ensure compliance with the Drug-Free Workplace Requirements for Federal Grant Recipients under section 5153 through 5158 of the Anti-Drug Abuse Act of 1988 (41 U.S.C. 702-707);

(5) The State Serve-America Proposal, as required in § 2501.5 of this part;

(6) The number of individuals currently involved in community service as participants in programs proposed to receive funds under this part (if known);

(7) The number of additional participants and non-participant volunteers expected to become involved in community service under the program (if known);

(8) A description of how non-participant volunteers will assist the program, (if known); and

(9) Such other information as specified by the Commission.

(b) Applications must be submitted annually at such time and in such manner as prescribed by the Commission.

§ 2501.3 Local application.

An application for Serve-America funds made by local applicants eligible for grants under § 2501.1(b) of this part must contain:

(a) The amount of funds requested for the period covered by the application;

(b) An assurance that the local applicant will comply with the requirements of this chapter;

(c) A budget of expenditures, which provides an estimate of the use of Serve-America funds during the period covered by the application;

(d) An assurance that the applicant will ensure compliance with the Drug-Free Workplace Requirements for Federal Grant Recipients under sections 5153 through 5158 of the Anti-Drug Abuse Act of 1988 (41 U.S.C. 702-707);

(e) A local Serve-America proposal, as required in § 2501.6 of this part;

(f) A copy of a written agreement between the partners stating that the proposed program was jointly developed by the parties and that the program will be jointly executed by the parties;

(g) The number of individuals currently involved in community service as participants in programs proposed to receive funds under this part (if applicable);

(h) The number of additional participants and non-participant volunteers expected to become involved in community service under the program;

(i) A description of how non-participant volunteers will assist the program; and

(j) Such other information as specified by the Commission or the State Educational Agency.

§ 2501.4 Assurances.

(a) The State Serve-America Proposal must include assurances that:

(1) The State will ensure that local applicants are funded in accordance with the provisions of this chapter;

(2) The State will keep such records and provide such information to the Commission as may be required for fiscal audits and program evaluation;

(3) The State will assure that local applicants comply with the requirements of this Chapter; and

(4) The State will develop the State Serve-America proposal in consultation with, and solicit information from, a broad-based group of public and private nonprofit eligible organizations.

(b) The local Serve-America proposal must include assurances that:

(1) The local applicant will assure compliance with the requirements of this chapter;

(2) Prior to the placement of a participant, the program will consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such program;

(3) An assurance that the applicant will develop an age-appropriate learning component for participants in the program that shall include a chance for participants to reflect on service experiences and expected learning outcomes; and

(4) Assurances that participants in the program will be provided with information concerning VISTA, the Peace Corps, the GI Bill, full-time Youth Service Corps and National Service programs receiving assistance under this Title, and other service options and their benefits (such as student loan deferment and forgiveness) as appropriate.

§ 2501.5 State Serve-America Proposal.

(a) A State Serve-America Proposal for an operating grant must cover a period of not more than three years and must contain a description of the manner in which:

(1) Local applicants will be ranked by the State according to the criteria described in § 2501.16 of this part and in a manner that ensures the equitable treatment of local applications submitted by both local educational agencies and community-based organizations;

(2) Service programs within the State will be coordinated with each other and with other Federally assisted education programs, training programs, and other appropriate programs that serve youth;

(3) Cooperative efforts among local educational agencies, local government agencies, community-based agencies, businesses, and State agencies to develop and provide service opportunities, including those that

involve the participation of urban, suburban, and rural youth working together, will be encouraged;

(4) Economically and educationally disadvantaged youths, including individuals with disabilities, youth with limited basic skills or learning disabilities, youth in foster care who are becoming too old for foster care, youth of limited English proficiency, and homeless youth are assured of service opportunities;

(5) Service programs that receive assistance under this Part will be evaluated for effectiveness in achieving program objectives;

(6) Programs that receive assistance under this Part will serve urban and rural areas and tribal areas that exist within such State;

(7) Training and technical assistance will be provided to local grantees by qualified and experienced individuals employed by the State or through grant or contract with experienced content specialist and youth service resource organizations;

(8) Non-Federal assistance will be used to expand service opportunities for students and out-of-school youth;

(9) Information and outreach services will be disseminated and utilized to ensure the involvement of a broad range of organizations, particularly community-based organizations; and

(10) The State will give special consideration to providing assistance to projects that will provide academic credit to participants or are integrated into the academic program of the school.

(b) A State Serve-America Proposal for a planning grant must cover a period of not more than one year, describe activities mentioned in § 2501.9(a) of this part proposed to be conducted under the plan, including a description of activities proposed to be accomplished through grants and contracts with qualified organizations and individuals.

§ 2501.6 Local Serve-America Proposal.

(a) A local Serve-America Proposal must: (1) Establish and specify the membership and role of an advisory committee. Representatives of community-based agencies including community action agencies, service recipients, youth-serving agencies, youth, parents, teachers, administrators, agencies that serve older adults, school board members, labor, business, and individuals with disabilities, if any such entities exist in the community, shall be offered the opportunity to serve on the committee;

(2) Describe the goals of the program, which shall include goals that are quantifiable, measurable, and

demonstrate any benefits that flow from the program to the participants and the community;

(3) Describe service opportunities to be provided under the program that shall include evidence that participants will make a sustained commitment to the service project;

(4) Describe the manner in which the participants in the program will be recruited, including any special efforts that will be utilized to recruit out-of-school youth with the assistance of community-based agencies;

(5) Describe the manner in which participants in the program were or will be involved in the design and operation of the program;

(6) Describe the qualifications, and responsibilities of the coordinator of the program assisted under this part;

(7) Describe pre-service and in-service training for supervisors, teachers, and participants in the program;

(8) Describe the manner in which exemplary service will be recognized;

(9) Describe any potential resources that will permit continuation of the program, if needed, after the assistance received under this part has ended; and

(10) Disclose whether the program plans include preventing and treating school-age drug and alcohol abuse and dependency.

(b) If the local applicant intends to operate a program described in § 2501.9 (b) or (c) of this part, the local Serve-America proposal submitted by the applicant must include:

(1) A disclosure of whether or not the participants will receive academic credit for participation in the program and whether the program is integrated into the academic program of the school;

(2) The target levels of participants in the program and the target levels for the hours of service that such participants will provide individually and as a group;

(3) The proportion of expected participants in the program who are educationally or economically disadvantaged, including participants with disabilities;

(4) The ages or grade levels of expected participants in the program; and

(5) Other relevant demographic information concerning such expected participants.

(c) If the local applicant intends to operate a program described in § 2501.9(d) of this part, the local Serve-America proposal must describe the students who will be assisted through such a program, including the ages and grade levels of such students.

§ 2501.7 Distribution of funds.

(a) If less than \$20,000,000 is made available in each fiscal year to carry out parts 2501 and 2502, the Commission may award operating or planning grants to States and Indian Tribes, and to eligible local applicants in States that have not applied for funding under this part, on a competitive basis.

(b) If \$20,000,000 or more is made available to carry out parts 2501 and 2502, the Commission will:

(1) Reserve not more than 1 percent for payments to Indian Tribes, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands and Palau, until such time as the Compact of Free Association is ratified to be allotted in accordance with their respective needs;

(2) Allot the remaining funds as follows: (i) From 50 percent of such remainder the Commission shall allot to each State an amount which bears the same ratio to 50 percent of such remainder as the school age population of the State bears to the school-age population of all States.

(ii) From 50 percent of such remainder the Commission shall allot to each State an amount which bears the same ratio to 50 percent of such remainder as allocations to the State for the previous fiscal year's appropriation under the basic grant of chapter 1 of title 1 of the Elementary and Secondary Education Act of 1965 bears to such allocations to all States.

(iii) For purposes of this paragraph: (A) The term "school-age population" means the population aged 5 through 17, inclusive;

(B) The term "State" includes the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(3) For any year in which a State is solely carrying out planning activities pursuant to a grant described in § 2501.10 of this part, a State may be paid not more than 25 percent of its allotment under paragraph (b)(2) of this section;

(4) If any State does not have an application approved under § 2501.8 of this part, the Commission may use the allotment the State would otherwise have received under paragraph (b)(2) of this section to make grants to eligible local applicants located within the State using the priority criteria described in § 2501.16 of this part; and

(5) Funds remaining after the requirements of paragraphs (b) (1) through (4) of this section have been carried out will be reallocated to States as the Commission determines appropriate.

§ 2501.8 Approval.

(a)(1) If § 2501.7(a) of this part applies, the Commission will take into account whether the proposed plan meets the requirements of this Chapter and the appropriate criteria in § 2501.16 of this part in approving applications to receive grants.

(2) If § 2501.7(b) of this part applies, the Commission shall approve applications submitted by States, Indian Tribes, and eligible local applicants in States that have not applied for funding if such applications comply with the provisions of this Chapter and the appropriate criteria in § 2501.16. Applications that comply with the provisions of this Chapter but do not fully comply with the appropriate criteria in § 2501.16 may be approved for planning grants. The Commission may, at its discretion, assist applicants in bringing their applications into compliance.

(b) Applications submitted in the second or third year of a multi-year proposal will be approved if the Commission determines the applicant has made satisfactory progress under the proposal and if appropriated funds are available.

§ 2501.9 Uses of funds.

Grantees may use funds provided under this part for:

(a) Planning and building State capacity (which may be accomplished through grants and contracts with qualified organizations) for implementing statewide, school-aged service-learning programs, including:

(1) Pre-service and in-service training for teachers, supervisors, and personnel from community organizations in which service opportunities will be provided that will be conducted by qualified individuals or organizations that have experience in service-learning programs;

(2) Developing service-learning curricula, including age-appropriate learning components for students to analyze and apply their service experiences;

(3) Forming local partnerships to develop school-based community service programs in accordance with this part;

(4) Devising appropriate methods for research and evaluation of the educational value of youth service opportunities and the effect of youth service programs on communities;

(5) Establishing effective outreach and dissemination to ensure the broadest possible involvement of nonprofit community-based organizations and youth-service agencies with demonstrated effectiveness in their communities; and

(6) Integrating service-learning into academic curricula.

(b) The implementation, operation, or expansion of school-based service-learning programs.

(c) The implementation, operation, or expansion of community service programs for school dropouts, out-of-school youth and other youth.

(d) The implementation, operation, or expansion of programs involving adult volunteers in schools, or partnerships of schools and public or private organizations, to improve the education of at-risk students, school dropouts, and out-of-school youth.

§ 2501.10 Planning grants.

The Commission may make planning grants to States or Indian Tribes to conduct activities described in § 2501.9(a) of this part. Such grants will be not more than 25 percent of its formula allotment described in § 2501.7(b)(2) of this part, provided that appropriated funds are available, or, if § 2501.7(a) of this part applies, in an amount determined by the Commission to be sufficient to conduct the proposed activities. States are encouraged to use planning grants to assist potential local applicants plan Serve-America programs.

§ 2501.11 Term of grant.

(a) Grants to States and Indian Tribes, other than planning grants, shall be for a term of not more than three years, subject to annual appropriations.

(b) Grants made directly to local applicants by the Commission shall be for a term of not more than one year.

(c) Planning grants shall be for a term of not more than one year.

§ 2501.12 Federal share.

(a) The Federal share of an operating grant for a project under this part may not exceed:

(1) 90 percent of the total cost of a project for the first year for which the project receives assistance under this part;

(2) 80 percent of the total cost of a project for the second year for which the project receives assistance under this part; and

(3) 70 percent of the total cost of a project for the third year for which the project receives assistance under this part.

(b) The non-Federal share of the costs of the project may be in cash from public or private non-Federal funds or in kind.

(c) If a grantee is unable to pay the non-Federal share of the costs of the project due to lack of resources, the

grantee may request a waiver of the requirements of paragraph (a) of this section. A request for a waiver must be in writing to the Commission and will be approved if the Commission determines that such a waiver would be equitable due to a lack of resources at the State or local level.

§ 2501.13 Reservation of funds.

A State receiving a Serve-America grant other than a planning grant shall use:

- (a) Not more than 5 percent of such funds for administrative costs for any fiscal year;
- (b) Not more than 10 percent of such funds to build capacity through training, technical assistance, curriculum development, and coordination activities, described in § 2501.9(a) of this part;
- (c) Not less than 60 percent of such funds to carry out school-based service learning programs described in § 2501.9(b) of this part;
- (d) Not less than 15 percent of such funds to carry out community-based service programs described in § 2501.9(c) of this part; and
- (e) Not more than 10 percent of such funds to carry out adult volunteer and partnership programs described in § 2501.9(d) of this part.

§ 2501.14 Authorized uses of funds.

(a) Grants made under this part may be used for the supervision of participating students, including teacher stipends, program administration, training, reasonable transportation costs, insurance, evaluations, and for other reasonable expenses.

(b) Grants made available under this part may not be used to pay any stipend, allowance, or other financial support to any participant, except reimbursement for transportation, meals, and other reasonable out-of-pocket expenses directly related to participation in a program assisted under this part.

§ 2501.15 Participation of children and teachers from private schools.

To the extent consistent with the number of children in the State or in the school district of a local educational agency receiving funds under this part who are enrolled in private nonprofit elementary and secondary schools, such State or agency shall (after consultation with appropriate private school representatives) make provision:

(a) For the inclusion of services and arrangements for the benefit of such children so as to assure the equitable participation of such children in the programs or projects implemented to

carry out the purposes and provide the benefits described in this part;

(b) Where applicable, for the training of the teachers of such children so as to assure the equitable participation of such teachers in the programs of projects implemented to carry out the purposes and provide the benefits described in this part; and

(c) If a State or local educational agency or institution of higher education is prohibited by law from providing for the participation of children or teachers from private nonprofit schools as required by paragraph (a) of this section, or if the Commission determines that a State or local educational agency substantially fails or is unwilling to provide for such participation on an equitable basis, the Commission shall waive such requirements and shall arrange for the provision of services to such children and teachers. Such waivers shall be subject to consultation, withholding, notice, and judicial review requirements in accordance with section 1017 of the Elementary and Secondary Education Act of 1965.

§ 2501.16 Criteria for funding.

(a) In providing assistance under this part, the State Educational Agency, or the Commission if § 2501.1(b)(2) of this part applies, shall give priority for funds described in § 2501.9 (b) and (c) of this part to applications that describe programs that:

- (1) Involve participants in the design and operation of the program;
- (2) Are in the greatest need of assistance, such as programs targeting low-income areas;
- (3) Involve students from both public and private elementary and secondary schools or individuals of different ages, races, sexes, ethnic groups, abilities and disabilities, and economic backgrounds serving together;
- (4) Are integrated into the academic program;
- (5) Involve a focus on substance abuse prevention or school dropout prevention;
- (6) Best represent the potential of service-learning, including exploring the root-causes of community problems;
- (7) Develop the leadership skills and qualities of participants; or
- (8) Demonstrate the ability to achieve the goals of this chapter because of the program's quality, innovation, replicability, and sustainability.

(b) In providing assistance under this part, the State Educational Agency, or the Commission, if § 2501.2(b)(2) applies, shall give priority for funds described in § 2501.9(d) of this part to applications describing programs that:

- (1) Involve older Americans or parents as adult volunteers;

(2) Involve a partnership between an educational institution and a private business in the community;

(3) Include a focus on substance abuse prevention, school dropout prevention, or nutrition;

(4) Will improve basic skills and reduce illiteracy; or

(5) Demonstrate the ability to achieve the goals of this chapter because of the program's quality, innovation, replicability, and sustainability.

(c) In providing assistance to States under this Part, if § 2501.7(b) applies, the Commission will consider:

(1)(i) The quality of the program, based on the program's ability to offer valuable services in the communities where they are needed most and where programs do not exist or where existing volunteer service programs are too limited to meet community needs; to provide productive, meaningful, educational experiences for participants which incorporate service-learning methods; to involve the participants in the design and operation of the program; to involve individuals from diverse backgrounds (including economically disadvantaged youth), who will serve together and explore the root-causes of community problems; to be integrated into the academic program; and to develop the leadership skills of participants;

(ii) The quality of leadership and management, as measured by the qualifications of the principal leaders of the program; and plans and processes for recruitment, training, supervision, participant support, evaluation, administration and other key activities;

(2) Innovative aspects of the program based on the:

(i) Ability of the program to advance knowledge about effective community service in ways that will be broadly applicable beyond the program location; and

(ii) Approach to evaluation and other means of learning from the experience of the program;

(3)(i) Replicability, based on the ability and willingness of the program to assist others in learning from the experience and replicating the approach of the program; and

(4) Sustainability, based on:

(i) Inclusion in a State Comprehensive Plan;

(ii) Strong and broad-based community support for and involvement in the program; and

(iii) Evidence that financial resources will be available to continue the program after the expiration of the grant.

PART 2502—HIGHER EDUCATION PROGRAM: INNOVATIVE PROJECTS FOR COMMUNITY SERVICE

Sec.

- 2502.1 General.
- 2502.2 Eligibility for grants.
- 2502.3 Types of grants.
- 2502.4 Application.
- 2502.5 Criteria for evaluating applications.
- 2502.6 Federal share.
- 2502.7 Reservation of funds.
- 2502.8 Term of grant.

Authority: 42 U.S.C. 12501 et seq.

§ 2502.1 General.

The purpose of this Part is to support innovative projects to encourage students to participate in community service activities.

§ 2502.2 Eligibility for grants.

The following are eligible for grants under this Part:

- (a) Institutions of higher education;
- (b) Consortia of institutions of higher education; and
- (c) Public or private nonprofit agencies and organizations, including States, in consortia with institutions of higher education.

§ 2502.3 Types of grants.

The Commission may make grants under this Part for the following purposes:

- (a) To enable institutions to create or expand community service activities for students attending that institution;
- (b) To encourage student-initiated and student-designed community service projects;
- (c) To facilitate the integration of community service into academic curricula, so that students can obtain credit for their community service;
- (d) To encourage students to participate in community service activities that will engender a sense of social responsibility and commitment to the community;
- (e) To encourage students to assist in the teaching of individuals with limited basic skills or an inability to read and write; and
- (f) To provide for the training of teachers, prospective teachers, related education personnel, and community leaders in the skills necessary to develop, supervise, and organize community service activities, taking into consideration the particular needs of a community and the ability of the grantee to actively involve a major part of the community in, and substantially benefit the community by, the proposed community service activities.

§ 2502.4 Application.

- (a) To receive a grant under this Part, an eligible applicant shall prepare and

submit to the Commission an application that includes the following information:

- (1) A description of the proposed program to be established with assistance provided under the grant;
- (2) A description of the human, educational, environmental or public safety service that participants will perform and the community need that will be addressed under such program;
- (3) A description of how participants have been involved in the design of the program and how participants will take leadership positions in implementing and evaluating the program;
- (4) A description of whether or not students will receive academic credit for community service activities under the program and whether the program is integrated into the academic curriculum;
- (5) A description of the procedure for training supervisors and participants and supervising and organizing participants in such proposed program;
- (6) A description of the procedures to ensure that the proposed program provides participants with an opportunity to reflect on their service experiences;
- (7) A description of the budget for the program and the amount of funds requested for each fiscal year during the period covered by the application;
- (8) Assurances that in the program, prior to the placement of a participant, the applicant will consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such project;
- (9) The number of individuals currently involved in community service as participants in programs proposed to receive funds under this part (if applicable);
- (10) The number of additional participants and nonparticipant volunteers expected to become involved in community service under the program;
- (11) A description of how non-participant volunteers will assist the program;
- (12) Whether or not the proposed program is part of a State Comprehensive Service Plan or endorsed by the State, even if the application for funding under this part is not being submitted by the State;
- (13) A description of any local advisory committee that includes broad representation from the community; and
- (14) Any additional information that the Commission may require.

§ 2502.5 Criteria for evaluating applications.

Applications for grants under this Part will be evaluated according to the following criteria:

- (a)(1) The quality of the program, based on the program's ability to offer valuable services in the communities where they are needed most and where programs do not exist or where existing volunteer service programs are too limited to meet community needs; to provide productive, meaningful, educational experiences for participants that incorporate service-learning methods; to involve the participants in the design and operation of the program; to involve individuals from diverse backgrounds (including economically disadvantaged youth) who will serve together and explore the root-causes of community problems; to be integrated into the academic program; and to develop the leadership skills of participants;
- (2) The quality of leadership and management, as measured by the qualifications of the principal leaders of the program and plans and processes for recruitment, training, supervision, participant support, evaluation, administration and other key activities;
- (b) Innovation, based on the:
 - (1) Ability of the program to advance knowledge about effective community service in ways that will be broadly applicable beyond the program location; and
 - (2) Approach to evaluation and other means of learning from the experience of the program;
- (c)(1) Replicability, based on the ability and willingness of the program to assist others in learning from the experience and replicating the approach of the program; and
- (d) Sustainability, based on:
 - (1) Strong and broad-based community support for and involvement in the program;
 - (2) Campus-wide involvement, including faculty, staff, administration, and students; and
 - (3) Evidence that financial resources will be available to continue the program after the expiration of the grant.

§ 2502.6 Federal share.

- (a) The Federal share of each grant awarded under this part shall not exceed 50 percent of the cost of the community service activities carried out with each such grant;
- (b) The non-Federal share of each grant may be in cash (from non-Federal public or private funds) or in kind (fairly evaluated).

§ 2502.7 Reservation of funds.

Not more than five percent of funds awarded by the Commission may be used for administrative costs for any fiscal year.

§ 2502.8 Term of grant.

Grants may be for up to three years, subject to annual review and availability of appropriations.

**PART 2503—AMERICAN
CONSERVATION AND YOUTH
SERVICE CORPS PROGRAMS**

Sec.

- 2503.1 Purpose.
- 2503.2 Eligibility.
- 2503.3 Allocation of funds.
- 2503.4 Selection criteria.
- 2503.5 Amount of awards.
- 2503.6 General content of the State application.
- 2503.7 Specific content of the State application to operate a program directly.
- 2503.8 Specific content of the State application to conduct a grant program.

Local Application Process

- 2503.9 Procedures governing applications to a State to operate a program.
- 2503.10 Procedures for submitting applications to the Commission.
- 2503.11 Contents of a local application submitted directly to the Commission.
- 2503.12 Term of grant.

Allowable Program Activities

- 2503.13 Conservation Corps activities.
- 2503.14 Youth Service Corps activities.
- 2503.15 Combined eligible activities.
- 2503.16 Ineligible service categories.
- 2503.17 Administrative and other expenses.
- 2503.18 Public lands or Indian lands.
- 2503.19 Training and education services.
- 2503.20 Matching requirement.
- 2503.21 Age, citizenship, and other criteria for enrollment.
- 2503.22 Joint projects with senior citizens' organizations.
- 2503.23 Use of volunteers.
- 2503.24 Post-service benefits.
- 2503.25 Living allowance and other benefits.
- 2503.26 Miscellaneous duties and authorities of program agencies.
- 2503.27 Health and safety standards.
- 2503.28 Federal and state employee status.

Authority: 42 U.S.C. 12501 et seq.

§ 2503.1 Purpose.

The purpose of this program is to provide grants for the creation or expansion of full-time or summer youth service or conservation corps programs, including grants for the addition of participants, an increase in the number of hours or weeks during which the program operates, the involvement of an existing program in new types of service, or the improvement of an existing program consistent with this part.

§ 2503.2 Eligibility.

States, Indian Tribes, local governments, and public and private nonprofit organizations are eligible to receive awards under this program. In addition, the Commission may make awards to, or enter into other appropriate arrangements with, the Secretary of Agriculture, the Secretary of the Interior, or the Director of ACTION to carry out this program.

§ 2503.3 Allocation of funds.

(a) The Commission will make awards on a competitive basis to States and Indian Tribes using the selection criteria and amount of award determination procedures specified in §§ 2503.4 and 2503.5 respectively.

(1) If a State does not apply for a grant, the Commission may award grants directly to local governments and public or private nonprofit agencies with experience in youth programs within the State;

(2) Under these circumstances, if more than one local applicant in the State applies for funds, the Commission will allocate funds among the local applicants in the State in a manner determined by the Commission;

(3) An Indian Tribe is treated the same as a State for purposes of making grants under this part. The Commission shall reserve an amount not to exceed one percent of the amounts available in each fiscal year to make grants to Indian Tribes; and

(4) The Commission shall reserve an amount not to exceed five percent of the amounts made available in each fiscal year to make grants for youth corps involvement in Federal disaster relief programs.

§ 2503.4 Selection criteria.

(a) In selecting programs for funding, the Commission will give preference to programs that:

(1) Will provide long-term benefits to the public;

(2) Will instill a work ethic and a sense of public service in the participants;

(3) Will be labor intensive and involve youth operating in crews;

(4) Can be planned and initiated promptly; and

(5) Will enhance skills development, educational level and opportunities, and leadership skills and qualities of participants.

(b) The Commission will also take into consideration:

(1)(i) The quality of the program, based on the program's ability to offer valuable services in the communities where they are needed most and where programs do not exist or where existing

volunteer service programs are too limited to meet community needs; to provide productive, meaningful, educational experiences for participants that incorporate service-learning methods; to involve the participants in the design and operation of the program; to involve individuals from diverse backgrounds (including economically disadvantaged youth), who will serve together and explore the root-causes of community problems;

(ii) The quality of leadership and management, as measured by the qualifications of the principal leaders of the program, and the program's plans and processes for recruitment, training, supervision, participant support, evaluation, administration and other key activities;

(2) Innovative aspects of the program, based on the:

(i) Ability of the program to advance knowledge about effective community service in ways that will be broadly applicable beyond the program location; and

(ii) Approach to evaluation and other means of learning from the experience of the program;

(3)(i) Replicability, based on the ability and willingness of the program to assist others in learning from the experience and replicating the approach of the program; and

(4) Sustainability, based on:

(i) Inclusion in a State Comprehensive Plan;

(ii) Strong and broad-based community support for and involvement in the program; and

(5) Evidence that financial resources will be available to continue the program after the expiration of the grant.

(c) In addition, the Commission shall:

(1) Ensure the equitable treatment of both urban and rural areas; and

(2) Fund an equal number of service and conservation corps programs. A corps program performing both conservation and service corps activities shall be considered one conservation corps and one service corps.

(d) Further, in reviewing applications that propose to carry out activities on Federal public lands or Indian lands, the Commission shall consult with the Department of the Interior.

§ 2503.5 Amount of awards.

The Commission, in determining the amount of a grant to be awarded under this program, shall consider:

(a) The additional number of participants to be served;

(b) The youth unemployment rate, as measured by the U.S. Department of Labor, in the State;

(c) The type of activity proposed to be carried out; and

(d) Other criteria as may be determined by the Commission.

§ 2503.6 General content of the State application.

(a) All applications submitted to the Commission by the States, under this process, shall include:

(1) A description of any youth corps program the State proposes to operate directly;

(2) A description of any grant program the State proposes to conduct;

(3) The number of individuals currently involved in community service as participants in programs proposed to receive funds under this part (if known);

(4) The number of additional participants and non-participant volunteers expected to become involved in community service under the program (if known);

(5) A description of how non-participant volunteers will assist the program;

(6) The amount of funds required for each fiscal year during the period covered by the application;

(7) A budget of expenditures;

(8) An assurance that the State will comply with the requirements of this chapter;

(9) An assurance that the State will ensure compliance with the Drug-Free Workplace Requirements for Federal Grant Recipients under sections 5153 through 5158 of the Anti-Drug Abuse Act of 1988 (41 U.S.C. 702-707); and

(10) Such other information as specified by the Commission.

(b) A State may operate a program directly with funds provided under this part only if it also uses a reasonable portion of such funds to establish and implement a program to make grants to State and local applicants within the State consistent with the requirements of § 2503.8.

§ 2503.7 Specific content of the State application to operate a program directly.

Each application submitted by a State to operate a youth corps program directly shall include:

(a) A comprehensive description of the objectives and performance goals for the program to be conducted, a plan for managing and funding the program, and a description of the types and duration of training and work experience to be provided by such program;

(b) A plan that will lead to the certification of the training skills acquired by participants as determined

by the State and the awarding of academic credit to participants for competencies developed through training programs or work experience;

(c) An age-appropriate learning component for participants that includes procedures that permit participants to reflect on their service experience;

(d) An estimate of the number of participants and crew leaders necessary for the proposed program, the length of time that the services of such participants and crew leaders will be required, the support services needed for participants and crew leaders, and a plan for recruiting participants, including educationally and economically disadvantaged youth, youth with limited basic skills or learning disabilities, youth with disabilities, homeless youth, youth who are in foster care who are becoming too old for foster care, and youth of limited English proficiency;

(e) A list of requirements to be imposed on the sponsoring organizations, such as giving preference to a sponsoring organization that invests in a program receiving assistance under this part (cash contribution or free training to participants), over a sponsoring organization that does not make such an investment;

(f) A description of the manner of appointment and training of sufficient supervisory staff (including participants who have displayed exceptional leadership qualities), to provide for other central elements of a youth corps, such as crew structure and a youth development component;

(g) A description of a plan to ensure the on-site presence of knowledgeable and competent supervisory personnel at program facilities;

(h) A description of the facilities, quarters and board (in the case of residential facilities), limited and emergency medical care, transportation from administrative facilities to work sites, accommodations for individuals with disabilities, and other appropriate services, supplies, and equipment that will be provided by such applicant;

(i) A description of the basic standards of work requirements, health, nutrition, sanitation, and safety, and the manner that such standards shall be enforced;

(j) A description of a plan to assign participants to facilities as near to the homes of such participants as is reasonable and practicable;

(k) An assurance that, prior to the placement of a participant, the program agency will consult with any local labor organization representing employees in the area who are engaged in the same or

similar work as that proposed to be carried out by such program;

(l) A description of formal social counseling arrangements to be made available to the participant;

(m) A strategy for ensuring that individuals do not drop out of school for the purpose of participating in a youth corps program;

(n) A plan for ensuring that post-service education and training benefits are used solely for the purposes designated in this part;

(o) A description of any local advisory committee that includes youth and a broad representation from the community; and

(p) Such other information as the Commission may require.

§ 2503.8 Specific content of the State application to conduct a grant program.

Each application submitted by a State to conduct a grant program for the benefit of entities within a State shall include a description of the manner in which:

(a) The State will determine which local applicants receive funding;

(b) Service programs within the State will be coordinated;

(c) Economically and educationally disadvantaged youth, including youth with disabilities, youth with limited basic skills or learning disabilities, youth with limited English proficiency, homeless youth, youth with disabilities, and youth in foster care who are becoming too old for foster care, will be recruited;

(d) Projects that receive assistance will be evaluated concerning performance;

(e) The State will encourage cooperation among programs that receive assistance under this part and the appropriate State job training coordinating council established under the Job Training Partnership Act (29 U.S.C. 1501 et. seq.);

(f) Such State will develop a plan for the certification of the training skills acquired by each participant and the awarding of credit to each participant for competencies developed through training programs or work experience obtained under programs that receive assistance under this part;

(g) Prior to the placement of a participant under this part, the State will ensure that program agencies consult with each local labor organization representing employees in the area who are engaged in the same or similar work that is proposed to be carried out by such program; and

(h) Programs will be evaluated for effectiveness in achieving program objectives.

Local Application Process

§ 2503.9 Procedures governing applications to a State to operate a program.

When the State receives an award from the Commission to conduct a grant program, the State will define the contents and procedures to be followed when local applicants apply to the State to operate a project through a grant from the State. In defining the contents of the application and the procedures to be followed, the State must assure that all applicable requirements contained in these regulations are being met, and shall minimize paperwork required of local applicants. The State is not required to issue a formal request for proposals, but should solicit applications from a broad-based group of public and private nonprofit eligible organizations.

§ 2503.10 Procedures for submitting applications to the Commission.

The Commission may consider applications from eligible local applicants located in a State that does not apply for a grant.

§ 2503.11 Contents of a local application submitted directly to the Commission.

In those situations where a State does not apply for a grant from the Commission, and a local applicant chooses to apply directly to the Commission, the contents of the application from a local applicant shall be the same as those specified in § 2503.7.

§ 2503.12 Term of grant.

(a) Grants to States and Indian Tribes shall be for a term of not more than three years.

(b) Grants made by the Commission directly to local applicants shall be for a term of not more than one year.

Allowable Program Activities

§ 2503.13 Conservation Corps activities.

Projects that receive assistance for conservation corps activities may carry out activities that focus on:

(a) Conservation, rehabilitation, and the improvement of wildlife habitat, rangelands, parks, and recreational areas;

(b) Urban and rural revitalization, historical and cultural site preservation, and reforestation of both urban and rural areas;

(c) Fish culture, wildlife habitat maintenance and improvement, and other fishery assistance;

(d) Road and trail maintenance and improvement;

(e) Erosion, flood, drought, and storm damage assistance and controls;

(f) Stream, lake, waterfront harbor, and port improvement;

(g) Wetlands protection and pollution control;

(h) Insect, disease, rodent, and fire prevention and control;

(i) The improvement of abandoned railroad beds and rights-of-way;

(j) Energy conservation projects, renewable resource enhancement, and recovery of biomass;

(k) Reclamation and improvement of strip-mined land;

(l) Forestry, nursery, and cultural operations;

(m) Making public facilities accessible to individuals with disabilities; and

(n) Housing rehabilitation, renovation, construction, and repair for the purpose of providing affordable housing for low-income and homeless individuals.

§ 2503.14 Youth service corps activities.

Projects that receive assistance for youth service corps activities may carry out activities that include participant service in the following:

(a) State, local, and regional governmental agencies;

(b) Nursing homes, hospices, senior centers, hospitals, local libraries, parks, recreational facilities, child and adult day care centers, programs serving individuals with disabilities, and schools;

(c) Law enforcement agencies, and penal and prohibition systems;

(d) Private nonprofit organizations that primarily focus on social service, such as community action agencies;

(e) Activities that focus on the rehabilitation or improvement of public facilities and neighborhood improvements;

(f) Literacy training that benefits educationally disadvantaged individuals;

(g) Weatherization of, rehabilitation of, construction of, and basic repairs to low-income housing, including housing occupied by older adults, day care, senior citizens, and recreational center facilities, and other community facilities;

(h) Energy conservation (including solar energy techniques);

(i) Removal of architectural barriers to access by individuals with disabilities to public facilities;

(j) Activities that focus on drug and alcohol abuse education, prevention and treatment;

(k) Conservation, maintenance, or restoration of natural resources on publicly held lands; and

(l) Other nonpartisan civic activities and services that are of a substantial social benefit in meeting unmet human, educational, public safety or environmental needs (particularly related to poverty) in the community.

§ 2503.15 Combined eligible activities.

Projects may also carry out activities that encompass the focuses and service described in §§ 2503.13 and 2503.14.

§ 2503.16 Ineligible service categories.

The eligible activities described in §§ 2503.13, 2503.14, and 2503.15 shall not be conducted by any:

(a) Business organized for profit;

(b) Labor union;

(c) Partisan political organization;

(d) Organization engaged in religious activities, unless such activities do not involve the use of funds provided under this part by program participants and program staff to give religious instruction, conduct worship services, or engage in any form of proselytization; or

(e) Domestic or personal service company or organization.

Administrative and Other Program Requirements

§ 2503.17 Administrative and other expenses.

(a) States may not use more than five percent of the amounts made available for administrative costs.

(b) In addition, a program agency may not:

(1) Use more than five percent of the amount of assistance for administrative costs;

(2) Use more than ten percent of funds for the purchase of major capital equipment;

(3) Use less than ten percent of funds for pre-service and in-service training and educational materials and services for participants; or

(4) Use more than two percent of funds for joint projects with senior citizens organizations.

§ 2503.18 Public lands or Indian lands.

To be eligible to receive assistance, a program must carry out activities on public lands or Indian lands, or result in a public benefit. A program carried out with assistance for conservation, rehabilitation, or improvement of any public lands or Indian lands shall be consistent with:

(a) The provisions of law and policies relating to the management and administration of such lands, and all other applicable provisions of law;

(b) All management, operational, and other plans and documents that govern the administration of such lands; and

(c) Any land or water conservation program (or any related program) administered in any State under the authority of any Federal program is encouraged to use services available under this part to carry out its program.

§ 2503.19 Training and education services.

(a) Assessment of Skills: Each program agency shall assess the educational level of participants at the time of their entrance into the program, using any available records or simplified assessment means or methodology and shall, where appropriate, refer such participants for testing for specific learning disabilities.

(b) Enhancement of Skills: Each program agency shall, through the programs and activities administered under this part, enhance the educational skills of participants.

(c) Provision of Pre-Service and In-Service Training and Education: (1) Program participants shall be provided with information concerning the benefits to the community that result from the activities undertaken by such participants.

(2) A program agency may enter into arrangements with academic institutions or education providers to evaluate the basic skills of participants and to make academic study available to participants to enable such participants to upgrade literacy skills, to obtain high school diplomas or the equivalent of such diplomas, to obtain college degrees, or to enhance employable skills. Such academic institutions or education providers may include:

- (i) Local education agencies;
- (ii) Community colleges;
- (iii) 4-year colleges;
- (iv) Area vocational-technical schools; and

(v) Community-based organizations.

(3) Career and education guidance and counseling shall be provided to a participant during a period of the in-service training as described in this part. Each graduating participant shall be provided with counseling with respect to additional study, job skills training or employment and shall be provided job placement assistance where appropriate; and

(4) A program agency shall give priority to participants who have not obtained a high school diploma or the equivalent of such diploma, in providing services under this Section.

(d) Standards and Procedures. Appropriate State and local officials shall certify that standards and procedures with respect to the awarding of academic credit and the certification of educational attainment in programs conducted under paragraph (c) of this

section are consistent with the requirements of applicable State and local laws and regulations. These standards and procedures shall provide that participants:

(1) Will participate in a program that will prepare them to earn a high school diploma or the equivalent (non-high school graduates);

(2) May arrange to receive academic credit in recognition of the education and skills obtained from service satisfactorily completed; and

(3) Will use service-learning methods whenever practicable.

§ 2503.20 Matching requirement.

(a) The Federal share of each grant awarded under this part shall not exceed 75 percent of the cost of the community service activities carried out with each such grant.

(b) The non-Federal share may be in cash (from non-Federal public or private funds) or in-kind.

§ 2503.21 Age, citizenship, and other criteria for enrollment.

(a) Age and Citizenship. (1) Except as provided in paragraph (c) of this section, enrollment in projects that receive assistance under this program shall be limited to individuals who, at the time of enrollment, are:

(i) Not less than 16 years nor more than 25 years of age, except that summer programs may include individuals not less than 15 years of age nor more than 21 years of age at the time of the enrollment of such individuals; and

(ii) Citizens or nationals of the United States or lawful permanent resident aliens of the United States.

(2) A program agency may limit enrollment to any age group within the range specified above.

(b) Participation of Disadvantaged Youth. Programs that receive assistance shall ensure that educationally and economically disadvantaged youth, including youth in foster care who are becoming too old for foster care, youth with disabilities, youth with limited English proficiency, youth with limited basic skills or learning disabilities, and homeless youth, are offered opportunities to enroll.

(c) Special Corps Members. Program agencies may enroll a limited number of special corps members over age 25 so that the corps may draw on their special skills to fulfill the purposes of this Chapter. Projects are encouraged to consider senior citizens as special corps members.

§ 2503.22 Joint projects with senior citizens' organizations.

Program agencies shall use not more than 2 percent of amounts received to

conduct joint projects with senior citizens' organizations to enable senior citizens to serve as mentors for youth participants.

§ 2503.23 Use of volunteers.

Program agencies may use volunteer services for purposes of assisting projects and may expend funds made available to provide for services or costs incidental to the utilization of such volunteers, including transportation, supplies, lodging, recruiting, training, and supervision. The use of volunteer services may not result in the displacement of any participant.

§ 2503.24 Post-service benefits.

Program agencies shall provide post-service education and training benefits (such as scholarships and grants) for each participant in an amount that is not in excess of \$100 per week, or in excess of \$5,000 per year, whichever is less.

§ 2503.25 Living allowance and other benefits.

(a) Full-time service allowance. (1) Each participant in a full-time youth corps program that receives assistance under this Part shall receive a living allowance of not more than 100 percent of the poverty line for a family of two. Program agencies have the flexibility to establish the amount of living allowance in accordance with this part.

(2) Notwithstanding this paragraph, a program agency may provide participants with additional amounts for living expenses that are made available from non-Federal sources.

(b) Adjustment to allowance. A program agency may deduct, from the amounts required to be provided to a participant, a reasonable portion of the costs of the rates for any room and board that is provided for such participant at a residential facility. Such deducted funds shall be deposited into rollover accounts that shall be used solely to defray the costs of room and board for participants. In addition, the program agency shall establish the amount of the deductions and rates for any room and board after evaluating the costs of providing these services to the participant.

(c) Allowance for quarters. For purposes of section 5911 of title 5, United States Code, relating to allowances for quarters, a participant or crew leader shall be considered an employee of the United States within the meaning of the term "employee" as defined in paragraph (a)(3) of that section.

(d) No requirement for a reduction in existing benefits. A program in

existence as of November 16, 1990, is not required to decrease any stipends, salaries, or living allowances provided to participants in such program as a result of any of the above requirements, so long as the amount of any such stipends, salaries, or living allowances that is in excess of the levels specified above are paid from non-Federal sources.

(e) **Health insurance.** In addition to a living allowance, program agencies are encouraged to provide health insurance to each participant in a full-time youth corps program who does not otherwise have access to health insurance.

§ 2503.26 Miscellaneous duties and authorities of program agencies.

(a) **Responsibilities to participant.** A program agency may provide facilities, quarters, and board and shall provide limited and emergency medical care, transportation from administrative facilities to work sites, accommodations for individuals with disabilities, child care and other supportive services, and other appropriate services, supplies, and equipment to each participant.

(b) **Operation of maintenance agreements.** Program agencies may enter into contracts and other appropriate arrangements with local government agencies and nonprofit organizations for the operation or management of any projects or facilities under the program.

(c) **Coordination.** Program agencies shall coordinate their projects with related Federal, State, local, and private activities.

(d) **Limitation on placement.** No participant shall perform any specific activity for more than a six-month period. No participant shall remain enrolled in programs assisted under this part for more than 24 months.

§ 2503.27 Health and safety standards.

(a) Program agencies shall establish and meet standards and enforcement procedures concerning the health and safety of participants for all projects, consistent with Federal, State, and local health and safety standards.

(b) Due to the wide variety of eligible activities and locations in which these activities may be performed, the Commission will not set separate standards for these programs. The Commission requires that program agencies meet the existing Federal, State, and local health and safety standards that would otherwise be applicable to the particular location of the project and the activity being performed if the activity were performed by regular employees of the program.

§ 2503.28 Federal and State employee status.

(a) **General Responsibility.** Participants and crew leaders shall be responsible to, or be a responsibility of, the program agency administering the program on which such participants, crew leaders, and volunteers work.

(b) **General Treatment as a Non-Federal Employee.** Except as otherwise provided under paragraphs (c) and (d) of this Section, a participant or crew leader in a program that receives assistance shall not be considered a Federal employee and shall not be subject to the provisions of law relating to Federal employment.

(c) **Work-Related Injury.** A participant or crew leader serving in a program that receives assistance shall be considered an employee of the United States, within the meaning of the term *employee* as defined in section 8101 of title 5, United States Code, for the purposes of subchapter I of chapter 81 of title 5, United States Code, relating to the compensation of Federal employees for work injuries. The provision of that subchapter shall apply, except:

(1) The term *performance of duty*, as used in such subchapter, shall not include an act of a participant or crew leader while absent from the assigned post of duty of such participant or crew leader, except while participating in an activity authorized by or under the direction and supervision of a program agency, (including an activity while on pass or during travel to or from such post of duty);

(2) Compensation for disability shall not begin to accrue until the day following the date that the employment of the injured participant or crew leader is terminated; and

(3) In computing compensation benefits for disability or death, the annual rate of pay of a full-time participant shall be deemed to be such entry salary for a grade GS-5 employee, and the annual rate of pay of a participant enrolled for a period of summer service shall be deemed to be 25 percent of such entry salary.

(d) **Tort Claims Procedure.** For purposes of chapter 171 of title 28, United States Code, relating to tort claims procedure, a participant or crew leader assigned to a youth corps program for which a grant has been made to, or other appropriate arrangement entered into with, the Secretary of Agriculture, Secretary of the Interior, or the Director of ACTION, shall be considered an employee of the United States within the meaning of the term "employee of the government" as defined in 28 U.S.C. 2671.

PART 2504—NATIONAL AND COMMUNITY SERVICE PROGRAMS

Sec.	
2504.1	General.
2504.2	Eligibility to receive grants.
2504.3	Eligibility to participate in a program funded under this part.
2504.4	State application.
2504.5	Assurances.
2504.6	State proposal.
2504.7	Reservation of funds.
2504.8	Types of service.
2504.9	Terms of service.
2504.10	Value of post-service benefits.
2504.11	Uses of post-service benefits.
2504.12	Living allowance.
2504.13	Criteria for evaluating applications.
2504.14	Program training.

Authority: 42 U.S.C. 12501 et seq.

§ 2504.1 General.

The Commission will make grants for the creation of full- and part-time national and community service programs.

§ 2504.2 Eligibility to receive grants.

States and Indian Tribes are eligible to receive grants under this part. For the purposes of this part, the definition of State includes Indian Tribes.

§ 2504.3 Eligibility to participate in a program funded under this part.

(a) **Part-Time:** (1) An individual may serve in a part-time national service program under this part if the individual:

- (i) Is 17 years of age or older; and
- (ii) Is a citizen of the United States or lawfully admitted for permanent residence.

(2) In selecting applicants for a part-time program, States must give priority to applicants who are currently employed.

(b) An individual may serve in a full-time national service program under this part if the individual:

- (1) Is 17 years of age or older;
- (2) Has received a high school diploma or the equivalent of such diploma, or agrees to achieve a high school diploma or the equivalent of such while participating in the program; and
- (3) Is a citizen of the United States or lawfully admitted for permanent residence.

(c) An individual may serve as a special senior service participant under this part if the individual:

- (1) Is 60 years of age or older; and
- (2) Meets any additional eligibility criteria for special senior service participation established by the Commission.

§ 2504.4 State application.

(a) An application for funds under this part made by a State, must contain:

(1) The amount of funds requested for each fiscal year during the period covered by the State proposal;

(2) An assurance that the State will comply with the requirements of this Chapter and this part;

(3) A budget of estimated expenditures;

(4) The amount of Federal, State, and local public funds expended for services of the type assisted under this Chapter in the previous fiscal year;

(5) The State proposal, as required by § 2504.6 of this part;

(6) The number of individuals currently involved in community service part-time or full-time as participants in programs proposed to receive funds under this part (if applicable);

(7) The number of additional part-time, full-time, and special senior service participants and non-participant volunteers expected to become involved in community service under the program;

(8) Describe how non-participant volunteers will assist the program; and

(9) Such other information as specified by the Commission.

(b) Applications must be submitted annually at such time and in such manner as prescribed by the Commission.

§ 2504.5 Assurances.

The State proposal must include assurances that:

(a) The State will keep such records and provide such information to the Commission as may be required for fiscal audits and program evaluation;

(b) The State will ensure that the uses of post-service benefits described in § 2504.10 of this part are limited to the uses specified in § 2504.11 of this part;

(c) Prior to the placement of a participant, the State will consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such program;

(d) Prior to the placement of a participant, the State will consult with employees at the proposed project site who are engaged in the same or similar work as that proposed to be carried out by such program;

(e) The State will ensure that any entity carrying out program functions pursuant to grant or contract will comply with the provisions of this chapter and part;

(f) The State will provide to each participant enrolled in a full-time program in-service educational services and materials to enable such participant to obtain a high school diploma or the equivalent of such diploma;

(g) The State will cooperate in arranging and conducting the three-week training provided to participants by the Commission; and

(h) The State will comply with the requirements of the Drug-Free Workplace Requirements for Federal Grant Recipients under section 5153 through 5158 of the Anti-Drug Abuse Act of 1988 (41 U.S.C. 401-707).

§ 2504.6 State proposal.

The State proposal must include the following information:

(a) A description of the State administrative plan for the implementation of a program with assistance provided under this part, including such functions, if any, that will be carried out by public or private nonprofit organizations pursuant to a grant or contract;

(b) A description of the manner in which an ethnically and economically diverse group of participants, including economically and educationally disadvantaged individuals, college-bound youth, individuals with disabilities, youth in foster care who are becoming too old for foster care, and employed individuals, shall be recruited and selected for participation in a program receiving assistance under this part;

(c) Whether the program will enroll individuals who have completed undergraduate education or specialized post-secondary training and whose training and skills enable them to provide needed services in the State;

(d) A description of the procedures for training supervisors and participants in skills relevant to the work to be conducted and for supervising and organizing participants in such program;

(e) A description of the procedures to ensure that the program provides participants with an opportunity to reflect on their service experience;

(f) A plan for providing full-time participants with educational services required in § 2504.5(f) of this part;

(g) A description of the geographical areas within the State in which the program would be operated to provide the optimum match between the need for services and the anticipated supply of participants;

(h) A description of the plan for placing the participants in teams or making individual placements in the programs;

(i) A description of the anticipated number of full- and part-time participants and special senior service members in such program;

(j) A plan for the recruitment and selection of sponsoring organizations that will receive participants under the

programs that receive assistance under this part;

(k) A description of the procedures for matching the participants with the sponsoring organizations;

(l) A description of the procedures to be used to assure that sponsoring organizations that are not matched with participants shall be provided with information concerning the VISTA program and the Older American Volunteer Programs;

(m) The budget for the program, including anticipated public and private funding;

(n) A plan for evaluating the program and assurances that the State will fully cooperate with any evaluation undertaken by the Commission;

(o) The assurances required in § 2504.5 of this part; and

(p) Any other information required by the Commission.

§ 2504.7 Reservation of funds.

Not more than five percent of funds received under this part shall be used for administrative costs for any fiscal year.

§ 2504.8 Types of service.

A participant in a program that receives assistance under this part shall perform national service to meet unmet educational, human, environmental, and public safety needs, especially those needs relating to poverty.

§ 2504.9 Terms of service.

(a)(1) An individual performing part-time national service under this part shall agree to perform community service as a participant in the program for not less than 3 years unless the individual is unable to complete the term of service for reasons provided in paragraph (b) of this section.

(2) An individual performing full-time national service under this part shall agree to perform community service as a participant in the program for not less than 1 year nor more than 2 years, at the discretion of such individual, unless the individual is unable to complete the term of service for reasons provided in paragraph (b) of this section.

(3) A special senior service participant performing national service under this part shall serve for any period of time as determined by the State.

(b) If the State releases a participant from completing a term of service in a program receiving assistance under this part for compelling personal circumstances as demonstrated by the participant, or if the program in which the participant serves does not receive continual funding for any reason, the

State may provide such participant with that portion of the financial assistance described in paragraph (a) of this section that corresponds to the quantity of the service obligation completed by such individual.

(c)(1) A participant performing part-time national service under this part shall serve for:

(i) 2 weekends each month and 2 weeks during the year; or

(ii) An average of 9 hours per week each year in increments determined by the State;

(2) A participant performing full-time national service under this part shall participate in activities of the program for not less than 40 hours per week each year of service, including such holidays and vacation periods as designated by the program.

(3) A special senior service participant performing national service under this part shall serve either part- or full-time as permitted by the State.

§ 2504.10 Value of post-service benefits.

(a)(1) The Commission, through the State, will annually provide to each part-time participant a non-transferrable post-service benefit equal in value to \$1,000 for each year of service that such participant provides to the program. Funds for this benefit shall be included in the budget for the program and reflected in the grant request.

(2)(i) The State shall annually provide to each part-time participant from non-Federal public or private funds a nontransferrable post-service benefit that is equal in value to \$1,000 for each year of service that such participant provides to the program.

(ii) A State may apply for a waiver to reduce the amount of the post-service benefit to an amount that is equal to not less than the average annual tuition and required fees at four year public institutions of higher education within such State. Such waivers will be granted if the Commission determines that such waiver would be equitable due to lack of resources in the State.

(b)(1) The Commission, through the State, shall annually provide to each full-time participant a non-transferrable post-service benefit that is equal in value to \$2,500 for each year of service that such participant provides to the program. Funds for this benefit shall be included in the budget for the program and reflected in the grant request.

(2)(i) The State shall annually provide from non-Federal public or private funds to each full-time participant a nontransferrable post-service benefit that is equal in value to \$2,500 for each year of service that such participant provides to the program.

(ii) A State may apply for a waiver to reduce the amount of the post-service benefit to an amount that is equal to not less than the average annual tuition, required fees, and room and board costs at four year public institutions of higher education within such State. Such waiver will be granted if the Commission determines that such waiver would be equitable due to a lack of resources in the State.

(c) Nothing in this part shall be construed to prevent a State from using funds made available from non-Federal sources to increase the amount of post-service benefits to an amount in excess of that described in this part.

(d) A special senior service participant shall be ineligible to receive post-service benefits under this part.

(e) The Commission will increase the value of post-service benefits provided under this part in each fiscal year based on the increase in the costs associated with attending a four year institution of higher education during that fiscal year. The Commission will determine such increases in costs based on information made available by the Bureau of Labor Statistics and the National Center for Education Statistics.

§ 2504.11 Uses of post-service benefits.

(a) A post-service benefit for a part-time participant provided under § 2504.10(a) of this part shall only be used for:

(1) Payment of a student loan from Federal or non-Federal sources;

(2) Down-payment or closing costs associated with purchasing a first home; or

(3) Tuition at an institution of higher education on a fulltime basis, or to pay the expenses incurred in the full-time participation in an apprenticeship program approved by the appropriate State agency.

(b) A post-service benefit for a full-time participant provided under § 2504.10(b) of this part shall only be used for:

(1) Payment of a student loan from Federal or non-Federal sources; or

(2) Tuition, room and board, books and fees, and other costs associated with attendance (pursuant to section 472 of the Higher Education Act of 1965 (20 U.S.C. 108711)) at an institution of higher education on a full-time basis, or to pay the expenses incurred in the full-time participation in an apprenticeship program approved by the appropriate State agency.

§ 2504.12 Living allowance.

(a)(1) Each participant in a full-time program that receives assistance under this part shall receive a living allowance

of not more than 100 percent of the poverty line for a family of two. Program agencies have the flexibility to establish the amount of living allowance in accordance with this part.

(2) Notwithstanding paragraph (a)(1) of this section, a program agency may provide participants with additional amounts that are made available from non-Federal sources.

(b) Nothing in this section shall be construed to require a program in existence on November 16, 1990, to decrease any stipends, salaries, or living allowances provided to participants under such program.

(c) In addition to the living allowances provided under paragraph (a) of this section, grantees are encouraged to provide health insurance to each participant in a full-time national service program who does not otherwise have access to health insurance.

(d)(1) Each full-time special senior service participant shall receive a living allowance equal to the living allowance provided to full-time participants under paragraph (a) of this Section and such other assistance as the Commission considers necessary and appropriate for a special senior service participant to carry out the service obligation of such participant.

(2) Each part-time special senior service participant shall receive a living allowance equal to a share of such allowance offered to a full-time special senior service participant under paragraph (d)(1) of this section, that has been prorated according to the number of hours such part-time participant serves in the program, and such other assistance as the Commission considers necessary and appropriate for a special senior service participant to carry out the service obligation of such participant.

§ 2504.13 Criteria for evaluating applications.

(a) In determining whether to award a grant, the Commission will consider:

(1) The ability of the proposed program to serve as an effective model for a large-scale national service program;

(2) The quality of the application, including the plan for training, recruitment, placement, and data collection;

(3) The extent that the program builds on existing programs; and

(4) The expedience with which the State proposes to make the program operational.

(b) The Commission will also consider:

(1)(i) The quality of the program, based on the program's ability to offer valuable services in the communities where they are needed most and where programs do not exist or where existing volunteer service programs are too limited to meet community needs; to provide productive, meaningful, educational experiences for participants that incorporate service-learning methods; to involve the participants in the design and operation of the program; to involve individuals from diverse backgrounds (including economically disadvantaged youth) who will serve together and explore the root-causes of community problems; and to prepare the participants for future volunteer service leadership.

(ii) The quality of leadership and management, as measured by the qualifications of the principal leaders of the program and plans and processes for recruitment, training, supervision, participant support, evaluation, administration and other key activities.

(2) Innovative aspects of the program, based on the:

(i) Ability of the program to advance knowledge about effective community service in ways that will be broadly applicable beyond the program location; and

(ii) Approach to evaluation and other means of learning from the experience of the program;

(3)(i) Replicability, based on the ability and willingness of the program to assist others in learning from the experience and replicating the approach of the program; and

(4) Sustainability, based on:

(i) Inclusion in a State Comprehensive Plan;

(ii) Significant bipartisan, nonpartisan, or other broad-based support for and involvement in the program; and

(iii) Evidence that financial resources will be available to continue the program after the expiration of the grant.

(c) In addition, the Commission shall ensure that programs receiving assistance under this part are geographically diverse and include programs in both urban and rural areas.

§ 2504.14 Program training.

(a) Each participant shall receive three weeks of training provided by the Commission in cooperation with the State.

(b) Each training session described above will:

(1) Orient each participant in the nature, philosophy, and purpose of the program; and

(2) Build an ethic of community service, and the assigned program task of each participant by providing:

(i) General training in citizenship and civic and community service; and

(ii) If feasible, specialized training for the type of service that each participant will perform.

(c) The State may provide additional training as the State determines necessary.

(d) Each sponsoring agency will also train participants in skills relevant to the work to be conducted.

PART 2505—INNOVATIVE AND DEMONSTRATION PROGRAMS

Subpart A—General

Sec.

2505.1 Limitation on grants.

Subpart B—Governors, Innovative Service Programs

2505.10 Purpose.

2505.11 Projects to be funded.

2505.12 Application contents.

2505.13 Selection criteria.

Subpart C—Peace Corps and VISTA Training Programs

2505.20 Purpose.

2505.21 Eligibility.

Subpart D—Rural Youth Service Demonstration Project

2505.30 Purpose.

2505.31 Designation of rural areas.

2505.32 Eligibility.

2505.33 Projects to be funded.

2505.34 Allowable uses of funds.

2505.35 Selection criteria.

Subpart E—Assistance for Head Start

2505.40 Purpose.

2505.41 Eligibility.

2505.42 Applicable requirements.

2505.43 Relationship with ACTION.

2505.44 Selection Criteria.

Subpart F—Employer-based Retiree Volunteer Programs

2505.50 Purpose.

2505.51 Eligibility.

2505.52 Projects to be funded.

2505.53 Selection criteria.

Authority: 42 U.S.C. 12501 et seq.

Subpart A—General

§ 2505.1 Limitation on grants.

Given the availability of funds, the Commission shall make grants for no fewer than three programs, as specified in subparts under this part.

Subpart B—Governors, Innovative Service Programs

§ 2505.10 Purpose.

This program is to support the creation of innovative volunteer and community service programs by providing assistance for certain service

and demonstration activities as well as support functions such as training, technical assistance, and evaluation.

§ 2505.11 Projects to be funded.

The Commission may provide assistance through a general grant to States to support one or more of the following activities:

(a) Enhancements to existing volunteer and community service programs;

(b) Demonstration programs;

(c) Research concerning, and evaluation of, service programs;

(d) Coordination of service programs;

(e) Technical assistance;

(f) Training and staff development; and

(g) Collection and dissemination of information concerning service programs.

§ 2505.12 Application contents.

Applications proposing to perform activities under this subpart must contain:

(a) A description of the proposed program;

(b) A description of the human, educational, environmental or public safety service that participants will perform and the State or community need that will be addressed;

(c) A description of the target population of participants and how they will be recruited;

(d) A description of the procedures for training supervisors and participants and for supervising and organizing participants;

(e) A description of the procedures to ensure that the proposed program provides participants with an opportunity to reflect on their service experiences;

(f) An assurance that, prior to the placement of a participant in the program, the applicant will consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by the program;

(g) The number of individuals currently involved in community service as participants in programs proposed to receive funds under this part (if applicable);

(h) The number of additional participants and non-participant volunteers expected to become involved in community service under the program;

(i) A description of how non-participant volunteers will assist the program;

(j) An assurance that, prior to the placement of a participant in the program, the applicant will consult with employees at the proposed program site who are engaged in the same or similar work as that proposed to be carried out by the program;

(k) A description of the budget of the program;

(l) The amount of funds requested for each fiscal year during the period covered by the application;

(m) An assurance that the State will comply with requirements of this chapter and this part;

(n) An assurance that the State will ensure compliance with the Drug-Free Workplace Requirements for Federal Grant Recipients under sections 5153 through 5158 of the Anti-Drug Abuse Act of 1988 (41 U.S.C. 702-707); and

(o) Such other information as specified by the Commission.

§ 2505.13 Selection criteria.

The Commission makes awards under this program on the basis of the criteria specified below. The Commission determines the following in evaluating applications:

(a) Ability of the proposed program to serve as an effective model, including demonstrating the effectiveness of results;

(b) Quality of the plan of operation and staffing, including the quality of the management plan, adequacy of the proposed budget in relation to objectives, evaluation plan, and qualifications and capability of any staff assigned to the project;

(c) Extent to which the proposed program builds on existing programs, including both expanding services and improving their quality;

(d) The demonstrated innovation of the program in responding to one or more of the following needs: human, educational, environmental, and public safety;

(e) The demonstrated ability to achieve the goals of this Chapter; and

(f) Inclusion in a State Comprehensive Service Plan.

Subpart C—Peace Corps and VISTA Training Programs

§ 2505.20 Purpose.

The purpose of this demonstration program is to provide certain training and education benefits for potential VISTA and Peace Corps volunteers.

§ 2505.21 Eligibility.

The Commission may make grants to, or enter into other appropriate arrangements with, the Director of the Peace Corps and/or the Director of

ACTION to carry out this program. The Director of the Peace Corps and/or the Director of ACTION are responsible, either directly or by way of grant, contract, or other arrangement, to carry out the provisions specified in sections 161, 162, and 163 of the Act. Any regulation determined necessary to govern the implementation of these provisions will be issued by the Director of ACTION and/or the Director of the Peace Corps.

Subpart D—Rural Youth Service Demonstration Project

§ 2505.30 Purpose.

The purpose of this program is to support demonstration projects in rural areas involving youth volunteers.

§ 2505.31 Designation of rural areas.

For the purposes of this subpart, a rural area is:

(a) Open country which is not part of or associated with an urban area;

(b) Any town, village, city or place, including the immediately adjacent densely settled area, which is not part of or associated with an urban area and which:

(1) Has a population not in excess of 10,000 if it is rural in character; or

(2) Has a population in excess of 10,000 but not in excess of 20,000 and is not contained within a Metropolitan Statistical Area.

§ 2505.32 Eligibility.

For the purposes of this subpart, States, local governments, and public and private nonprofit organizations are eligible to receive awards as specified in the *Federal Register* announcing the availability of funds for this program.

§ 2505.33 Projects to be funded.

The Commission will support demonstration projects providing education, human, environmental, and public safety service performed by students, school dropouts, and out-of-school youth, in rural areas, including services for the elderly, assisted living services for the elderly and individuals with disabilities, and services targeted at the needs of low-income individuals in the community.

§ 2505.34 Allowable uses of funds.

Grantees may use funds provided under this program to support and operate the demonstration project.

§ 2505.35 Selection criteria.

The Commission makes awards under this program on the basis of the criteria specified below. The Commission shall determine the following in evaluating applications:

(a) The quality of the plan of operation and staffing, including the quality of the management plan, adequacy of the proposed budget in relation to the objectives, evaluation plan, and qualifications and capability of any staff assigned to the project;

(b) The ability of the proposed program to address the particular needs of assisted individuals in rural areas;

(c) The innovation of the program; and

(d) The demonstrated ability to achieve the goals of this chapter.

Grantees may use funds provided under this program to support and operate the demonstration project.

Subpart E—Assistance for Head Start

§ 2505.40 Purpose.

The purpose of this program is to increase the number of low-income individuals who provide services under the Foster Grandparent program to children who participate in Head Start programs.

§ 2505.41 Eligibility.

Only those organizations which have a grant from ACTION, the Federal Domestic Volunteer Agency, to operate a Foster Grandparent program, are eligible to receive awards.

§ 2505.42 Applicable requirements.

Grantees' activities under this program are limited to the support of children who participate in Head Start programs.

§ 2505.43 Relationship with ACTION.

The Commission, at its discretion and with the concurrence of the Director of ACTION, may enter into an agreement to issue awards under this program through ACTION. If this agreement is applicable in any given year, the terms of the agreement will define the award process, and eligible applicants will be informed of the process through the notice of funding availability.

§ 2505.44 Selection criteria.

The Commission shall make grants under this program on the basis of the criteria specified below. The Commission shall consider the following in evaluating applications:

(a) The effectiveness of the project in addressing the needs of children enrolled in Head Start programs;

(b) The quality of the plan of operation and staffing, including the quality of the management plan, adequacy of the proposed budget in relation to objectives, and qualifications and capability of any staff assigned to the program;

(c) The demonstrated innovation of the program;

(d) The percentage of children in need not currently served by the program in the community;

(e) The unavailability of alternate funding sources to applicants; and

(f) The demonstrated ability to achieve the goals of this.

Subpart F—Employer-based Retiree Volunteer Programs

§ 2505.50 Purpose.

The purpose of the program is to provide support to bring together retirees, their former employers, and community agencies to develop employer-based retiree volunteer programs.

§ 2505.51 Eligibility.

Public and private nonprofit organizations are eligible to receive awards.

§ 2505.52 Projects to be funded.

The Commission will support projects involving retirees, their former employers, and community agencies engaged in volunteer activities.

§ 2505.53 Selection criteria.

The Commission makes awards under this program on the basis of the criteria specified below. The Commission shall consider the following in evaluating applications:

(a) The effectiveness of the program in addressing the needs of the community;

(b) The quality of the plan of operation and staffing, including the quality of the management plan, adequacy of the proposed budget in relation to objectives, and qualifications and capability of any staff assigned to the project;

(c) The demonstrated innovation of the program;

(d) The effectiveness of the program in involving retirees, their former employers, and community organizations in working together to address the needs of the local community; and

(e) The demonstrated ability to achieve the goals of this.

PART 2506—ADMINISTRATIVE REQUIREMENTS

Subpart A—Program Specific Requirements

Sec.

2506.1 Reporting specific requirements.

2506.2 Supplementation, nonduplication, and nondisplacement.

2506.3 Suspension or termination of payments.

2506.4 Grievance procedure.

Sec.

2506.5 Prohibition on use of funds for certain purposes.

2506.6 Standards of conduct.

2506.7 Treatment of benefits.

2506.8 Program evaluation.

2506.9 Treatment of living allowances.

Authority: 42 U.S.C. 12501 et. seq.

Subpart A—Program Specific Requirements

§ 2506.1 Reporting specific requirements.

(a) Requirement for State reports. (1) Each State receiving assistance under this Chapter shall prepare and submit to the Commission an annual report concerning the use of Federal funds under this Chapter and the status of national and community service programs in the State; and

(2) The report shall include information demonstrating compliance with the provisions of this chapter, including §§ 2501.5(a)(9) and 2506.2, and any additional information requested by the Commission.

(b) Requirement for Reports from Local Grantees to the State. In order to meet the requirement in § 2506.1(a), each State may require local grantees to supply such information as is necessary, including a comparison of actual accomplishments with the goals established for the program, the number of participants, the number of service hours generated, and the existence of any problems, delays, or adverse conditions that have affected or will affect the attainment of program goals. In addition, local grantees may be asked to provide information to the State demonstrating compliance with the provisions of the chapter.

(c) Requirement for Reports from Local Grantees Receiving Grants Directly From the Commission. If a local grantee, including an institution of higher education, has received a grant directly from the Commission, the local grantee will be required to provide directly to the Commission a report concerning the use of Federal funds under this chapter, and such other information as is necessary, including a comparison of actual accomplishments with the goals established for the program, the number of participants, the number of service hours generated, and the existence of any problems, delays, or adverse conditions that have affected or will affect the attainment of program goals. In addition, local grantees may be asked to provide information to the Commission demonstrating compliance with the provisions of the chapter.

(d) Availability of report. Reports submitted to the Commission by the States and local grantees shall be made available to the public upon request.

§ 2506.2 Supplementation, nonduplication, and nondisplacement.

(a) *Supplementation.* (1) Recipients of funds under this Chapter are advised that such funds are to be used only to supplement, not supplant, State and local public funds expended for services of the type assisted under this Chapter in the previous fiscal year.

(2) Paragraph (a) of this section shall be satisfied, with respect to a particular program, if the aggregate expenditure for such program for the fiscal year in which services are to be provided will not be less than the aggregate expenditure for such program in the previous fiscal year, excluding the amount of Federal assistance provided and any other amounts used to pay the remainder of the costs of programs assisted under this chapter.

(b) *Nonduplication.* (1) In general, funds may be used only for a program that does not duplicate, and is in addition to, an activity performed by paid employees in the locality being served by the program; this requirement shall not be construed to bar the replication of an exemplary volunteer or community service program; and

(2) Assistance made available under this chapter shall not be provided to a private nonprofit entity to conduct activities that are the same or substantially equivalent to activities provided by a State or local government agency that such entity resides in, unless the requirements of paragraph (c) of this section are met.

(c) *Nondisplacement.* Further, an employer shall not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the assistance used by the employer of a participant in a program funded under this chapter. A service opportunity may not infringe in any manner on the promotional opportunity of an employed individual. Services may not be performed that would supplant the hiring of employed workers or would otherwise be performed by an employee, including an employed worker who recently resigned or was discharged; an employee who is subject to a reduction in force; an employee who is on leave (terminal, temporary, vacation, emergency, or sick); or an employee who is on strike or who is being locked out.

§ 2506.3 Suspension or termination of payments.

(a) *General.* The Commission may, in accordance with the provisions of this chapter, suspend or terminate payments under a grant or contract awarded under this chapter whenever the Commission

determines there is a material failure, or threat of failure, to comply with the applicable terms and conditions of the grant or contract or to protect the fiduciary interests of the government.

(b) *Summary action.* In emergency situations, the Commission may summarily suspend a grant or contract for not more than 30 days. Examples of emergency situations that would allow such action are serious risk to persons or property; violations of Federal, State, or local criminal statutes; or material violations of the grant or contract that are sufficiently serious that they outweigh the general policy in favor of advance notice and opportunity to show cause.

(c) *Suspension or termination notice.* The Commission shall notify a recipient by letter or telegram that the Commission intends to suspend or terminate assistance either in whole or in part unless the recipient shows good cause why such assistance should not be suspended. In this communication, the grounds and the effective date for the proposed suspension or termination shall be described. The recipient shall be given at least 7 calendar days to submit written material in opposition to the proposed action.

(d) *Hearings.* The recipient may request a hearing on a proposed suspension or termination. With 5 days notice to the recipient, the Commission may authorize the conduct of a hearing or other meeting, at a location convenient to the recipient, to consider the proposed suspension or termination. A transcript or recording shall be made of such a hearing or meeting and it shall be available for inspection by any individual.

(e) *Decision.* The Commission's decision on suspension or termination of a grant or contract shall be final and shall be delivered by letter or telegram.

§ 2506.4 Grievance procedure.

(a) *General.* State and local applicants that receive assistance under this chapter shall establish and maintain a procedure to adjudicate grievances from participants, labor organizations, and other interested individuals concerning programs that receive assistance under this chapter. Such grievances may include proposed placements of participants in projects receiving assistance.

(b) *Deadline for grievances.* Except for a grievance that alleges fraud or criminal activity, a grievance shall be made not later than 1 year after the date of an alleged occurrence.

(c) *Deadline for hearing and decision.* If a hearing is held on a grievance, it shall be conducted no later than 30 days

from the date of the filing of the grievance. A decision shall be made not later than 60 days from the date of the filing of the grievance.

(d) *Arbitration.* When there is an adverse decision on a grievance, or 60 days after the filing of a grievance if no decision has been reached, the party filing the grievance shall submit the grievance to binding arbitration before a qualified arbiter who is jointly selected and independent of the interested parties. Any resulting proceedings shall be held no later than 45 days after the request for arbitration, with a decision made not later than 30 days after the date of the proceeding. The cost of arbitration shall be divided evenly between the parties to the arbitration.

(e) *Proposed placement.* If a grievance is filed regarding a proposed placement of a participant in a program that receives assistance under this chapter, such placement shall not be made unless it is consistent with the resolution of the grievance in accordance with the requirements of this part.

(f) *Remedies.* Remedies for a grievance filed under this part include suspension or termination of payments for assistance under this chapter Act, and prohibition of a placement of a participant described in paragraph (e) of this section.

§ 2506.5 Prohibition on use of funds for certain purposes.

(a) *Prohibited uses.* No assistance made available under a grant under this chapter shall be used to provide religious instruction, conduct worship services, or engage in any form of proselytization.

(b) *Political activity.* Assistance provided under this chapter shall not be used by program participants and program staff to:

(1) Assist, promote, or deter union organizing; or

(2) Finance, directly or indirectly, any activity designed to influence the outcome of an election to Federal office or the outcome of an election to a State or local public office.

(c) *Contracts or collective bargaining agreements.* A project that receives assistance under this chapter shall not impair existing contracts for services or collective bargaining agreements.

§ 2506.6 Standards of conduct.

Programs that receive assistance under this chapter shall establish and stringently enforce standards of conduct at the program site to promote proper moral and disciplinary conditions.

§ 2506.7 Treatment of benefits.

Living allowances and post-service benefits provided to individuals participating in programs under this chapter shall not be considered as income for the purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or federally assisted program based on need, other than programs under the Social Security Act.

§ 2506.8 Program evaluation.

(a) *General.* The Commission has broad responsibility for the continuing evaluation of programs receiving assistance under this chapter. In turn, program participants, States, and local grantees have the responsibility to provide information to the Commission as required by the Commission in order to evaluate programs and projects funded under this chapter. State and local grantees may be required to assist in the selection of, and collection of information about, control groups of individuals who are not selected to participate in funded programs.

(b) Standards for the evaluation of program effectiveness. (1) All funded programs will be evaluated based on their effectiveness in achieving any or all of the goals of this chapter.

(2) Specific evaluation standards for each of these broad goals will be established by the Commission and made available to funded programs and the public.

(c) Program objectives. Programs receiving funds under part 2504 will be evaluated to determine their effectiveness in:

(1) Recruiting and enrolling diverse participants in such programs based on economic background, race, ethnicity, gender, age, marital status, education levels, and ability and disability;

(2) Promoting the educational achievement of each participant based on earning a high school diploma or its equivalent and the future enrollment and completion of increasingly higher levels of education;

(3) Encouraging each participant to engage in public and community service after completing of the program based on career choices and service in other service programs such as VISTA, the Peace Corps, the military, and part-time volunteer service;

(4) Promoting positive attitudes among each participant regarding the participant's role in solving community problems, ability to improve the lives of others, sense of responsibilities as a citizen and community member, and other factors;

(5) Enabling participants to finance a lesser portion of their higher education through student loans;

(6) Providing services and projects that benefit the community;

(7) Supplying additional volunteer assistance to community agencies without overloading such agencies with more volunteers than can be utilized effectively;

(8) Providing service and activities that could not otherwise be performed by employed workers and that will not supplant the hiring of, or result in the displacement of, employed workers or

impair the existing contracts of such workers; and

(9) Attracting a greater number of citizens to public service, including service in the active and reserve components of the Armed Forces, the National Guard, the Peace Corps, VISTA, and the Older American Volunteer Programs.

(d) The Commission shall keep confidential the information acquired about individual participants or members of control groups from evaluations under paragraph (c) of this section.

§ 2506.9 Treatment of living allowances.

Living allowances received under this chapter shall not be considered in the determination of expected family contribution or independent student status under subpart 1 of part A of title IV, and part F of title IV, of the Higher Education Act of 1965.

Catherine Milton,

Executive Director, Commission on National and Community Service.

[FR Doc. 92-3134 Filed 2-12-92; 8:45 am]

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Environmental Protection

Thursday
February 13, 1992

Part III

Environmental Protection Agency

40 CFR Part 1, et al.

Changes to Regulations to Reflect the Role
of the New Environmental Appeals Board in
Agency Adjudications; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 1, 3, 17, 22, 27, 57, 60, 66, 85, 86, 114, 123, 124, 164, 209, 222, 223, 233 and 403

[FRL-4086-71]

Changes to Regulations to Reflect the Role of the New Environmental Appeals Board in Agency Adjudications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the environmental statutes administered by the Environmental Protection Agency, the Administrator has authority to decide appeals of permit decisions made by the Agency's Regional Administrators and administrative penalty decisions made by the Agency's Administrative Law Judges. Because it is unnecessary and impractical for the Administrator to make all such decisions, the Administrator has in the past either delegated authority to decide appeals in such cases to the Agency's Judicial Officers or decided such appeals himself primarily on the basis of recommendations from the Judicial Officers. As part of the response to an increasing level of administrative adjudications, the Administrator is creating a new entity called the Environmental Appeals Board to hear and decide the kinds of appeals that the Administrator formerly delegated to the Agency's Judicial Officers or decided on the basis of the Judicial Officers' recommendations. The rule promulgated herein makes technical changes to the rules of practice governing Agency permit and penalty decisions to bring such rules into conformity with the Administrator's action. The final rule delegates to the new Environmental Appeals Board the Administrator's authority to hear appeals of permit and penalty decisions. The rule also replaces references to the Judicial Officers and those references to the Administrator relating to appellate functions with references to the Environmental Appeals Board.

EFFECTIVE DATE: March 1, 1992.

FOR FURTHER INFORMATION CONTACT: James W. Black, Administrator's Office (A-101), 401 M Street, SW., Washington, DC, 20460, (202) 260-4076.

SUPPLEMENTARY INFORMATION:

The Environmental Appeals Board

The Administrator has authority to decide appeals of permitting decisions

made by Regional Administrators and appeals of administrative penalty decisions made by Administrative Law Judges. In implementing this authority, the Administrator has delegated authority to decide most kinds of appeals to the Agency's Judicial Officers (two EPA attorneys, one denominated the Chief Judicial Officer and the other denominated the Judicial Officer). The Administrator has retained authority to decide a few types of appeals, but has decided such appeals primarily on the basis of recommendations from the Agency's Judicial Officers.

The Agency is now creating a new entity called the Environmental Appeals Board, the purpose of which is to hear and decide appeals in cases that were formerly either delegated to the Judicial Officers or decided on the basis of the Judicial Officers' recommendations. The Judicial Officer positions at EPA Headquarters are being abolished. The establishment of the Board is being accomplished by the Administrator through internal Agency action. The purpose of the rule promulgated herein is only to make technical changes to the rules of practice governing Agency permit and penalty decisions to bring such rules into conformity with the Administrator's action.

The Board will be a permanent body with continuing functions. It will be composed of three Environmental Appeals Judges designated by the Administrator. The Board will decide each matter before it by majority vote in accordance with applicable statutes and regulations. Two Board members constitute a quorum, and if the absence or recusal of a Board member so requires, the Board may sit as a Board of two members. In the case of a tie vote, the matter shall be referred to the Administrator to break the tie.

The rule promulgated herein defines the Board and sets qualifications for Board members. It also includes express delegations of authority from the Administrator to the Board to hear and decide appeals of various types of cases. Under the old scheme, the rules of practice governing Agency adjudications did not actually delegate authority to the Judicial Officers (with the exception of the Equal Access to Justice Act regulations in part 17). Instead, the rules merely recognized the possibility of such a delegation, while the actual delegations were accomplished through an internal Agency document called the delegations manual. By contrast, under the rule promulgated herein, the rules of practice actually effect the delegation of the Administrator's authority. In addition, the rule replaces references to the Judicial Officer and those references

to the Administrator related to appellate functions with references to the Environmental Appeals Board.

The approach adopted in this rule, while having the same practical effect as the previous approach, is designed to provide greater clarity. Under the old approach, in which delegations of authority were effected in a separate internal delegations manual, there was considerable confusion in the regulated community over the role of the Judicial Officers in Agency adjudications. The approach adopted in this rule reflects more clearly and directly the role of the Board as the final decisionmaker in Agency adjudications. Also, effecting the delegation directly in the regulation confers on the Board the dignity and stature that is appropriate for the Agency's highest adjudicative body. The old approach, in which the rules of practice merely recognized the possibility of a delegation, was rejected because it might have fostered the perception that the Board is an ad hoc, provisional body.

As a result of the rule promulgated today, the Board now holds delegated authority from the Administrator to hear and decide the following types of cases:

- Appeals of cases arising under the Equal Access to Justice Act (EAJA) (5 U.S.C. 504), which are governed by the procedures set out in part 17;
- Appeals of civil penalty cases arising under sections 3005(e), 3008, 9006, 11005 of the Solid Waste Disposal Act (RCRA), as amended (42 U.S.C. 6925, 6928, 6991(e), and 6992(d)), which are governed by the procedures set out in part 22;
- Appeals of civil penalty cases arising under section 211 of the Clean Air Act (CAA), as amended (42 U.S.C. 7545), which are governed by the procedures set out in part 22;
- Appeals of Class II penalty cases arising under section 309(g) of the Clean Water Act (CWA) (33 U.S.C. 1319(g)), which are governed by the procedures set out in part 22;
- Appeals of civil penalty cases arising under section 16(a) of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2615(a)), which are governed by the procedures set out in part 22;
- Appeals of civil penalty cases arising under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 1361(a)), which are governed by the procedures set out in part 22;
- Appeals of administrative penalty cases arising under section 325 of the Emergency Planning and Community Right to Know Act (EPCRA) (42 U.S.C.

- 11045), which are governed by the procedures set out in part 22;
- Appeals of civil penalties cases arising under sections 105 (a) and (f) of the Marine Protection, Research, Sanctuaries Act of 1972 (MPRSA) (33 U.S.C. 1415(a)), which are governed by the procedures set out in part 22;
 - Appeals of administrative penalty cases arising under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) (42 U.S.C. 9609), which are governed by the procedures set out in part 22.
 - Appeals of civil penalty cases arising under section 1414(g)(3)(B) of the Safe Drinking Water Act as amended (42 U.S.C. 300g-3(g)(3)(B)), which are governed by the procedures set out in part 22.
 - Appeals of cases arising under the Program Fraud Civil Remedies Act (31 U.S.C. 3801), which are governed by the procedures set out in part 27;
 - Appeals of determinations under § 60.539, which deals with standards of performance for new residential wood heaters promulgated under the Clean Air Act.
 - Appeals of Clean Air Act section 120 noncompliance penalty cases, which are governed by the procedures set out in part 66;
 - Appeals of cases arising under the Clean Air Act involving control of air pollution from motor vehicles and motor vehicle engines, which are governed by the procedures set out in part 85;
 - Appeals of cases arising under the Clean Air Act involving control of air pollution from new motor vehicles and new motor vehicle engines and certification and test procedures, which are governed by the procedures set out in part 86;
 - Appeals of Spill Prevention, Containment and Control (SPCC) penalty cases arising under the Clean Water Act, which are governed by the oil pollution prevention regulations set out in part 114;
 - Appeals from permit decisions made by Regional Administrators and Administrative Law Judges under the Clean Water Act (NPDES), which are governed by the procedures set out in part 124;
 - Appeals from permit decisions made by Regional Administrators under RCRA, which are governed by the procedures set out in part 124;
 - Appeals from permit decisions made by Regional Administrators and delegated States under the Clean Air Act (PSD permits), which are governed by the procedures set out in part 124;
 - Appeals from permit decisions made by Regional Administrators under the Safe Drinking Water Act (UIC permits), which are governed by the procedures set out in part 124;
 - Appeals of FIFRA cancellation, suspension and compensation cases, which are governed by the procedures set out in part 164;
 - Appeals of cases under the Noise Control Act, which are governed by the procedures set out in part 209;
 - Appeals from permit decisions made by Regional Administrators under the Marine Protection, Research, and Sanctuaries Act (MPRSA), which are governed by the procedures set out in part 222.
 - Appeals of determinations under § 403.13, which deals with "fundamentally different factors" variances from Clean Water Act categorical pretreatment standards for publicly owned treatment works.
- The Board will also have authority to decide appeals in cases arising under section 113(d) of the Clean Air Act, as soon as final action is taken on a proposed rule to make such cases subject to part 22. In addition, it is expected that the Administrator will, on occasion, ask the Board for advice and consultation on decisions that the Administrator has not delegated to the Board through these rule changes. In such cases, the Administrator may ask the Board to make findings of fact or conclusions of law, to prepare a recommended decision for the Administrator's consideration, or to serve as the final decisionmaker for the Agency, as is appropriate to a particular case.
- The provisions promulgated herein to effect the delegation of the Administrator's authority to the Board provide that the delegation of authority does not preclude the Board from referring a particular case or motion to the Administrator for decision when the Board deems it appropriate to do so. The language of the provisions makes clear, however, that an appeal or motion for reconsideration of a Board decision must be directed to the Board. An appeal or motion for reconsideration directed to the Administrator will not be considered. One of the goals of the Board is to relieve the Administrator of the responsibility for responding to appeals. Allowing parties to petition the Administrator directly to hear an appeal or to overturn a Board decision would defeat this goal. It is expected that the Board will exercise its discretion to refer cases or motions to the Administrator directly to hear an appeal or to overturn a Board decision would defeat this goal.

It is expected that the Board will exercise its discretion to refer cases or motions to the Administrator only in exceptional circumstances.

The rule promulgated herein also amends parts of Title 40 under which the Board will not have authority to hear appeals, but which contain incidental references to the Judicial Officer that need to be removed to reflect the abolition of that position. The following provisions have been amended for that purpose:

- (1) Sections 57.103, 57.806, 57.809, relating to primary nonferrous smelter orders;
- (2) Section 123.64, governing withdrawal of State NPDES programs;
- (3) Section 223.4, relating to the revision, revocation, or limitation of ocean dumping permits under the Marine Protection, Research, and Sanctuaries Act;
- (4) Section 233.53, relating to withdrawal of section 404 State program approval.

The Environmental Appeals Board will decide any appeals or related matters covered in this rule that are pending before a Judicial Officer or the Administrator at the time this rule becomes effective.

Reasons for the Change

The Environmental Appeals Board is being established to adapt the Agency's administrative appeals process to new realities facing the Agency. In recent years, the Agency has stepped up enforcement of the environmental statutes it is charged with administering. In addition, statutory amendments (most recently the Clean Air Act Amendments of 1990) have greatly increased the Agency's administrative penalty authority. This increase in administrative enforcement activity will continue to generate an increasing number of appeals to the Administrator. The Agency has also received a greater number of permit applications, resulting in more appeals from the permit decisions of Regional Administrators. As a result, the Agency needs to direct more resources to its administrative appeals process, so that it may keep pace with the growing case docket. The establishment of the Environmental Appeals Board will allow the Agency to do this. Another advantage of the Board is that it will allow for a broader range of input and perspective in administrative decisionmaking. It will do this in two ways. First, three individuals, rather than just one, will review each case, lending greater authority to the Agency's decisions. Second, the Board anticipates that, in

appropriate cases, it will exercise its discretionary authority to grant or require oral argument, an authority that the Judicial Officers held under the rules but did not exercise. Another virtue of the Board is that it will make clear that the Administrator's enforcement authority (delegated to various Regional and Headquarters enforcement officers) and the Administrator's adjudicative authority are delegated to, and exercised by, separate and distinct components of the Agency, thus inspiring confidence in the fairness of Agency adjudications. Finally, the creation of the Board confers on Agency appellate proceedings the stature and dignity that are commensurate with the growing importance of such proceedings.

Issuance of Rule on Final Basis

The rule promulgated herein is being issued on a final basis pursuant to the Administrative Procedure Act, which allows the issuance of rules without prior notice and comment where the rules concern agency practice or procedure. 5 U.S.C. 553(b)(A). All of the changes made in this notice affect only Agency practice and procedure. None of the changes are substantive in nature. Accordingly, the Agency may take final action approving these rule changes without first providing for notice and comment.

Effective Date of Rule

The rule promulgated herein will become effective on March 1, 1992. This effective date was chosen to coincide with the internal Agency actions creating the Environmental Appeals Board and abolishing the positions of the Judicial Officers.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, 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. In such circumstances, a regulatory flexibility analysis is not required. The rule promulgated herein is not expected to have any impact on small entities. The rule does not impose additional regulatory requirements on small entities. Accordingly, the Administrator certifies that these regulations will not

have a significant impact on a substantial number of small entities. These regulations, therefore, do not require a regulatory flexibility analysis.

Executive Order No. 12291

The rule promulgated herein has been reviewed under Executive Order 12291. The rule does not constitute a "major" regulation within the meaning of Executive Order 12291, because it will not 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 or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or U.S. enterprises operating in foreign or domestic markets. Because the rule promulgated herein is not a "major" regulation, the Agency is not required to conduct a Regulatory Impact Analysis.

Paper Work Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction act of 1980.

List of Subjects

40 CFR Part 1

Organization and functions (Government agencies).

40 CFR Part 3

Conflicts of interest.

40 CFR Part 17

Claims, Equal access to justice, Lawyers.

40 CFR Part 22

Administrative practice and procedure, Air pollution control, Hazardous substances, Hazardous waste, Penalties, Pesticides and pests, Poison prevention, Water pollution control.

40 CFR Part 27

Administrative practice and procedure, Claims, Fraud, Penalties.

40 CFR Part 57

Administrative practice and procedure, Air pollution control, Intergovernmental relations.

40 CFR Part 60

Administrative practice and procedure, Air pollution control, Penalties.

40 CFR Part 85

Confidential business information, Imports, Labeling, Motor vehicle

pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 86

Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 114

Administrative practice and procedure, Oil pollution, Penalties.

40 CFR Part 123

Administrative practice and procedure, Confidential business information, Hazardous substances, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous waste, Indians-lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 164

Administrative practice and procedure, Pesticides and pests.

40 CFR Part 209

Administrative practice and procedure, Noise control.

40 CFR Part 222

Administrative practice and procedure, water pollution control.

40 CFR Part 223

Administrative practice and procedure, Water pollution control.

40 CFR Part 233

Administrative practice and procedure, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 403

Confidential business information, Reporting and recordkeeping requirement, Waste treatment and disposal, Water pollution.

Dated: January 27, 1992.

William K. Reilly,
Administrator.

For the reasons set out in the preamble, title 40 is amended, effective March 1, 1992, as follows:

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

Authority: 5 U.S.C. 552.

2. Section 1.25 is amended by adding paragraph (e) to read as follows:

§ 1.25 Staff Offices.

(e)(1) *Environmental Appeals Board.* The Environmental Appeals Board is a permanent body with continuing functions composed of three Board Members designated by the Administrator. The Environmental Appeals Board shall decide each matter before it in accordance with applicable statutes and regulations. The Environmental Appeals Board shall decide each matter by majority vote. Two Board Members constitute a quorum, and if the absence or recusal of a Board Member so requires, the Board shall sit as a Board of two Members. In the case of a tie vote, the matter shall be referred to the Administrator to break the tie.

(2) *Functions.* The Environmental Appeals Board shall exercise any authority expressly delegated to it in this title. With respect to any matter for which authority has not been expressly delegated to the Environmental Appeals Board, the Environmental Appeals Board shall, at the Administrator's request, provide advice and consultation, make findings of fact and conclusions of law, prepare a recommended decision, or serve as the final decisionmaker, as the Administrator deems appropriate. In performing its functions, the Environmental Appeals Board may consult with any EPA employee concerning any matter governed by the rules set forth in this title, provided such consultation does not violate applicable *ex parte* rules in this title.

(3) *Qualifications.* Each member of the Environmental Appeals Board shall be a graduate of an accredited law school and a member in good standing of a recognized bar association of any state or the District of Columbia. Board Members shall not be employed by the Office of Enforcement, the Office of the General Counsel, a Regional Office, or any other office directly associated with matters that could come before the Environmental Appeals Board. A Board Member shall recuse himself or herself from deciding a particular case if that Board Member in previous employment performed prosecutorial or investigative functions with respect to the case,

participated in the preparation or presentation of evidence in the case, or was otherwise personally involved in the case.

PART 3—EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. The authority citation for part 3 continues to read as follows:

Authority: E.O. 11222, 30 FR 6460; 3 CFR 1964-65 Comp., p. 306; 5 CFR parts 734, 735 and 737.

2. Appendix C of subpart A is amended by revising 2(a), the first paragraph of 9(a), and the last sentence of the second paragraph of 9(a) to read as follows:

Appendix C to Subpart A—Procedures for Administrative Enforcement of Post-Employment Restrictions

2. * * *

(a) A member of the Environmental Appeals Board or its designee is the presiding official as provided by paragraph 9(a) of this appendix:

9. * * *

(a) *The Presiding Official.* A member of the Environmental Appeals Board or its designee presides at the hearing. The Presiding Official, if not a member of the Environmental Appeals Board, must be an attorney and an employee of the Environmental Protection Agency. If the Environmental Appeals Board designates a Presiding Official other than one of its members, it must promptly notify the former employee and the Inspector General of the Presiding Official's name, address and telephone number.

* * * The Environmental Appeals Board may remove a Presiding Official for cause.

PART 17—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN EPA ADMINISTRATIVE PROCEEDINGS

1. The authority citation for part 17 continues to read as follows:

Authority: Section 504, Title 5 U.S.C., as amended by sec. 203(a)(1), Equal Access to Justice Act (Title 2 of Pub. L. 96-481, 94 Stat. 2323).

2. Section 17.8 is revised to read as follows:

§ 17.8 Delegation of authority.

The Administrator delegates to the Environmental Appeals Board authority to take final action relating to the Equal Access to Justice Act. The Environmental Appeals Board is described at 40 CFR 1.25(e). This delegation does not preclude the

Environmental Appeals Board from referring any matter related to the Equal Access to Justice Act to the Administrator when the Environmental Appeals Board deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Environmental Appeals Board, all parties shall be so notified and the rules in this part referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

3. Section 17.14 is amended by revising paragraph (b) to read as follows:

§ 17.14 Time for submission of application.

(b) Final disposition means the later of: (1) The date on which the Agency decision becomes final, either through disposition by the Environmental Appeals Board of a pending appeal or through an initial decision becoming final due to lack of an appeal or (2) the date of final resolution of the proceeding, such as settlement or voluntary dismissal, which is not subject to a petition for rehearing or reconsideration.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION OR SUSPENSION OF PERMITS

1. The authority citation for part 22 continues to read as follows:

Authority: Sec. 16 of the Toxic Substances Control Act, 15 U.S.C. 2615; secs. 211 and 301 of the Clean Air Act, 42 U.S.C. 7545 and 7601; secs. 14 and 15 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 1361 and 1366m; secs. 105 and 108 of the Marine Protection, Research and Sanctuaries Act, 33 U.S.C. 1415 and 1418; secs. 2002 and 3008 of the Solid Waste Disposal Act, 42 U.S.C. 6912 and 6928; sec. 501 of the Clean Water Act, 33 U.S.C. 1361; and, sec. 1414 of the Safe Drinking Water Act, 42 U.S.C. 300g-3.

2. Section 22.03 is amended by revising the definition of "Complainant," removing the definition of "Judicial Officer" and adding the definition of "Environmental Appeals Board" in alphabetical order to read as follows:

§ 22.03 Definitions.

Complainant means any person authorized to issue a complaint on behalf of the Agency to persons alleged to be in violation of the Act. The complainant shall not be a member of

the Environmental Appeals Board, the Regional Judicial Officer, or any other person who will participate or advise in the decision.

Environmental Appeals Board means the Board within the Agency described in § 1.25 of this title, located at U.S. Environmental Protection Agency, A-110, 401 M St. SW., Washington, DC 20460.

3. Section 22.04 is amended by revising paragraphs (a) and (b), the first, third, and fourth sentences of paragraph (d)(1), and paragraph (d)(2) to read as follows:

§ 22.04 Powers and duties of the Environmental Appeals Board, the Regional Administrator, the Regional Judicial Officer and the Presiding Officer; disqualification.

(a) *Environmental Appeals Board.* The Administrator delegates authority under the Act to the Environmental Appeals Board to perform the functions assigned to it in these rules of practice. An appeal or motion under this part directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation of authority to the Environmental Appeals Board does not preclude the Environmental Appeals Board from referring any case or motion governed by this part to the Administrator when the Environmental Appeals Board, in its direction, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all parties shall be so notified and the rules in this part referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator. If a case or motion is referred to the Administrator by the Environmental Appeals Board, the Administrator may consult with any EPA employee concerning the matter, provided such consultation does not violate the ex parte rules set forth in § 22.08.

(b) *Regional Administrator.* The Regional Administrator shall exercise all powers and duties as prescribed or delegated under the Act and these rules of practice.

(1) *Delegation to Regional Judicial Officer.* One or more Regional Judicial Officers may be designated by the Regional Administrator to perform, within the region of their designation, the functions described below. The Regional Administrator may delegate his or her authority to a Regional Judicial Officer to act in a given proceeding. This delegation will not prevent the Regional Judicial Officer from referring any motion or case to the

Regional Administrator. The Regional Judicial Officer shall exercise all powers and duties prescribed or delegated under the Act or these rules of practice.

(2) *Qualifications of Regional Judicial Officer.* A Regional Judicial Officer shall be an attorney who is a permanent or temporary employee of the Agency or some other Federal agency and who may perform other duties within the Agency. A Regional Judicial Officer shall not be employed by the Region's Enforcement Division or by the Regional Division directly associated with the type of violation at issue in the proceeding. A Regional Judicial Officer shall not have performed prosecutorial or investigative functions in connection with any hearing in which he serves as a Regional Judicial Officer or with any factually related hearing.

(d) * * * (1) The Administrator, the Regional Administrator, the members of the Environmental Appeals Board, the Regional Judicial Officer, or the Presiding Officer may not perform functions provided for in these rules of practice regarding any matter in which they (i) have a financial interest or (ii) have any relationship with a party or with the subject matter which would make it inappropriate for them to act.

* * * Any party may at any time by motion to the Administrator request that the Regional Administrator, a member of the Environmental Appeals Board, or the Presiding Officer be disqualified or request that the Administrator disqualify himself or herself from the proceeding. The Administrator, the Regional Administrator, a member of the Environmental Appeals Board, the Regional Judicial Officer, or the Presiding Officer may at any time withdraw from any proceeding in which they deem themselves disqualified or unable to act for any reason.

(2) If the Administrator, the Regional Administrator, the Regional Judicial Officer, or the Presiding Officer is disqualified or withdraws from the proceeding, a qualified individual who has none of the infirmities listed in paragraph (d)(1) of this section shall be assigned to replace him. Assignment of a replacement for Regional Administrator or for the Regional Judicial Officer shall be made by the Administrator or the Regional Administrator, respectively. The Administrator, should he or she withdraw or disqualify himself or herself, shall assign the Regional Administrator from the Region where the case originated to replace him or her. If that Regional Administrator would be disqualified, the Administrator

shall assign a Regional Administrator from another region to replace the Administrator. The Regional Administrator shall assign a new Presiding Officer if the original Presiding Officer was not an Administrative Law Judge. The Chief Administrative Law Judge shall assign a new Presiding Officer from among available Administrative Law Judges if the original Presiding Officer was an Administrative Law Judge.

4. Section 22.05 is amended by revising paragraph (c)(1) and the first and third sentences of paragraph (c)(5) to read as follows.

§ 22.05 Filings, service, and form of pleadings and documents.

(c) * * * (1) Except as provided herein, or by order of the Presiding Officer or of the Environmental Appeals Board, there are no specific requirements as to the form of documents.

(5) The Environmental Appeals Board, the Regional Administrator, the Presiding Officer, or the Regional Hearing Clerk may refuse to file any document which does not comply with this paragraph. * * * Such person may amend and resubmit any document refused for filing upon motion granted by the Environmental Appeals Board, the Regional Administrator, or the Presiding Officer, as appropriate.

5. Section 22.06 is amended by revising the second and third sentences to read as follows:

§ 22.06 Filing and service of rulings, orders, and decisions.

* * * All such documents issued by the Environmental Appeals Board shall be filed with the Clerk of the Environmental Appeals Board. Copies of such rulings, orders, decisions, or other documents shall be served personally, or by certified mail, return receipt requested, upon all parties by the Environmental Appeals Board, the Regional Administrator, the Regional Judicial Officer, or the Presiding Officer, as appropriate.

6. Section 22.07 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 22.07 Computation and extension of time.

(b) * * * The Environmental Appeals Board, the Regional Administrator, or the Presiding Officer, as appropriate, may grant an extension of time for the

filing of any pleading, document, or motion (1) upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties, or (2) upon its or his own motion. * * *

7. Section 22.08 is amended by revising the first and second sentences to read as follows:

§ 22.08 Ex parte discussion of proceeding.

At no time after the issuance of the complaint shall the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, the Regional Judicial Officer, the Presiding Officer, or any other person who is likely to advise these officials in the decision on the case, discuss ex parte the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any ex parte memorandum or other communication addressed to the Administrator, the Regional Administrator, the Environmental Appeals Board, the Regional Judicial Officer, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. * * *

8. Section 22.09(a) is amended by revising the second sentence to read as follows:

§ 22.09 Examination of documents filed.

(a) * * * Such documents shall be made available by the Regional Hearing Clerk, the Hearing Clerk, or the Environmental Appeals Board, as appropriate. * * *

9. Section 22.11 is amended by revising the third sentence of paragraph (d) to read as follows:

§ 22.11 Intervention.

(d) * * * If the motion is granted, the Presiding Officer or the Environmental Appeals Board shall issue an order setting the time for filing such brief. * * *

10. Section 22.16 is amended by revising the first sentence of paragraph (b) and the second and fourth sentences of paragraph (c) to read as follows:

§ 22.16 Motions.

(b) * * * The Presiding Officer, the Regional Administrator, or the Environmental Appeals Board, as appropriate, may set a shorter time for response, or make such other orders concerning the disposition of motions as they deem appropriate.

(c) * * * The Environmental Appeals Board shall rule on all motions filed or made after service of the initial decision upon the parties. * * * Oral argument on motions will be permitted where the Presiding Officer, the Regional Administrator, or the Environmental Appeals Board considers it necessary or desirable.

11. Section 22.23 is amended by revising the last sentence of paragraph (b) to read as follows:

§ 22.23 Objections and offers of proof.

(b) * * * Where the Environmental Appeals Board decides that the ruling of the Presiding Officer in excluding the evidence was both erroneous and prejudicial, the hearing may be reopened to permit the taking of such evidence.

12. Section 22.27 is amended by revising the last sentence of paragraph (a) and paragraph (c) to read as follows:

§ 22.27 Initial decision.

(a) * * * The Hearing Clerk shall forward a copy of the initial decision to the Environmental Appeals Board. * * *

(c) *Effect of initial decision.* The initial decision of the Presiding Officer shall become the final order of the Environmental Appeals Board within forty-five (45) days after its service upon the parties and without further proceedings unless (1) an appeal to the Environmental Appeals Board is taken from it by a party to the proceedings, or (2) the Environmental Appeals Board elects, sua sponte, to review the initial decision.

13. Section 22.29 is amended by revising the first and second sentences of paragraph (a), paragraph (b), the first, second, third and fifth sentences of paragraph (c), and the first and third sentences of paragraph (d) to read as follows:

§ 22.29 Appeal from or review of interlocutory orders or rulings.

(a) * * * Except as provided in this section, appeals to the Environmental Appeals Board shall obtain as a matter of right only from a default order, an accelerated decision or decision to dismiss issued under § 22.20(b)(1), or an initial decision rendered after an evidentiary hearing. Appeals from other orders or rulings shall lie only if the

Presiding Officer or Regional Administrator, as appropriate, upon motion of a party, certifies such orders or rulings to the Environmental Appeals Board on appeal. * * *

(b) *Availability of interlocutory appeal.* The Presiding Officer may certify any ruling for appeal to the Environmental Appeals Board when (1) the order or ruling involves an important question of law or policy concerning which there is substantial grounds for difference of opinion, and (2) either (i) an immediate appeal from the order or ruling will materially advance the ultimate termination of the proceeding, or (ii) review after the final order is issued will be inadequate or ineffective.

(c) * * * If the Environmental Appeals Board determines that certification was improvidently granted, or if the Environmental Appeals Board takes no action within thirty (30) days of the certification, the appeal is dismissed. When the Presiding Officer declines to certify an order or ruling to the Environmental Appeals Board on interlocutory appeal, it may be reviewed by the Environmental Appeals Board only upon appeal from the initial decision, except when the Environmental Appeals Board determines, upon motion of a party and in exceptional circumstances, that to delay review would be contrary to the public interest. Such motion shall be made within six (6) days of service of an order of the Presiding Officer refusing to certify a ruling for interlocutory appeal to the Environmental Appeals Board. * * * The Environmental Appeals Board may, however, allow further briefs and oral argument.

(d) * * * The Presiding Officer may stay the proceedings pending a decision by the Environmental Appeals Board upon an order or ruling certified by the Presiding Officer for an interlocutory appeal. * * * Where the Presiding Officer grants a stay of more than thirty (30) days, such stay must be separately approved by the Environmental Appeals Board.

14. Section 22.30 is amended by revising the first sentence of paragraph (a)(1), the first and third sentences of paragraph (a)(2), the paragraph heading and the first sentence of paragraph (b), paragraph (c) and paragraph (d) to read as follows:

§ 22.30 Appeal from or review of initial decision.

(a) * * * (1) Any party may appeal an adverse ruling or order of the Presiding Officer by filing a notice of appeal and an accompanying appellate brief with the Environmental Appeals

Board and upon all other parties and amicus curiae within twenty (20) days after the initial decision is served upon the parties. * * *

(2) Within fifteen (15) days of the service of notices of appeal and briefs under paragraph (a)(1) of this section, any other party or amicus curiae may file and serve with the Environmental Appeals Board a reply brief responding to argument raised by the appellant, together with references to the relevant portions of the record, initial decision, or opposing brief. * * * Further briefs shall be filed only with the permission of the Environmental Appeals Board.

(b) *Sua sponte review by the Environmental Appeals Board.* Whenever the Environmental Appeals Board determines sua sponte to review an initial decision, the Environmental Appeals Board shall serve notice of such intention on the parties within forty-five (45) days after the initial decision is served upon the parties. * * *

(c) *Scope of appeal or review.* If the Environmental Appeals Board determines that issues raised, but not appealed by the parties, should be argued, it shall give counsel for the parties reasonable written notice of such determination to permit preparation of adequate argument. Nothing herein shall prohibit the Environmental Appeals Board from remanding the case to the Presiding Officer for further proceedings.

(d) *Argument before the Environmental Appeals Board.* The Environmental Appeals Board may, upon request of a party or sua sponte, assign a time and place for oral argument after giving consideration to the convenience of the parties.

15. Section 22.31 is amended by revising paragraph (a) to read as follows:

§ 22.31 Final order on appeal.

(a) *Contents of the final order.* When an appeal has been taken or the Environmental Appeals Board issues a notice of intent to conduct a review sua sponte, the Environmental Appeals Board shall issue a final order as soon as practicable after the filing of all appellate briefs or oral argument, whichever is later. The Environmental Appeals Board shall adopt, modify, or set aside the findings and conclusions contained in the decision or order being reviewed and shall set forth in the final order the reasons for its actions. The Environmental Appeals Board may, in its discretion, increase or decrease the assessed penalty from the amount recommended to be assessed in the decision or order being reviewed, except that if the order being reviewed is a

default order, the Environmental Appeals Board may not increase the amount of the penalty.

16. Section 22.32 is revised to read as follows:

§ 22.32 Motion to reconsider a final order.

Motions to reconsider a final order shall be filed within ten (10) days after service of the final order. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision shall be directed to, and decided by, the Environmental Appeals Board. Motions for reconsideration directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered, except in cases that the Environmental Appeals Board has referred to the Administrator pursuant to § 22.04(a) and in which the Administrator has issued the final order. A motion for reconsideration shall not stay the effective date of the final order unless specifically so ordered by the Environmental Appeals Board.

PART 27—PROGRAM FRAUD CIVIL REMEDIES

1. The authority citation for part 27 continues to read as follows:

Authority: 31 U.S.C. 3809.

2. Section 27.2 is amended by removing the definitions of "Authority Head" and "Judicial Officer" and adding the definition of "Environmental Appeals Board" in alphabetical order to read as follows:

§ 27.2 Definitions.

Environmental Appeals Board means the Board within the Agency described in § 1.25 of this title.

3. Section 27.10 is amended by revising paragraphs (h), (i), (j), (k), and (l) to read as follows:

§ 27.10 Default upon failure to file an answer.

(h) The defendant may appeal to the Environmental Appeals Board the decision denying a motion to reopen by filing a notice of appeal within 15 days after the presiding officer denies the section. The timely filing of a notice of appeal shall stay the initial decision the Environmental Appeals Board decides the issue.

(i) If the defendant files a timely notice of appeal, the presiding officer shall forward the record of the

proceeding to the Environmental Appeals Board.

(j) The Environmental Appeals Board shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the presiding officer.

(k) If the Environmental Appeals Board decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the Environmental Appeals Board shall remand the case to the presiding officer with instructions to grant the defendant an opportunity to answer.

(l) If the Environmental Appeals Board decides that the defendant's failure to file a timely answer is not excused, the Environmental Appeals Board shall reinstate the initial decision of the presiding officer, which shall become final and binding upon the parties 30 days after the Environmental Appeals Board issues such decision.

4. Section 27.14 is amended by revising paragraphs (a)(2) and (b) to read as follows:

§ 27.14 Separation of functions.

(a) * * *

(2) Participate or advise in the initial decision or the review of the initial decision by the Environmental Appeals Board, except as a witness or representative in public proceedings; or

(b) Neither the presiding officer nor the members of the Environmental Appeals Board shall be responsible to, or subject to, the supervision or direction of the investigating official or the reviewing official.

5. Section 27.16 is amended by revising paragraph (f)(3) to read as follows:

§ 27.16 Disqualification of the reviewing official or presiding officer.

(f) * * *

(3) If the presiding officer denies a motion to disqualify, the Environmental Appeals Board may determine the matter only as part of its review of the initial decision upon appeal, if any.

6. Section 27.31 is amended by revising the first sentence of paragraph (a), the introductory text of paragraph (b) and paragraph (c) to read as follows:

§ 27.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the presiding officer and the Environmental Appeals Board, upon

appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. * * *

(b) Although not exhaustive, the following factors are among those that may influence the presiding officer and the Environmental Appeals Board in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(c) Nothing in this section shall be construed to limit the presiding officer or the Environmental Appeals Board from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed. 7. Section 27.35 is amended by revising paragraph (b) to read as follows:

§ 27.35 The record.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the presiding officer and the Environmental Appeals Board.

8. Section 27.37 is amended by revising paragraph (d) to read as follows:

§ 27.37 Initial decision.

(d) Unless the initial decision of the presiding officer is timely appealed to the Environmental Appeals Board, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the Environmental Appeals Board and shall be final and binding on the parties 30 days after it is issued by the presiding officer.

9. Section 27.38 is amended by revising paragraphs (f) and (g) to read as follows:

§ 27.38 Reconsideration of initial decision.

(f) If the presiding officer denies a motion for reconsideration, the initial decision shall constitute the final decision of the Environmental Appeals Board and shall be final and binding on the parties 30 days after the presiding officer denies the motion, unless the initial decision is timely appealed to the Environmental Appeals Board in accordance with § 27.39.

(g) If the presiding officer issued a revised initial decision, that decision shall constitute the final decision of the Environmental Appeals Board and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the Environmental Appeals Board in accordance with § 27.39.

10. Section 27.39 is amended by revising paragraphs (a), (b)(3), (c), (f), (h), (i), (j), (k), and (l) to read as follows:

§ 27.39 Appeal to Environmental Appeals Board.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the Environmental Appeals Board by filing a notice of appeal with the hearing clerk in accordance with this section.

(b) * * *

(3) The Environmental Appeals Board may extend the initial 30 day period for an additional 30 days if the defendant files a request for an extension within the initial 30 day period and shows good cause.

(c) If the defendant filed a timely notice of appeal, and the time for filing motions for reconsideration under § 27.38 has expired, the presiding officer shall forward the record of the proceeding to the Environmental Appeals Board.

(f) There is no right to appear personally before the Environmental Appeals Board.

(h) In reviewing the initial decision, the Environmental Appeals Board shall not consider any objection that was not raised before the presiding officer unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the Environmental Appeals Board that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the Environmental Appeals Board shall remand the matter to the presiding officer for consideration of such additional evidence.

(j) The Environmental Appeals Board may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the presiding officer in any initial decision.

(k) The Environmental Appeals Board shall promptly serve each party to the appeal with a copy of the decision of the Environmental Appeals Board and a statement describing the right of any

person determined to be liable for a civil penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the Environmental Appeals Board serves the defendant with a copy of the Environmental Appeals Board's decision, a determination that a defendant is liable under § 27.3 is final and is not subject to judicial review.

11. Section 27.40 is revised to read as follows:

§ 27.40 Stay ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the Environmental Appeals Board a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the Environmental Appeals Board shall stay the process immediately. The Environmental Appeals Board may order the process resumed only upon receipt of the written authorization of the Attorney General.

12. Section 27.41 is revised to read as follows:

§ 27.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the Environmental Appeals Board.

(b) No administrative stay is available following a final decision of the Environmental Appeals Board.

13. Section 27.42 is revised to read as follows:

§ 27.42 Judicial Review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the Environmental Appeals Board imposing penalties or assessments under this part and specifies the procedures for such review.

14. Section 27.46 is amended by revising paragraphs (c) and (e) to read as follows:

§ 27.46 Compromise or settlement.

(c) The Environmental Appeals Board has exclusive authority to compromise or settle a case under this part at any time after the date on which the

presiding officer issues an initial decision, except during the pendency of any review under § 27.42 or during the pendency of any action to collect penalties and assessments under § 27.43.

(e) The investigating official may recommend settlement terms to the reviewing official, the Environmental Appeals Board, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Environmental Appeals Board or the Attorney General, as appropriate.

15. Section 27.48 is revised to read as follows:

§ 27.48 Delegated functions.

The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in appeals filed under this part. An appeal directed to the Administrator, rather than the Environmental Appeals Board, will not be considered. This delegation of authority to the Environmental Appeals Board does not preclude the Environmental Appeals Board from referring an appeal or motion filed under this part to the Administrator for decision when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all parties shall be so notified and the rules in this part referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator. If a case or motion is referred to the Administrator by the Environmental Appeals Board, the Administrator may consult with any EPA employee concerning the matter, provided such consultation does not violate the ex parte contacts restrictions set forth in §§ 27.14 and 27.15 of this part.

PART 57—PRIMARY NONFERROUS SMELTER ORDERS

1. The authority citation for part 57 continues to read as follows:

Authority: 31 U.S.C. 3809.

§ 57.103 [Amended]

2. Section 57.103 is amended by removing paragraph (p) and redesignating paragraphs (q) through (x) as new paragraphs (p) through (w).

3. Section 57.806 is amended by revising paragraph (a)(2) to read as follows:

§ 57.806 Presiding Officer.

(a) * * *

(2) If the parties to the hearing waive their right to have the Agency or an Administrative Law Judge preside at the hearing, the Administrator shall appoint an EPA employee who is an attorney to serve as presiding officer.

4. Section 57.809 is amended by revising the first sentence of paragraph (c)(2) to read as follows:

§ 57.809 Ex parte communications.

(c) * * *
(2) *Decisional body* means any Agency employee who is or may be reasonably expected to be involved in the decisional process of the proceeding including the Administrator, Presiding Officer, the Regional Administrator (if he does not designate himself as a member of the Agency trial staff), and any of their staff participating in the decisional process. * * *

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

2. Section 60.539 is amended by revising the third sentence of paragraph (h)(1); paragraph (h)(2); and the last sentence of paragraph (h)(3) to read as follows:

§ 60.539 Hearing and appeal procedures.

(h)(1) * * * The initial decision shall become the decision of the Environmental Appeals Board without further proceedings unless there is an appeal to the Environmental Appeals Board or motion for review by the Environmental Appeals Board. * * *

(2) The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in appeals filed under this section. An appeal directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation of authority to the Environmental Appeals Board does not preclude the Environmental Appeals Board from referring an appeal or a motion filed under this part to the Administrator for decision when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all parties shall be so notified and the rules in this section referring to the Environmental Appeals Board shall be interpreted as

referring to the Administrator. On appeal from or review of the initial decision, the Environmental Appeals Board shall have all the powers that it would have in making the initial decision including the discretion to require or allow briefs, oral argument, the taking of additional evidence or the remanding to the Presiding Officer for additional proceedings. The decision by the Environmental Appeals Board shall include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the appeal or considered in the review.

(3) * * * Any appeal to the Environmental Appeals Board shall be taken within 10 days of the initial decision, and the Environmental Appeals Board shall render its decision in the appeal within 30 days of the filing of the appeal.

PART 66—ASSESSMENT AND COLLECTION OF NONCOMPLIANCE PENALTIES BY EPA

1. The authority citation for part 66 continues to read as follows:

Authority: Sec. 120, Clean Air Act, as amended, 42 U.S.C. 7420.

2. Section 66.3 is amended by redesignating paragraphs (g) through (l) as paragraphs (h) through (m) and adding a new paragraph (g) to read as follows:

§ 66.3 Definitions.

(g) "Environmental Appeals Board" shall mean the Board within the Agency described in § 1.25 of this title. The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in appeals filed under this part. Appeals directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation of authority to the Environmental Appeals Board does not preclude the Environmental Appeals Board from referring an appeal or a motion filed under this part to the Administrator for decision when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all parties shall be so notified and the rules in this part referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

3. Section 66.6 is amended by revising paragraph (b) to read as follows:

§ 66.6 Effect of litigation; time limits.

(b) Failure of the Environmental Appeals Board or the Presiding Officer at a hearing to meet any of the time limits contained in this part 66 and part 67 of this chapter shall not affect the validity of any proceeding under these regulations.

4. Section 66.72 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 66.72 Additional payment or reimbursement.

(a) Within 120 days after the source owner or operator receives notification pursuant to § 66.71(b) that it has achieved and is maintaining compliance with applicable legal requirements, or within 120 days after receipt of a decision to that effect upon petition and hearing, or within 120 days after receipt of a decision to that effect upon an appeal to the Environmental Appeals Board, the source owner or operator shall submit to the Administrator a revised penalty calculation as provided in the Technical Support Document and the Manual, together with data necessary for verification. * * *

5. Section 66.81 is amended by revising the second and third sentences of paragraph (b) and paragraph (c) to read as follows:

§ 66.81 Final action.

(b) * * * To exhaust administrative remedies, a source owner or operator must first petition for reconsideration of the decision in question and, if unsuccessful after hearing or after denial of hearing, appeal the decision in question to the Environmental Appeals Board. The action becomes final upon the completion of review by the Environmental Appeals Board and notice thereof to the owner or operator of the source.

(c) Where a petition seeks reconsideration both of the finding of noncompliance and of the finding of liability on the ground that the source owner or operator is entitled to an exemption, both questions must be decided before any review by the Environmental Appeals Board is sought, except on agreement of the parties.

6. Section 66.95 is amended by revising the first and second sentences of paragraph (c) to read as follows:

§ 66.95 Decision of the Presiding Officer, Appeal to the Environmental Appeals Board.

(c) An appeal to the Environmental Appeals Board from a decision of the Presiding Officer shall be made by petition filed within twenty (20) days from receipt by a party of the Presiding Officer's decision. The Environmental Appeals Board shall rule on the appeal within 30 days of receipt of a petition. * * *

PART 85—CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES AND MOTOR VEHICLE ENGINES

1. The authority citation for subpart S of part 85 continues to read as follows:

Authority: Sec. 301(a), Clean Air Act, 81 Stat. 504, as amended by sec. 15(c), 84 Stat. 1713 (42 U.S.C. 1857g(a)). The regulations implement sec. 207(c)(1)–(2), Clean Air Act, 84 Stat. 1697 (42 U.S.C. 1847f–5a(c)(1)–(2)); sec. 208(a), Clean Air Act, 81 Stat. 501, as renumbered by sec. 8(a), 84 Stat. 1694 (42 U.S.C. 1857f–6(a)).

2. Section 85.1807 is amended by revising paragraphs (a)(6) and (o)(2), the second and third sentences of paragraph (o)(3), paragraphs (q)(1), (q)(4), (q)(5), (t)(1), (t)(2), (u)(1), (u)(3)(iv), (u)(4), (u)(5), (v)(1), (v)(2), (w)(1), (w)(2), and (w)(3), the first, second, and fourth sentences of paragraph (x), paragraphs (z)(1) and (z)(2), and the second sentence of paragraph (aa)(1) to read as follows:

§ 85.1807 Public hearings.

(a) * * *

(6) "Environmental Appeals Board" shall mean the Board within the Agency described in § 1.25 of this title. The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in appeals filed under this subpart. Appeals directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation of authority to the Environmental Appeals Board does not preclude the Environmental Appeals Board from referring an appeal or a motion filed under this subpart to the Administrator for decision when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all parties shall be so notified and the rules in this part referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator. * * *

(o) * * *

(2) Within ten days after service of any motion filed pursuant to this section, or within such other time as may be fixed by the Environmental Appeals Board or the Presiding Officer, as appropriate, any party may serve and file an answer to the motion. The

movant shall, if requested by the Environmental Appeals Board or the Presiding Officer, as appropriate, serve and file reply papers within the time set by the request.

(3) * * * The Environmental Appeals Board shall rule upon all motions filed prior to the appointment of a Presiding Officer and all motions filed after the filing of the decision of the Presiding Officer or accelerated decision. Oral argument of motions will be permitted only if the Presiding Officer or the Environmental Appeals Board, as appropriate, deems it necessary. * * *

(q) *Interlocutory appeal.* (1) An interlocutory appeal may be taken to the Environmental Appeals Board either (i) with the consent of the Presiding Officer and where he certifies on the record or in writing that the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expense or prejudice to any party or substantial detriment to the public interest, or (ii) absent the consent of the Presiding Officer, by permission of the Environmental Appeals Board. * * *

(4) Applications to file such appeals absent consent of the Presiding Officer shall be filed with the Environmental Appeals Board within 5 days of the denial of any appeal by the Presiding Officer.

(5) The Environmental Appeals Board will consider the merits of the appeal on the application and any answers thereto. No oral argument will be heard nor other briefs filed unless the Environmental Appeals Board directs otherwise. * * *

(t) * * * (1) Unless extended by the Environmental Appeals Board, the Presiding Officer shall issue and file with the Hearing Clerk his decision within 30 days after the period for filing proposed findings as provided for in paragraph (s) of this section has expired.

(2) The Presiding Officer's decision shall become the opinion of the Environmental Appeals Board (i) when no notice of intention to appeal as described in paragraph (u) of this section is filed, 30 days after the issuance thereof, unless in the interim the Environmental Appeals Board shall have taken action to review or stay the effective date of the decision; or (ii) when a notice of intention to appeal is filed but the appeal is not perfected as required by paragraph (u) of this section, 5 days after the period allowed for perfection of an appeal has expired unless within that 5 day period, the

Environmental Appeals Board shall have taken action to review or stay the effective date of the decision.

(u) * * * (1) Any party to a proceeding may appeal the Presiding Officer's decision to the Environmental Appeals Board, *Provided*, That within 10 days after issuance of the Presiding Officer's decision such party files a notice of intention to appeal and an appeal brief within 30 days of such decision.

(3) * * * Any brief filed pursuant to this paragraph shall contain in the order indicated, the following:

(iv) A proposed form of rule or order for the Environmental Appeals Board's consideration if different from the rule or order contained in the Presiding Officer's decision.

(4) No brief in excess of 40 pages shall be filed without leave of the Environmental Appeals Board.

(5) Oral argument will be allowed in the discretion of the Environmental Appeals Board.

(v) * * * (1) If, after the expiration of the period for taking an appeal as provided for by paragraph (u) of this section, no notice of intention to appeal the decision of the Presiding Officer has been filed, or if filed, not perfected, the Hearing Clerk shall so notify the Environmental Appeals Board.

(2) The Environmental Appeals Board, upon receipt of notice from the Hearing Clerk that no notice of intention to appeal has been filed, or if filed, not perfected pursuant to paragraph (u) of this section, may, on its own motion, within the time limits specified in paragraph (t)(2) of this section, review the decision of the Presiding Officer. Notice of the intention of the Environmental Appeals Board to review the decision of the Presiding Officer shall be given to all parties and shall set forth the scope of such review and the issue which shall be considered and shall make provision for filing of briefs.

(w) * * * (1) Upon appeal from or review of the Presiding Officer's decision, the Environmental Appeals Board shall consider such parts of the record as are cited or as may be necessary to resolve the issues presented and, in addition shall to the extent necessary or desirable exercise all the powers which it could have exercised if it had presided at the hearing.

(2) In rendering its decision, the Environmental Appeals Board shall adopt, modify, or set aside the findings, conclusions, and rule or order contained

in the decision of the Presiding Officer and shall set forth in its decision a statement of the reasons or bases for its action.

(3) In those cases where the Environmental Appeals Board determines that it should have further information or additional views of the parties as to the form and content of the rule or order to be issued, the Environmental Appeals Board, in its discretion, may withhold final action pending the receipt of such additional information or views, or may remand the case to the Presiding Officer.

(x) * * * Within twenty (20) days after issuance of the Environmental Appeals Board's decision, any party may file with the Environmental Appeals Board a petition for reconsideration of such decision, setting forth the relief desired and the grounds in support thereof. Any petition filed under this subsection must be confined to new questions raised by the decision or the final order and upon which the petitioner had no opportunity to argue before the Presiding Officer or the Environmental Appeals Board. * * * The filing of a petition for reconsideration shall not operate to stay the effective date of the decision or order or to toll the running of any statutory time period affecting such decision or order unless specifically so ordered by the Environmental Appeals Board.

(z) * * * (1) If, after the expiration of the period for taking an appeal as provided for by paragraph (u) of this section, no appeal has been taken from the Presiding Officer's decision, and, after the expiration of the period for review by the Environmental Appeals Board on its own motion as provided for by paragraph (v) of this section, the Environmental Appeals Board does not move to review such decision, the hearing will be deemed to have ended at the expiration of all periods allowed for such appeal and review.

(2) If an appeal of the Presiding Officer's decision is taken pursuant to paragraph (u) of this section, or if, in the absence of such appeal, the Environmental Appeals Board moves to review the decision of the Presiding Officer pursuant to paragraph (v) of this section, the hearing will be deemed to have ended upon the rendering of a final decision by the Environmental Appeals Board.

(aa) * * * (1) * * * Such officer shall be responsible for filing in the court the record on which the order of the Environmental Appeals Board is based.

2. Section 85.1808 is amended by revising paragraph (d) to read as follows:

§ 85.1808 Treatment of confidential information.

(d) If a claim is made that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Environmental Appeals Board only to the extent and by means of the procedures set forth in part 2, subpart B, of this chapter.

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES; CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 206, 207, 208, 215, 301(a), of the Clean Air Act as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550 and 7601(a).

2. Section 86.614–84 is amended by revising paragraphs (b)(5) and (c)(2), the second and third sentences of paragraph (c)(3), paragraphs (s)(1), (s)(2), (t)(1), (t)(3)(iv), (t)(4), (t)(5), (u)(2), (u)(5), (v)(1), (v)(2), (w)(1), (w)(2), (w)(3), (w)(4), the first, second, and fourth sentences of paragraph (x), paragraphs (z)(1) and (z)(2), and the second sentence of paragraph (aa)(1) to read as follows:

§ 86.614–84 Hearings on suspensions, revocation, and voiding of certificates of conformity.

(b) * * *
(5) "Environmental Appeals Board" shall mean the Board within the Agency described in section 1.25 of this title. The Administrator delegates to the Environmental Appeals Board authority to issue final decisions in appeals filed under this subpart. Appeals directed by the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation of authority to the Environmental Appeals Board does not preclude the Environmental Appeals Board from referring an appeal or a motion filed under this subpart to the Administrator for decision when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all parties shall be so notified and the rules in this part referring to the Environmental Appeals

Board shall be interpreted as referring to the Administrator.

(o) * * *

(2) Within such time as may be fixed by the Environmental Appeals Board or the Presiding Officer, as appropriate, any party may serve and file an answer to the motion. The movant shall, if requested by the Environmental Appeals Board or the Presiding Officer, as appropriate, serve and file reply papers within the time set by the request.

(3) * * * The Environmental Appeals Board shall rule upon all motions filed prior to the appointment of a Presiding Officer and all motions filed after the filing of the decision of the Presiding Officer or accelerated decision. Oral argument of motions will be permitted only if the Presiding Officer or the Environmental Appeals Board, as appropriate, deems it necessary.

(s) * * * (1) Unless extended by the Environmental Appeals Board, the Presiding Officer shall issue and file with the Hearing Clerk his decision within 14 days (or within 7 days in the case of a hearing requested under § 86.612(i)) after the period for filing proposed findings as provided for in paragraph (r) of this section has expired.

(2) The Presiding Officer's decision shall become the decision of the Environmental Appeals Board (i) when no notice of intention to appeal as described in paragraphs (t) and (u) of this section is filed, 10 days after issuance thereof, unless in the interim the Environmental Appeals Board shall have taken action to review or stay the effective date of the decision; or (ii), when a notice of intention to appeal is filed but the appeal is not perfected as required by paragraphs (t) or (u) of this section, 5 days after the period allowed for perfection of an appeal has expired unless within that 5 day period, the Environmental Appeals Board shall have taken action to review or stay the effective date of the decision.

(t) * * * (1) Any party to a proceeding may appeal the Presiding Officer's decision to the Environmental Appeals Board, *Provided*, That within 10 days after issuance of the Presiding Officer's decision such party files a notice of intention to appeal and an appeal brief within 20 days of such decision.

(3) * * *

(iv) A proposed order for the Environmental Appeals Board's consideration if different from the order contained in the Presiding Officer's decision.

(4) No brief in excess of 40 pages shall be filed without leave of the Environmental Appeals Board.

(5) Oral argument shall be allowed only in the discretion of the Environmental Appeals Board.

(u) * * *

(2) Any party to the proceeding may appeal the Presiding Officer's decision to the Environmental Appeals Board by filing a notice of appeal within 10 days.

(5) No brief in excess of 15 pages shall be filed without leave of the Environmental Appeals Board.

(v) * * * (1) If after the expiration of the period for taking an appeal as provided for by paragraph (t) or (u) of this section no notice of intention to appeal the decision of the Presiding Officer has been filed, or if filed, not perfected, the Hearing Clerk shall so notify the Environmental Appeals Board.

(2) The Environmental Appeals Board, upon receipt of notice from the Hearing Clerk that no notice of intention to appeal the decision of the Presiding Officer has been filed, or if filed, not perfected pursuant to paragraph (t) or (u) of this section, may, on its own motion, within the time limits specified in paragraph (s)(2) of this section, review the decision of the Presiding Officer. Notice of the intention of the Environmental Appeals Board to review the decision of the Presiding Officer shall be given to all parties and shall set forth the scope of such review and the issues which shall be considered and shall make provision for filing of briefs.

(w) * * * (1) Upon appeal from or review of the Presiding Officer's decision, the Environmental Appeals Board shall consider such parts of the record as are cited or as may be necessary to resolve the issues presented and in addition shall, to the extent necessary or desirable, exercise all the powers which it could have exercised if it had presided at the hearing.

(2) In rendering its decision, the Environmental Appeals Board shall adopt, modify or set aside the findings, conclusions, and order contained in the decision of the Presiding Officer and shall set forth in its decision a statement of the reasons or bases for its action.

(3) In those cases where the Environmental Appeals Board determines that it should further information or additional views of the parties as to the form and content of the rule or order to be issued, the Environmental Appeals Board, in its discretion, may withhold final action pending the receipt of such additional

information or views, or may remand the case to the Presiding Officer.

(4) Any decision rendered under this paragraph which completes disposition of a case shall be a final decision of the Environmental Appeals Board.

(x) * * * Within twenty (20) days after issuance of the Environmental Appeals Board's decision, any party may file with the Environmental Appeals Board a petition for reconsideration of such decision, setting forth the relief desired and the grounds in support thereof. Any petition filed under this subsection must be confined to new questions raised by the decision or final order and upon which the petitioner had no opportunity to argue before the Presiding Officer or the Environmental Appeals Board; *Provided, however*, That in the case of a hearing requested under § 86.612(i) such new questions shall be limited to the issues specified in paragraph (c)(2)(ii) of this section. * * * The filing of a petition for reconsideration shall not operate to stay the effective date of the decision or order or to toll the running of any statutory time period affecting such decision or order unless specifically so ordered by the Environmental Appeals Board.

(z) * * * (1) If, after the expiration of the period for taking an appeal as provided for by paragraph (t) and (u) of this section, no appeal has been taken from the Presiding Officer's decision, and after the expiration of the period for review by the Environmental Appeals Board on its own motion as provided for by paragraph (v) of this section, the Environmental Appeals Board does not move to review such decision, the hearing will be deemed to have ended at the expiration of all periods allowed for such appeal and review.

(2) If an appeal of the Presiding Officer's decision is taken pursuant to paragraphs (t) and (u) of this section, or if, in the absence of such appeal, the Environmental Appeals Board moves to review the decision of the Presiding Officer pursuant to paragraph (v) of this section, the hearing will be deemed to have ended upon rendering of a final decision by the Environmental Appeals Board.

(aa) * * * (1) * * * Such officer shall be responsible for filing in the court the record on which the order of the Environmental Appeals Board is based.

3. Section 86.615-84 is amended by revising paragraph (d) to read as follows:

§ 86.615-84 Treatment of confidential information.

(d) If a claim is made that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Environmental Appeals Board only to the extent and by means of the procedures set forth in part 2, subpart B, of this chapter.

4. Section 86.1014-84 is amended by revising paragraphs (b)(5) and (o)(2), the second and third sentences of paragraph (o)(3), paragraphs (s)(1), (s)(2), (s)(2)(i), (s)(2)(ii), (t)(1), (t)(3)(iv), (t)(4), (t)(5), (u)(2), (u)(5), (v)(1), (v)(2), (w)(1), (w)(2), (w)(3), (w)(4), and (x)(1), the second sentence of paragraph (x)(2), paragraphs (z)(1) and (z)(2), and the second sentence of (aa)(1) to read as follows:

§ 86.1014-84 Hearings on suspension, revocation and voiding of certificate of conformity.

(b) * * *

(5) *Environmental Appeals Board* shall mean the Board within the Agency described in § 1.25 of this title. The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in appeals filed under this subpart. Appeals directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation of authority to the Environmental Appeals Board does not preclude the Environmental Appeals Board from referring an appeal or a motion filed under this subpart to the Administrator for decision when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all parties shall be so notified and the rules in this part referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

(o) * * *

(2) Within the time fixed by the Environmental Appeals Board or the Presiding Officer, as appropriate, any party may serve and file an answer to the motion. The movant shall, if requested by the Environmental Appeals Board or the Presiding Officer, as appropriate, serve and file reply papers within the time set by the request.

(3) * * * The Environmental Appeals Board shall rule upon all motions filed prior to the appointment of a Presiding Officer and all motions filed after the

filing of the decision of the Presiding Officer or accelerated decision. Oral argument of motions will be permitted only if the Presiding Officer or the Environmental Appeals Board, as appropriate, considers it necessary.

(s) * * * (1) Unless extended by the Environmental Appeals Board, the Presiding Officer shall issue and file with the Hearing Clerk his decision within fourteen (14) days (or within seven (7) days in the case of a hearing requested under § 86.1012-84(1)) after the period for filing proposed findings as provided for in paragraph (r) of this section has expired.

(2) The Presiding Officer's decision shall become the decision of the Environmental Appeals Board:

(i) When no notice of intention to appeal as described in paragraphs (t) and (u) of this section is filed, ten (10) days after issuance thereof, unless in the interim the Environmental Appeals Board shall have acted to review or stay the effective date of the decision; or

(ii) When a notice of intention to appeal is filed but the appeal is not perfected as required by paragraphs (t) or (u) of this section, five (5) days after the period allowed for perfection of an appeal has expired unless within that five (5) day period, the Environmental Appeals Board shall have acted to review or stay the effective date of the decision.

(t) * * * (1) Any party to a proceeding may appeal the Presiding Officer's decision to the Environmental Appeals Board; *Provided*, That within ten (10) days after issuance of the Presiding Officer's decision the party files a notice of intention to appeal and an appeal brief within twenty (20) days of the decision.

(3) * * *

(iv) A proposed order for the Environmental Appeals Board's consideration if different from the order contained in the Presiding Officer's decision.

(4) No brief in excess of 40 pages will be filed without leave of the Environmental Appeals Board.

(5) The Environmental Appeals Board may allow oral argument.

(u) * * *

(2) Any party to the proceeding may appeal the Presiding Officer's decision to the Environmental Appeals Board by filing a notice of appeal within ten (10) days.

(5) No brief in excess of fifteen (15) pages will be filed without leave of the Environmental Appeals Board.

(v) * * * (1) If after the expiration of the period for taking an appeal as provided for by paragraph (t) or (u) of this section, no notice of intention to appeal the decision of the Presiding Officer has been filed, or if filed, not perfected, the Hearing Clerk shall so notify the Environmental Appeals Board.

(2) The Environmental Appeals Board, upon receipt of notice from the Hearing Clerk that no notice of intention to appeal the decision of the Presiding Officer has been filed, or if filed, not perfected pursuant to paragraph (t) or (u) of this section, may, on its own motion, within the time limits specified in paragraph (s)(2) of this section, review the decision of the Presiding Officer. Notice of the intention of the Environmental Appeals Board to review the decision of the Presiding Officer shall be given to all parties and shall set forth the scope of such review and the issues to be considered and shall make provision for filing of briefs.

(w) * * * (1) Upon appeal from or review of the Presiding Officer's decision, the Environmental Appeals Board shall consider such parts of the record as are cited or as may be necessary to resolve the issues presented and in addition shall, to the extent necessary or desirable, exercise all the powers which it could have exercised if it had presided at the hearing.

(2) In rendering its decision, the Environmental Appeals Board shall adopt, modify or set aside the findings, conclusions, and order contained in the decision of the Presiding Officer and shall set forth in its decision a statement of the reasons or basis for its action.

(3) In those cases where the Environmental Appeals Board determines that it should have further information or additional views of the parties as to the form and content of the rule or order to be issued, the Environmental Appeals Board, in its discretion, may withhold final action pending the receipt of such additional information or views, or may remand the case to the Presiding Officer.

(4) Any decision rendered under this paragraph which completes disposition of a case constitutes a final decision of the Environmental Appeals Board.

(x) * * * (1) Within twenty (20) days after issuance of the Environmental Appeals Board's decision, any party may file with the Environmental Appeals Board a petition for reconsideration of such decision, setting

forth the relief desired and the grounds in support thereof. Any petition filed under this subsection must be confined to new questions raised by the decision or final order and upon which the petitioner had no opportunity to argue before the Presiding Officer or the Environmental Appeals Board; *Provided, however,* That in the case of a hearing requested under § 86.1012-84(1) such new questions shall be limited to the issues specified in paragraph (c)(2)(ii) of this section.

(2) * * * The filing of a petition for reconsideration shall not operate to stay the effective date of the decision or order or to toll the running of any statutory time period affecting such decision or order unless specifically so ordered by the Environmental Appeals Board.

(z) * * * (1) If, after the expiration of the period for taking an appeal as provided for by paragraphs (t) and (u) of this section, no appeal has been taken from the Presiding Officer's decision, and after the expiration of the period for review by the Environmental Appeals Board on its own motion as provided for by paragraph (v) of this section, the Environmental Appeals Board does not move to review such decision, the hearing is considered ended at the expiration of all periods allowed for the appeal and review.

(2) If an appeal of the Presiding Officer's decision is taken pursuant to paragraphs (t) and (u) of this section, or if, in the absence of this appeal, the Environmental Appeals Board moves to review the decision of the Presiding Officer pursuant to paragraph (v) of this section, the hearing is considered ended upon rendering of a final decision by the Environmental Appeals Board.

(aa) * * * (1) * * * This officer shall be responsible for filing in the court the record of which the order of the Environmental Appeals Board is based.

(5) Section 86.1015-84 is amended by revising paragraph (d) to read as follows:

§ 86.1015-84 Treatment of confidential information.

(d) If a claim is made that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Environmental Appeals Board only to the extent and by means

of the procedures set forth in part 2, subpart B, of this chapter.

6. Section 86.1115-87 is amended by revising paragraphs (b)(5) and (o)(2), the second sentence of (o)(3), paragraphs (s)(1), (s)(2), (t)(1), (t)(3)(iv), (t)(4), (t)(5), (u)(1), (u)(2), (v)(1), (v)(2), (v)(3), and (v)(4), the first, second, third, and fifth sentences of paragraph (w), paragraphs (y)(1) and (y)(2), and the second sentence of paragraph (z)(1) to read as follows:

§ 86.1115-87 Hearing procedures for nonconformance determinations and penalties.

(b) * * *
(5) *Environmental Appeals Board* shall mean the Board within the Agency described in § 1.25 of this title. The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in appeals filed under this subpart. Appeals directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation of authority to the Environmental Appeals Board does not preclude the Environmental Appeals Board from referring an appeal or a motion filed under this subpart to the Administrator for decision when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all parties shall be so notified and the rules in this part referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

(o) * * *
(2) Within such time as may be fixed by the Environmental Appeals Board or the Presiding Officer, as appropriate, any party may serve and file an answer to the motion. The movant shall, if requested by the Environmental Appeals Board or the Presiding Officer, as appropriate, serve and file reply papers, within the time set by the request.

(3) * * * The Environmental Appeals Board shall rule upon all motions filed prior to the appointment of a Presiding Officer and all motions filed after the filing of the decision of the Presiding Officer or accelerated decision. Oral argument of motions will be permitted only if the Presiding Officer or the Environmental Appeals Board, as appropriate, deems it necessary.

(s) * * * (1) Unless extended by the Environmental Appeals Board, the

Presiding Officer shall issue and file with the Hearing Clerk his decision within 30 days after the period for filing proposed findings has expired, as provided for in paragraph (c) of this section.

(2) The Presiding Officer's decision shall become the decision of the Environmental Appeals Board (i) 10 days after issuance thereof, if no notice of intention to appeal as described in paragraph (t) of this section is filed, unless in the interim the Environmental Appeals Board shall have taken action to review or stay the effective date of the decision; or (ii) 5 days after expiration of the period allowed by paragraph (t)(1) of this section for perfection of an appeal, if a notice of intention to appeal is filed but the appeal is not perfected, unless within that 5 day period the Environmental Appeals Board shall have taken action to review or stay the effective date of the decision;

(t) * * * (1) Any party to a proceeding may appeal the Presiding Officer's decision to the Environmental Appeals Board, *Provided,* That within 10 days after issuance of the Presiding Officer's decision such party files a notice of intention to appeal and an appeal brief within 20 days of such decision.

(3) * * *
(iv) A proposed order for the Environmental Appeals Board's consideration if different from the order contained in the Presiding Officer's decision.

(4) No brief in excess of 15 pages shall be filed without leave of the Environmental Appeals Board.

(5) Oral argument will be allowed only in the discretion of the Environmental Appeals Board.

(u) * * * (1) If, after the expiration of the period for taking an appeal as provided for by paragraph (t) of this section, no notice of intention to appeal the decision of the Presiding Officer has been filed, or if filed, not perfected, the Hearing Clerk shall so notify the Environmental Appeals Board.

(2) The Environmental Appeals Board, upon receipt of notice from the Hearing Clerk that no notice of intention to appeal has been filed, or if filed, not perfected pursuant to paragraph (t)(1) of this section, may, on its own motion, within 14 days after notice from the Hearing Clerk, review the decision of the Presiding Officer. Notice of the intention of the Environmental Appeals Board to review the decision of the

Presiding Officer shall be given to all parties and shall set forth the scope of such review and the issues which shall be considered and shall make provisions for filing of briefs.

(v) * * * (1) Upon appeal from or review of the Presiding Officer's the Environmental Appeals Board shall consider such parts of the record as are cited or as may be necessary to resolve the issues presented and in addition shall, to the extent necessary or desirable, exercise all the powers which it could have exercised if it had presided at the hearing.

(2) In rendering its decision, the Environmental Appeals Board shall adopt, modify, or set aside the findings, conclusions, and order contained in the decision of the Presiding Officer and shall set forth in its decision a statement of the reasons or bases for this action.

(3) In those cases where the Environmental Appeals Board determines that it should have further information or additional views of the parties as to the form and content of the rule or order to be issued, the Environmental Appeals Board, in its discretion, may without final action pending the receipt of such additional information or views, or may remand the case to the Presiding Officer.

(4) Any decision rendered under this paragraph which completed disposition of a case shall be a final decision of the Environmental Appeals Board.

(w) * * * Any party may file with the Environmental Appeals Board a petition for reconsideration of such decision setting forth the relief desired and the grounds in support thereof. This petition must be filed within 20 days of the issuance of the Environmental Appeals Board's decision, and must be confined to new questions raised by the decision or final order and which the petitioner had no opportunity to argue before the Presiding Officer or the Environmental Appeals Board, unless otherwise specified by the Environmental Appeals Board. Subsequent to the expiration of the period for petitioning for reconsideration, the Environmental Appeals Board may, in its discretion and for good cause shown, grant the manufacturer a hearing to contest the compliance level or the penalty calculation even though such issues may have been raised in the previous proceeding. * * * The filing of a petition for reconsideration shall not operate to stay the effective date of the decision or order or to toll the running of any statutory time period affecting such decision or order unless specifically so

ordered by the Environmental Appeals Board.

(y) * * * (1) If, after the expiration of the period for taking an appeal as provided by paragraph (t) of this section, no appeal has been taken from the Presiding Officer's decision, and after the expiration of the period for review by the Environmental Appeals Board on its own motion as provided for by paragraph (u) of this section, the Environmental Appeals Board does not move to review such decision, the hearing will be deemed to have ended at the expiration of all periods allowed for such appeal and review.

(2) If an appeal of the Presiding Officer's decision is taken pursuant to paragraph (t) of this section, or if, in the absence of such appeal the Environmental Appeals Board moves to review the decision of the Presiding Officer pursuant to paragraph (u) of this section, the hearing will be deemed to have ended upon issuance of a final decision by the Environmental Appeals Board.

(z) * * * (1) * * * Such officer shall be responsible for filing in the court the record on which the order of the Environmental Appeals Board is based.

7. Section 86.1116-87 is amended by revising paragraph (d) to read as follows:

§ 86.1116-87 Treatment of confidential information.

(d) If a claim is made that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Environmental Appeals Board only to the extent and by means of the procedures set forth in part 2, subpart B, of this chapter.

PART 114—CIVIL PENALTIES FOR VIOLATION OF OIL POLLUTION PREVENTION REGULATIONS

1. The authority citation for part 114 continues to read as follows:

Authority: Secs. 311(j), 501(a), Pub. L. 92-500, 86 Stat. 868, 885 (33 U.S.C. 1321(j), 1361(a)).

2. Section 114.10 is amended by revising the last sentence to read as follows:

§ 114.10 Decision.

* * * The decision of the Presiding Officer shall become the final decision of the Environmental Protection Agency unless within fifteen (15) days from the

date of receipt of such decision, the person assessed the penalty appeals the decision to the Environmental Appeals Board, or unless the Environmental Appeals Board shall have stayed the effectiveness of the decision pending review.

3. Section 114.11 is amended by removing paragraph (c), redesignating paragraph (b) as new paragraph (c), redesignating paragraph (a) as new paragraph (b), adding a new paragraph (a), revising newly redesignated paragraphs (b) and (c)(4) and paragraph (d) to read as follows:

§ 114.11 Appeal to the Environmental Appeals Board.

(a) The Administrator delegates authority to the Environmental Appeals Board (which is described in § 1.25 of this title) to issue final decisions in appeals filed under this part. An appeal directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation does not preclude the Environmental Appeals Board from referring an appeal or a motion filed under this part to the Administrator when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all parties shall be so notified and the rules in this part referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

(b) The person assessed a penalty in the Presiding Officer's determination shall have the right to appeal an adverse decision to the Environmental Appeals Board upon filing a written Notice of Appeal in the form required by paragraph (c) of this section within fifteen (15) days of the date of the receipt of the Presiding Officer's decision.

(c) * * * (4) Contain a concise statement setting forth the action which the person proposes that the Environmental Appeals Board take.

(d) The Environmental Appeals Board, after a Notice of Appeal in proper form has been filed, shall render a decision with respect to the appeal promptly. In rendering its decision, the Environmental Appeals Board may adopt, modify, or set aside the decision of the Presiding Officer in any respect and shall include in its decision a concise statement of the basis therefor. The decision of the Environmental Appeals Board on appeal shall be effective when rendered.

PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 123.64 is amended by revising paragraph (b)(3)(ii)(B) to read as follows:

§ 123.64 Procedures for withdrawal of State programs.

(b) * * *

(3)(ii) * * *

(B) *Ex parte* discussion of proceedings. At no time after the issuance of the order commencing proceedings shall the Administrator, the Regional Administrator, the Regional Judicial Officer, the Presiding Officer, or any other person who is likely to advise these officials in the decision on the case, discuss *ex parte* the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any *ex parte* memorandum or other communication addressed to the Administrator, the Regional Administrator, the Regional Judicial Officer, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party, shall be regarded as argument made in the proceeding and shall be served upon all other parties. The other parties shall be given an opportunity to reply to such memorandum or communication.

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 1857 *et seq.*

2. Section 124.2 is amended by adding a definition of "Environmental Appeals Board" in alphabetical order to read as follows:

§ 124.2 Definitions.

Environmental Appeals Board shall mean the Board within the Agency described in § 1.25(e) of this title. The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in RCRA, PSD, or UIC

permit appeals filed under this subpart. An appeal directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation does not preclude the Environmental Appeals Board from referring an appeal or a motion under this subpart to the Administrator when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Environmental Appeals Board, all parties shall be so notified and the rules in this subpart referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

3. Section 124.19 is amended by revising the first sentence of the paragraph (a) introductory text, paragraphs (a)(2) and (b), the first and third sentences of paragraph (c), the paragraph (d) introductory text, paragraphs (e) and (f)(1) (i), (ii) and (iii) and by adding paragraph (g) to read as follows:

§ 124.19 Appeal of RCRA, UIC, and PSD permits.

(a) Within 30 days after a RCRA, UIC, or PSD final permit decision (or a decision under § 270.29 to deny a permit for the active life of a RCRA hazardous waste management facility or unit) has been issued under § 124.15, any person who filed comments on that draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision. * * *

(2) An exercise of discretion or an important policy consideration which the Environmental Appeals Board should, in its discretion, review.

(b) The Environmental Appeals Board may also decide on its initiative to review any condition of any RCRA, UIC, or PSD permit issued under this part. The Environmental Appeals Board must act under this paragraph within 30 days of the service date of notice of the Regional Administrator's action.

(c) Within a reasonable time following the filing of the petition for review, the Environmental Appeals Board shall issue an order granting or denying the petition for review. * * * Public notice of any grant of review by the Environmental Appeals Board under paragraph (a) or (b) of this section shall be given as provided in § 124.10. * * *

(d) The Environmental Appeals Board may defer consideration of an appeal of a RCRA or UIC permit under this section until the completion of formal proceedings under subpart E or F

relating to an NPDES permit issued to the same facility or activity upon concluding that:

(e) A petition to the Environmental Appeals Board under paragraph (a) of this section is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action.

(f)(1) * * *

(i) When the Environmental Appeals Board issues notice to the parties that review has been denied;

(ii) When the Environmental Appeals Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(iii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Environmental Appeals Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(g) Motions to reconsider a final order shall be filed within ten (10) days after service of the final order. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision shall be directed to, and decided by, the Environmental Appeals Board. Motions for reconsideration directed to the administrator, rather than to the Environmental Appeals Board, will not be considered, except in cases that the Environmental Appeals Board has referred to the Administrator pursuant to § 124.2 and in which the Administrator has issued the final order. A motion for reconsideration shall not stay the effective date of the final order unless specifically so ordered by the Environmental Appeals Board.

4. Section 124.72 is amended by removing the definition of "Judicial Officer" and by adding the definition of "Environmental Appeals Board" in alphabetical order to read as follows:

§ 124.72 Definitions.

Environmental Appeals Board shall mean the Board within the Agency described in § 1.25 of this title. The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in NPDES appeals filed under this subpart. An appeal directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation does not preclude the Environmental Appeals Board from referring an appeal or a motion to the Administrator when the

Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Environmental Appeals Board, all parties shall be so notified and the rules in this subpart referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

5. Section 124.74 is amended by revising the third and fourth sentences of the explanatory note at the end of paragraph (b)(1) to read as follows:

§ 124.74 Request for evidentiary hearing.

(b)(1) * * *

Note: * * * However, on review of the denial the Environmental Appeals Board is authorized by § 124.91(a)(1) to review policy or legal conclusions of the Regional Administrator. EPA is requiring an appeal to the Environmental Appeals Board even of purely legal issues involved in a permit decision to ensure that the Environmental Appeals Board will have an opportunity to review any permit before it will be final and subject to judicial review.

6. Section 124.75 is amended by revising the second sentence of paragraph (b) to read as follows:

§ 124.75 Decision on request for a hearing.

(b) * * * That denial is subject to review by the Environmental Appeals Board under § 124.91.

7. Section 124.78 is amended by revising the first sentence of paragraph (a)(2) to read as follows:

§ 124.75 Ex parte communications.

(a) * * *

(2) *Decisional body* means any Agency employee who is or may reasonably be expected to be involved in the decisional process of the proceeding including the Administrator, the members of the Environmental Appeals Board, the Presiding Officer, the Regional Administrator (if he or she does not designate himself or herself as a member of the Agency trial staff), and any of their staff participating in the decisional process. * * *

8. Section 124.89 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 124.89 Decisions.

(b) * * *

(1) A party files a petition for review by the Environmental Appeals Board pursuant to § 124.91; or

(2) The Environmental Appeals Board *sua sponte* files a notice that it will review the decision pursuant to § 124.91.

9. Section 124.90 is amended by revising the first and second sentences of paragraph (a), the paragraph (b) introductory text, all but the next to the last sentence of paragraph (c), and paragraph (d) to read as follows:

§ 124.90 Interlocutory appeal.

(a) Except as provided in this section, appeals to the Environmental Appeals Board may be taken only under § 124.91. Appeals from orders or rulings may be taken under this section only if the Presiding Officer, upon motion of a party, certifies those orders or rulings to the Environmental Appeals Board for appeal on the record. * * *

(b) The Presiding Officer may certify an order or ruling for appeal to the Environmental Appeals Board if:

(c) If the Environmental Appeals Board decides that certification was improperly granted, it shall decline to hear the appeal. The Environmental Appeals Board shall accept or decline all interlocutory appeals within 30 days of their submission; if the Environmental Appeals Board takes no action within that time, the appeal shall be automatically dismissed. When the Presiding Officer declines to certify an order or ruling to the Environmental Appeals Board for an interlocutory appeal, it may be reviewed by the Environmental Appeals Board only upon appeal from the initial decision of the Presiding Officer, except when the Environmental Appeals Board determines, upon motion of a party and in exceptional circumstances, that to delay review would not be in the public interest. Such motion shall be made within 5 days after receipt of notification that the Presiding Officer has refused to certify an order or ruling for interlocutory appeal to the Environmental Appeals Board. * * * The Environmental Appeals Board may, however, allow briefs and oral argument.

(d) In exceptional circumstances, the Presiding Officer may stay the proceeding pending a decision by the Environmental Appeals Board upon an order or ruling certified by the Presiding Officer for an interlocutory appeal, or upon the denial of such certification by the Presiding Officer.

10. Section 124.91 is amended by revising the first sentence of the paragraph (a)(1) introductory text, paragraphs (a)(1)(ii), (a)(3), (b), (c)(1), (c)(2), (d), (e), (f), the first, fourth, and

fifth sentences of paragraph (g), paragraph (h), and by adding a new paragraph (i) to read as follows:

§ 124.91 Appeal to the Environmental Appeals Board.

(a)(1) Within 30 days after service of an initial decision, or a denial in whole or in part of a request for an evidentiary hearing, any party or requester, as the case may be, may appeal any matter set forth in the initial decision or denial, or any adverse order or ruling to which the party objected during the hearing, by filing with the Environmental Appeals Board notice of appeal and petition for review. * * *

(ii) An exercise of discretion or policy which is important and which the Environmental Appeals Board should review.

(3) Policy decisions made or legal conclusions drawn in the course of denying a request for an evidentiary hearing may be reviewed and changed by the Environmental Appeals Board in an appeal under this section.

(b) Within 30 days of an initial decision or denial of a request for an evidentiary hearing, the Environmental Appeals Board may, *sua sponte*, review such decision. Within 7 days after the Environmental Appeals Board has decided under this section to review an initial decision or the denial of a request for an evidentiary hearing, notice of that decision shall be served by mail upon all affected parties and the Regional Administrator.

(c)(1) Within a reasonable time following the filing of the petition for review, the Environmental Appeals Board shall issue an order either granting or denying the petition for review. When the Environmental Appeals Board grants a petition for review or determines under paragraph (b) of this section to review a decision, the Environmental Appeals Board may notify the parties that only certain issues shall be briefed.

(2) Upon granting a petition for review, the Regional Hearing Clerk shall promptly forward a copy of the record to the Environmental Appeals Board and shall retain a complete duplicate copy of the record in the Regional Office.

(d) Notwithstanding the grant of a petition for review or a determination under paragraph (b) of this section to review a decision, the Environmental Appeals Board may summarily affirm without opinion an initial decision or the denial of a request for an evidentiary hearing.

(e) A petition to the Environmental Appeals Board under paragraph (a) of this section for review of any initial decision or the denial of an evidentiary hearing is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final decision of the Agency.

(f) If a party timely files a petition for review or if the Environmental Appeals Board *sua sponte* orders review, then, for purposes of judicial review, final Agency action on an issue occurs as follows:

(1) If the Environmental Appeals Board denies review or summarily affirms without opinion as provided in § 124.91(d), then the initial decision or denial becomes the final Agency action and occurs upon the service of notice of the Environmental Appeals Board's action.

(2) If the Environmental Appeals Board issues a decision without remanding the proceeding then the final permit, redrafted as required by the Environmental Appeals Board's original decision, shall be reissued and served upon all parties to the appeal.

(3) If the Environmental Appeals Board issues a decision remanding the proceeding, then final Agency action occurs upon completion of the remanded proceeding, including any appeals to the Environmental Appeals Board from the results of the remanded proceeding.

(g) The petitioner may file a brief in support of the petition within 21 days after the Environmental Appeals Board has granted a petition for review. * * * Any person may file an *amicus* brief for the consideration of the Environmental Appeals Board within the same time periods that govern reply briefs. If the Environmental Appeals Board determines, *sua sponte*, to review an initial Regional Administrator's decision or the denial of a request for an evidentiary hearing, the Environmental Appeals Board shall notify the parties of the schedule for filing briefs.

(h) Review by the Environmental Appeals Board of an initial decision or the denial of an evidentiary hearing shall be limited to the issues specified under paragraph (a) of this section, except that after notice to all the parties, the Environmental Appeals Board may raise and decide other matters which it considers material on the basis of the record.

(i) Motions to reconsider a final order shall be filed within ten (10) days after service of the final order. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision shall be directed to,

and decided by, the Environmental Appeals Board. Motions for reconsideration directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered, except in cases that the Environmental Appeals Board has referred to the Administrator pursuant to § 124.72 and in which the Administrator has issued the final order. A motion for reconsideration shall not stay the effective date of the final order unless specifically so ordered by the Environmental Appeals Board.

11. Section 124.115 is amended by revising the second sentence to read as follows:

§ 124.115 Effect of denial of or absence of request for hearing.

* * * Any person whose hearing request has been denied may then appeal that recommended decision to the Environmental Appeals Board as provided in § 124.91.

12. Section 124.124 is amended by revising the last sentence to read as follows:

§ 124.124 Recommended decision.

* * * After the recommended decision has been filed, the Regional Hearing Clerk shall serve a copy of that decision on each party and upon the Environmental Appeals Board.

13. Section 124.125 is revised to read as follows:

§ 124.125 Appeal from or review of recommended decision.

Within 30 days after service of the recommended decision, any party may take exception to any matter set forth in that decision or to any adverse order or ruling of the Presiding Officer to which that party objected, and may appeal those exceptions to the Environmental Appeals Board as provided in § 124.91, except that references to the "initial decision" will mean recommended decision under § 124.124.

14. Section 124.126 is revised to read as follows:

§ 124.126 Final decision.

As soon as practicable after all appeal proceedings have been completed, the Environmental Appeals Board shall issue a final decision. The Environmental Appeals Board may consult with the Presiding Officer, members of the hearing panel, or any other EPA employee other than members of the Agency Trial Staff under § 124.78 in preparing the final decision. The Hearing Clerk shall file a copy of the decision on all parties.

15. Section 124.127 is revised to read as follows:

§ 124.127 Final decision if there is no review.

If no party appeals a recommended decision to the Environmental Appeals Board, and if the Environmental Appeals Board does not elect to review it, the recommended decision becomes the final decision of the Agency upon the expiration of the time for filing any appeals.

16. Section 124.128 is revised to read as follows:

§ 124.128 Delegation of authority; time limitations.

(a) The Administrator delegates authority to the Environmental Appeals Board (which is described in § 1.25 of this title) to issue final decisions in appeals filed under this subpart. An appeal directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation does not preclude the Environmental Appeals Board from referring an appeal or a motion filed under this subpart to the Administrator when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Environmental Appeals Board, all parties shall be so notified and the rules in this subpart referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

(b) The failure of the Environmental Appeals Board, the Regional Administrator, or the Presiding Officer to do any act within the time periods specified under this part shall not waive or diminish any right, power, or authority of the United States Environmental Protection Agency.

(c) Upon a showing by any party that it has been prejudiced by a failure of the Environmental Appeals Board, the Regional Administrator, or the Presiding Officer to do any act within the time periods specified under this part, the Environmental Appeals Board, the Regional Administrator, and the Presiding Officer, as the case may be, may grant that party such relief of a procedural nature (including extension of any time for compliance or other action) as may be appropriate.

17. In appendix A to part 124 figure 1 is amended by revising 1.c.ii, 6.a, and the second sentence of 7, and by revising the second sentence of the second paragraph of 4 in Figure 2 to read as follows:

Appendix A to Part 124—Guide to Decisionmaking Under Part 124

* * *

Figure 1—Conventional EPA Permitting Procedures

- * * * * *
1. * * *
- c. * * *
- ii. If the request is denied, an informal appeal to the Environmental Appeals Board is available.
- * * * * *
6. * * *

a. RCRA, UIC, or PSD permits standing alone will be appealed directly to the Environmental Appeals Board under § 124.9.

* * * * *

7. * * * Procedures for appeal to the Environmental Appeals Board under § 124.19 are self-explanatory; subpart F procedures are diagrammed in Figure 2; and subpart E procedures are basically the same that would apply in any evidentiary hearing.

Figure 2—Non-Adversary Panel Procedures

* * * * *

4. * * *

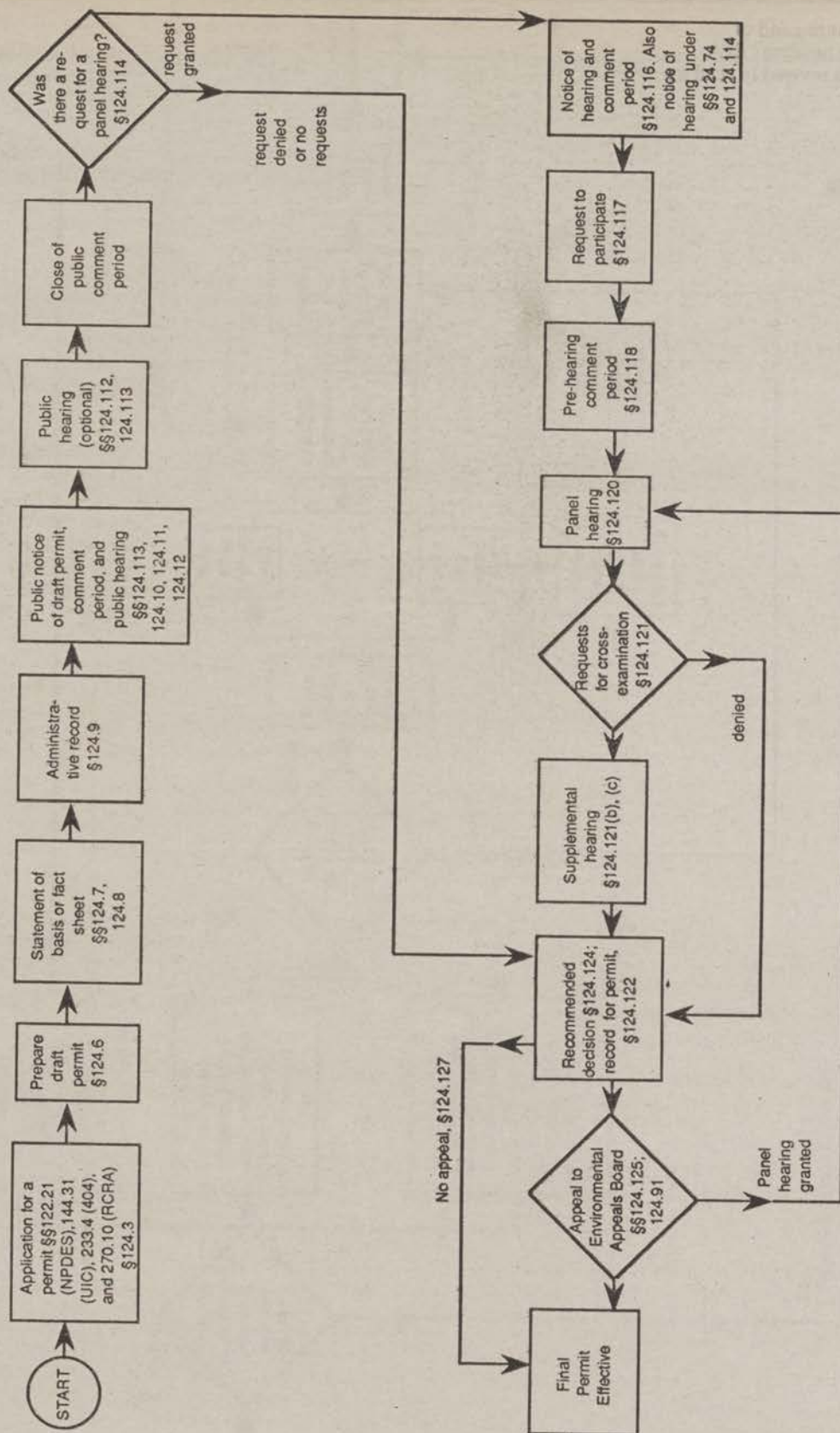
* * * The recommended decision may then be appealed to the Environmental Appeals Board. See § 124.115.

* * * * *

18. The flow chart at the end of appendix A under the heading "Figure 2-Non-Adversary Panel Procedures" is revised to read as follows:

BILLING CODE 6560-50-M

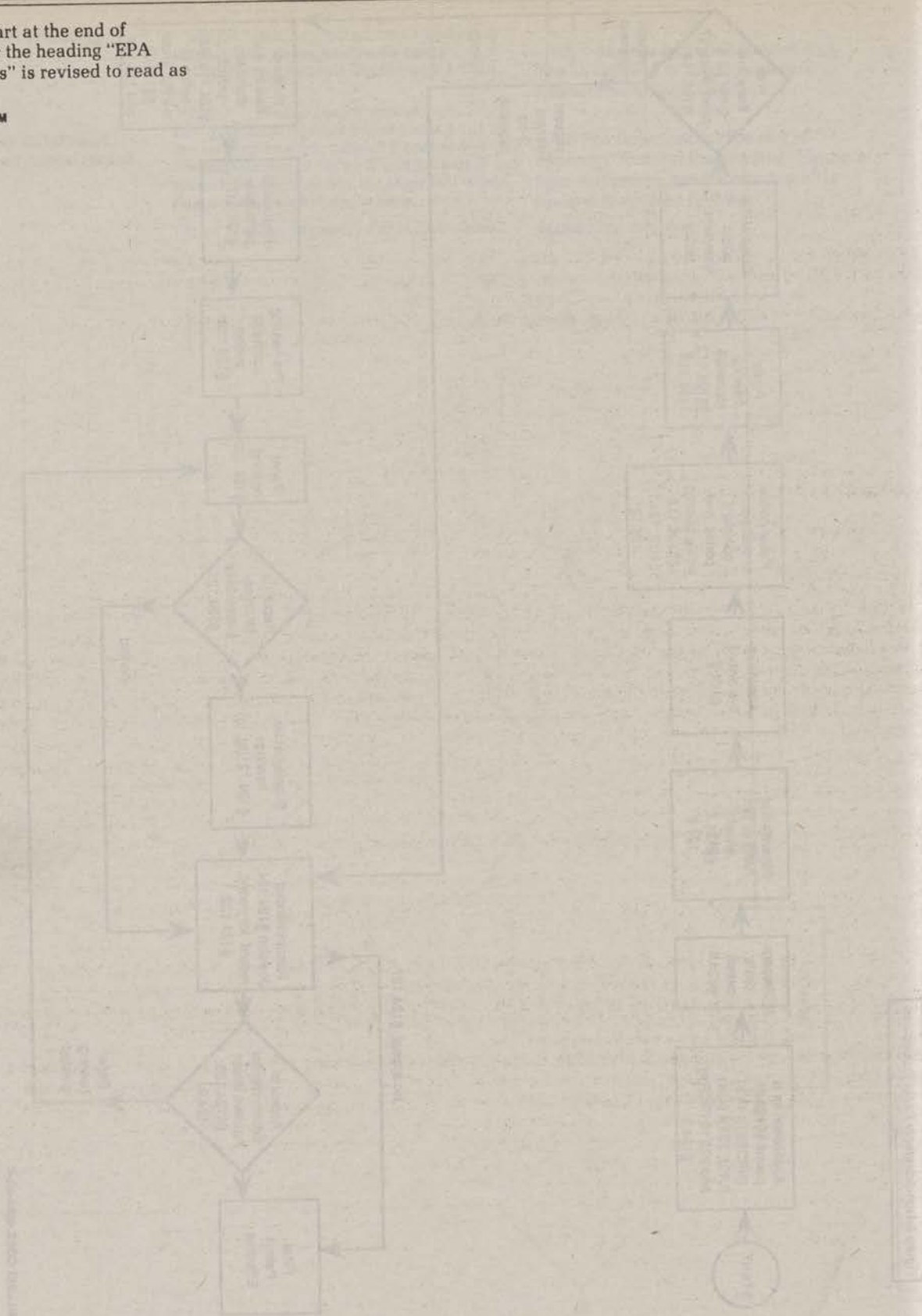
Figure 2-Non-Adversary Panel Procedures

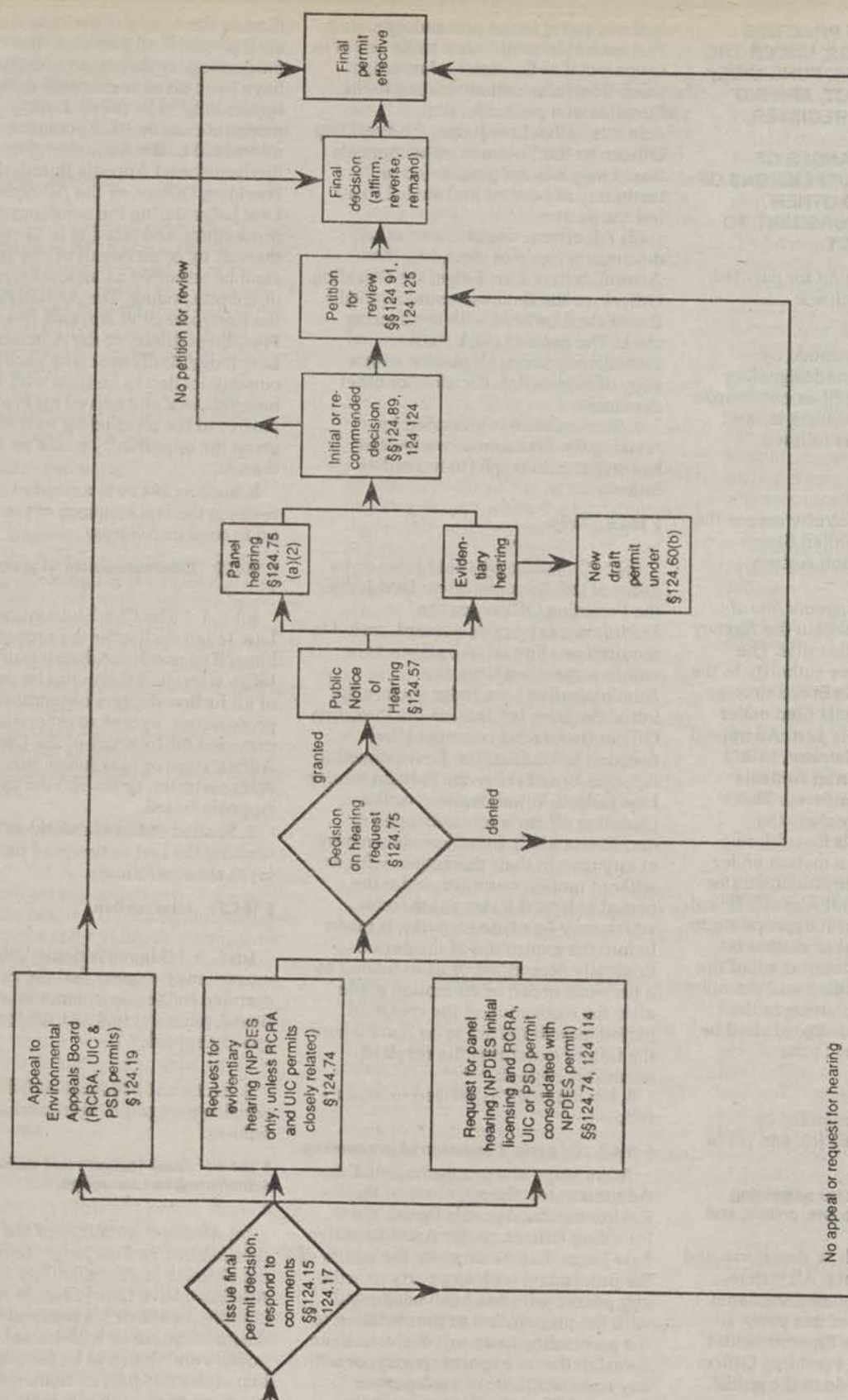


BILLING CODE 6560-50-C

19. The flow chart at the end of appendix A under the heading "EPA Appeal Procedures" is revised to read as follows:

BILLING CODE 6560-50-M





PART 164—RULES OF PRACTICE GOVERNING HEARINGS, UNDER THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT, ARISING FROM REFUSALS TO REGISTER, CANCELLATIONS OF REGISTRATIONS, CHANGES OF CLASSIFICATIONS, SUSPENSIONS OF REGISTRATIONS AND OTHER HEARINGS CALLED PURSUANT TO SECTION 6 OF THE ACT

1. The authority citation for part 164 continues to read as follows:

Authority: 7 U.S.C. 136d.

2. Section 164.2 is amended by revising paragraph (c), redesignating paragraphs (g) through (j) as paragraphs (h) through (k) and by adding a new paragraph (g) to read as follows:

§ 164.2 Definitions

(c) The term *Administrator* means the Administrator of the United States Environmental Protection Agency.

(g) *Environmental Appeals Board* shall mean the Board within the Agency described in § 1.25 of this title. The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in appeals filed under subparts B and C of this part. An appeal directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation does not preclude the Environmental Appeals Board from referring an appeal or a motion under subparts B and C to the Administrator when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all of the parties shall be so notified and the rules in subparts B and C referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

3. Section 164.4 is amended by revising paragraphs (a), (c), and (d) to read as follows:

§ 164.4 Arrangements for examining Agency records, transcripts, orders, and decisions.

(a) Reporting of orders, decisions, and other signed documents. All orders, decisions, or other signed documents required by the rules in this part, whether issued by the Environmental Appeals Board or the Presiding Officer shall be made available to the public.

(c) Whenever any information or data is required to be produced or examined

and any party to the proceeding claims that such information is a trade secret or commercial or financial information, other than information relating to the formulas of a pesticide, the Administrative Law Judge, the Presiding Officer, or the Environmental Appeals Board may require production or testimony *in camera* and sealed to all but the parties.

(d) All orders, decisions, or other documents made or signed by the Administrative Law Judge, the Presiding Officer, or the Environmental Appeals Board shall be filed with the hearing clerk. The hearing clerk shall immediately serve all parties with a copy of such order, decision, or other document.

4. Section 164.6 is amended by revising the first sentence after the hearing of paragraph (b) to read as follows:

§ 164.6 Time.

(b) * * * When by these rules or by order of the Administrative Law Judge, the Presiding Officer, or the Environmental Appeals Board, an act is required or allowed to be done at or within a specified time, the Administrative Law Judge (before his initial decision is filed), or the Presiding Officer (before his recommended decision is filed), or the Environmental Appeals Board (after the Administrative Law Judge's initial decision or the presiding officer's recommended decision is filed), for cause shown may at any time in their discretion: with or without motion or notice, order the period enlarged if request therefor, which may be made *ex parte*, is made before the expiration of the period originally prescribed or as extended by a previous order; or on motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect. * * *

5. Section 164.7 is revised to read as follows:

§ 164.7 Ex parte discussion of proceeding.

At no stage of a proceeding shall the Administrator, the members of the Environmental Appeals Board, the Presiding Officer, or the Administrative Law Judge discuss *ex parte* the merits of the proceeding with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate, or in an investigative or expert capacity, or with any representative of such person. *Provided*, That the Environmental Appeals Board, the Presiding Officer, or the Administrative Law Judge may

discuss the merits of the case with any such person if all parties to the proceeding, or their representatives, have been given reasonable notice and opportunity to be present. Any memorandum or other communication addressed to the Administrator, the Environmental Appeals Board, the Presiding Officer, or the Administrative Law Judge during the pendency of the proceeding, and relating to the merits thereof, by or on behalf of any party, shall be regarded as an argument made in the proceeding. The Administrator, the Environmental Appeals Board, the Presiding Officer, or the Administrative Law Judge shall cause any such communication to be filed with the hearing clerk and served upon all other parties to the proceeding who will be given the opportunity to file an answer thereto.

6. Section 164.20 is amended by revising the last sentence of paragraph (c) to read as follows:

§ 164.20 Commencement of proceeding.

(c) * * * The Chief Administrative Law Judge shall refer the proceeding to himself or another Administrative Law Judge who shall thereafter be in charge of all further matters concerning the proceedings, except as otherwise provided for by order of the Chief Administrative Law Judge, the Administrator, or the Environmental Appeals Board.

7. Section 164.31 is amended by revising the last sentence of paragraph (c) to read as follows:

§ 164.31 Intervention.

(c) * * * If leave is denied, the movant may request that the ruling be certified to the Environmental Appeals Board, pursuant to § 164.100 for a speedy appeal.

8. Section 164.40 is amended by revising paragraph (e) to read as follows:

§ 164.40 Qualifications and duties of Administrative Law Judge.

(e) *Absence or change of the Administrative Law Judge.* In the case of the absence or unavailability of the Administrative Law Judge, or his inability to act, or his removal by disqualification or withdrawal, the powers and duties to be performed by him under this part in connection with a hearing assigned to him may, unless otherwise directed by the Administrator, be assigned to another Administrative

Law Judge so designated to act by the Chief Administrative Law Judge, the Administrator or the Environmental Appeals Board.

9. Section 164.60 is amended by revising the third and fourth sentences of paragraph (c) to read as follows:

§ 164.60 Motions.

(c) * * * The Environmental Appeals Board shall rule upon all motions filed after the filing of the initial or accelerated decision. Oral argument of motions will be permitted only if the Administrative Law Judge or the Environmental Appeals Board deems it necessary.

10. Section 164.81 is amended by revising the last sentence of paragraph (f) to read as follows:

§ 164.81 Evidence.

(f) * * * In the event the Environmental Appeals Board decides that the Administrative Law Judge's ruling in excluding the evidence was erroneous and prejudicial, the hearings may be reopened to permit the taking of such evidence, or where appropriate, the Environmental Appeals Board may evaluate the evidence and proceed to a final decision.

11. Section 164.90 is amended by revising the second and the third sentences of paragraph (b) to read as follows:

§ 164.90 Initial Decision.

(b) * * * A copy of the initial decision shall be served upon each of the parties, and the hearing clerk shall immediately transmit a copy to the Environmental Appeals Board. The initial decision shall become the decision of the Environmental Appeals Board without further proceedings unless an appeal is taken from it or the Environmental Appeals Board orders review of it, pursuant to § 164.101.

12. Section 164.100 is revised to read as follows:

§ 164.100 Appeals from or review of interlocutory orders or rulings.

Except as provided herein, appeals as a matter of right shall lie to the Environmental Appeals Board only from an initial or accelerated decision of the Administrative Law Judge. Appeals from other orders or rulings shall, except as provided in this section, lie only if the Administrative Law Judge certifies such orders or rulings for appeal, or otherwise as provided. The Administrative Law Judge may certify an order or ruling for appeal to the

Environmental Appeals Board when: (a) The order or ruling involves an important question of law or policy about which there is substantial ground for difference of opinion; and (b) either (1) an immediate appeal from the order and ruling will materially advance the ultimate termination of the proceeding or (2) review after the final judgment is issued will be inadequate or ineffective. The Administrative Law Judge shall certify orders or rulings for appeal only upon the request of a party. If the Environmental Appeals Board determines that certification was improvidently granted, or takes no action within thirty (30) days of the certification, the appeal shall be deemed dismissed. When an order or ruling is not certified by the Administrative Law Judge, it shall be reviewed by the Environmental Appeals Board only upon appeal from the initial or accelerated decision except when the Environmental Appeals Board determines, upon request of a party and in exceptional circumstances, that delaying review would be deleterious to vital public or private interests. Except in extraordinary circumstances proceedings will not be stayed pending an interlocutory appeal; where a stay is granted, a stay of more than 30 days must be approved by the Environmental Appeals Board. Ordinarily, the interlocutory appeal will be decided on the basis of the submission made to the Administrative Law Judge, but the Environmental Appeals Board may allow further briefs and oral argument.

13. Section 164.101 is amended by revising the first sentence of paragraph (a)(1), the second and third sentences of paragraph (b), and paragraph (c) to read as follows:

§ 164.101 Appeals from or review of initial decisions.

(a) * * * (1) Within 20 days after the filing of the Administrative Law Judge's initial decision, each party may take exception to any matter set forth in such decision or to any adverse order or ruling to which he objected during the hearing and may appeal such exceptions to the Environmental Appeals Board for decision by filing them in writing with the hearing clerk, including a section containing proposed findings of fact, conclusions, orders, or rulings. * * *

(b) * * * Within 10 days after said notification, the Environmental Appeals Board shall issue an order either declining review of the initial decision or expressing its intent to review said initial decision. Such order may include a statement of issues to be briefed by the parties and a time schedule

concerning service and filing of briefs adequate to allow the Environmental Appeals Board to issue a final order within 90 days from the close of the hearing.

(c) *Argument before the Environmental Appeals Board.* (1) A party, if he files exceptions and a brief, shall state in writing whether he desires to make an oral argument thereon before the Environmental Appeals Board; otherwise, he shall be deemed to have waived such oral argument. The Environmental Appeals Board shall, however, on its own initiative, have the right to set an appeal for oral argument.

(2) If the Environmental Appeals Board determines that additional exceptions should be argued, counsel for the parties shall be given reasonable written notice of such determination so as to permit preparation of adequate argument on all of the exceptions to be argued.

14. Section 164.102 is amended by revising paragraph (c) to read as follows:

§ 164.102 Appeals from accelerated decisions.

(c) Ordinarily, the appeal from an accelerated decision will be decided on the basis of the submission of briefs, but the Environmental Appeals Board may allow additional briefs and oral argument.

15. Section 164.103 is revised to read as follows:

§ 164.103 Final decision or order on appeal or review.

Within 90 days after the close of the hearing or within 90 days from the filing of an accelerated decision, unless otherwise stipulated by the parties, the Environmental Appeals Board shall, on appeal or review from an initial or accelerated order of the Administrative Law Judge, issue its final decision and order, including its rulings on any exceptions filed by the parties; such final order may accept or reject all or part of the initial or accelerated decision of the Administrative Law Judge even if acceptable to the parties.

16. Section 164.110 is amended by revising the first sentence of paragraph (a) and paragraph (c) to read as follows:

§ 164.110 Motion for reopening hearings; for rehearing; for reargument of any proceeding; or for reconsideration of order.

(a) * * * A motion for reopening the hearing to take further evidence, or for rehearing or reargument of any proceeding or for reconsideration of the order, must be made by motion to the

Environmental Appeals Board filed with the hearing clerk. * * *

(c) *Motions to rehear or reargue proceedings, or to reconsider final orders.* A motion to rehear or reargue the proceeding or to reconsider the final order shall be filed within 10 days after the date of service of the final order. Every such motion must state specifically the matters claimed to have been erroneously decided, and alleged errors must be briefly stated. Motions to rehear or reargue proceedings or to reconsider final orders shall be directed to, and heard by, the Environmental Appeals Board. Motions under this section directed to the Administrator will not be considered, except in cases that the Environmental Appeals Board has referred to the Administrator pursuant to § 164.2(g) and in which the Administrator has issued the final order. A motion for reconsideration shall not stay the effective date of the final order unless specifically so ordered by the Environmental Appeals Board.

17. Section 164.111 is amended by revising all but the first sentence to read as follows:

§ 164.111 Procedure for disposition of motions.

* * * As soon as practicable thereafter, the Environmental Appeals Board shall announce its decision whether to grant or to deny the motion. Unless the Environmental Appeals Board shall determine otherwise, operation of the order shall not be stayed pending the decision to grant or to deny the motion. In the event that any such motion is granted by the Environmental Appeals Board, the applicable rules of practice, as set out elsewhere herein, shall be followed.

18. Section 164.121 is amended by revising paragraphs (j)(3) and (j)(4) to read as follows:

§ 164.121 Expedited hearing.

(j) * * *

(3) Within 10 days of the conclusion of the presentation of evidence the Presiding Officer shall submit to the Environmental Appeals Board his recommended findings and conclusions, together with the record.

(4) Within 12 days of the conclusion of the presentation of evidence the parties shall submit to the Environmental Appeals Board their objections to the Presiding Officer's recommended findings and conclusions and written briefs in support thereof.

19. Section 164.122 is amended by revising the first sentence of paragraph

(a) and the first sentence of paragraph (b) to read as follows:

§ 164.122 Final order and order of suspension.

(a) * * * Within 7 days of receipt of the record and of the Presiding Officer's recommended findings and conclusions, the Environmental Appeals Board shall issue a final decision and order. * * *

(b) * * * No final order of suspension shall be issued unless the Environmental Appeals Board has issued or at the same time issues a notice of its intention to cancel the registration or change the classification of the pesticide. * * *

20. Section 164.123 is amended by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

164.123 Emergency order.

(a) Whenever the Environmental Appeals Board determines that an emergency exists that does not permit him to hold a hearing before suspension, the Environmental Appeals Board may issue a suspension order in advance of notification to the registrant.

(b) The Environmental Appeals Board shall immediately notify the registrant of the suspension order. * * *

PART 209—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE NOISE CONTROL ACT OF 1972

1. The authority citation for part 209 continues to read as follows:

Authority: Sec. 11, Noise Control Act of 1972 (42 U.S.C. 4910) and additional authority as specified.

2. Section 209.3 is amended by revising paragraph (k) to read as follows:

§ 209.3 Definitions.

(k) "Environmental Appeals Board" means the Board within the Agency described in § 1.25 of this title. The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in appeals filed under this part. An appeal directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation of authority to the Environmental Appeals Board does not preclude the Environmental Appeals Board from referring an appeal or a motion filed under this part to the Administrator for decision when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all parties shall be so notified and the rules in this part

referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

3. Section 209.14 is amended by revising paragraph (b) and the second and third sentences of paragraph (c) to read as follows:

§ 209.14 Motions.

(b) Within 10 days after service of any motion filed under this section or within such other time as may be fixed by the Environmental Appeals Board or the administrative law judge, as appropriate, any party may serve and file an answer to the motion. The movant shall, by leave of the Environmental Appeals Board or the administrative law judge, as appropriate, serve and file reply papers within the time set by the request.

(c) * * * The Environmental Appeals Board shall rule upon all motions filed before the appointment of the administrative law judge and all motions filed after the filing of the decision of the administrative law judge or accelerated decision. Oral argument of motions will be permitted only if the administrative law judge or the Environmental Appeals Board, as appropriate, deems it necessary.

4. Section 209.17 is amended by revising the first sentence to read as follows:

§ 209.17 Amicus curiae.

Persons not parties to the proceedings who wish to file briefs may do so by leave of the Environmental Appeals Board or the administrative law judge, as appropriate, granted on motion. * * *

5. Section 209.19 is amended by revising paragraph (b) and the first and second sentences of paragraph (c) to read as follows:

§ 209.19 Informal settlement and consent agreement.

(b) *Consent agreement.* A written consent agreement signed by the complainant and respondent shall be prepared by the complainant and forwarded to the Environmental Appeals Board whenever settlement or compromise is proposed. A copy shall be served on all other parties to the proceeding, no later than the date the consent agreement is forwarded to the Environmental Appeals Board. The consent agreement shall state that, for the purpose of this proceeding, respondent (1) admits the jurisdictional allegations of the complaint; (2) admits the facts as stipulated in the consent

agreement or neither admits nor denies specific factual allegations contained in the complaint; and (3) consents to the issuance of a given remedial order. The consent agreement shall include (i) the terms of the agreement; (ii) any appropriate conclusions regarding material issues of law, fact and/or discretion as well as reasons therefor; and (iii) the Environmental Appeals Board's proposed final order. The administrative law judge does not have jurisdiction over a consent agreement.

(c) * * * No settlement or consent agreement shall be dispositive of any action pending under section 11(d) of the act without a final order of the Environmental Appeals Board. In preparing a final order, the Environmental Appeals Board may require that any or all of the parties to the settlement or other parties appear before it to answer inquiries relating to the proposed consent agreement. * * *

6. Section 209.24 is amended by revising the last sentence of paragraph (a) and the last sentence of paragraph (c) to read as follows:

§ 209.24 Default order.

(a) * * * The remedial order proposed is binding on respondent without further proceedings upon the issuance by the Environmental Appeals Board of a final order issued upon default.

(c) * * * An order issued by the Environmental Appeals Board upon default of respondent shall constitute a final order in accordance with the terms of § 209.33.

7. Section 209.27 is amended by revising paragraphs (a), (c), and (d) to read as follows:

§ 209.27 Interlocutory appeal.

(a) An interlocutory appeal may be taken to the Environmental Appeals Board either (1) with the consent of the administrative law judge where he or she certifies on the record or in writing that the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expense or prejudice to any party or substantial detriment to the public interest, or (2) absent the consent of the administrative law judge, by permission of the Environmental Appeals Board.

(c) Applications to file such appeals absent consent of the administrative law judge shall be filed with the Environmental Appeals Board within 5 days of the denial of any appeal by the administrative law judge.

(d) The Environmental Appeals Board will consider the merits of the appeal on the application and answers. No oral argument will be heard nor other briefs filed unless the Environmental Appeals Board directs otherwise.

8. Section 209.30 is amended by revising paragraph (b) to read as follows:

§ 209.30 Decision of the administrative law judge.

(b) The administrative law judge's decision shall become the decision of the Environmental Appeals Board (1) when no notice of intention to appeal as described in § 209.31 is filed, 30 days after its issuance, unless in the interim the Environmental Appeals Board shall have taken action to review or stay the effective date of the decision; or (2) when a notice of intention to appeal is filed but the appeal is not perfected as required by § 209.31, 5 days after the period allowed for perfection of an appeal has expired unless within that 5 day period, the Environmental Appeals Board has taken action to review or stay the effective date of the decision.

9. Section 209.31 is amended by revising paragraphs (a), (c)(4), (d), and (e) to read as follows:

§ 209.31 Appeal from the decision of the administrative law judge.

(a) Any party to a proceeding may appeal the administrative law judge's decision to the Environmental Appeals Board: Provided, That within 10 days after the administrative law judge's decision is issued, the party files a notice of intention to appeal, and within 30 days of the decision the party files an appeal brief.

(4) A proposed form of rule or order for the Environmental Appeals Board's consideration if different from the rule or order contained in the administrative law judge's decision.

(d) Briefs shall not exceed 40 pages without leave of the Environmental Appeals Board.

(e) The Environmental Appeals Board may allow oral argument in its discretion:

10. Section 209.32 is revised to read as follows:

§ 209.32 Review of the administrative law judge's decision in absence of appeal.

(a) If, after the expiration of the period for taking an appeal under § 209.31, no notice of intention to appeal the decision of the administrative law judge

has been filed, or if filed, not perfected, the hearing clerk shall so notify the Environmental Appeals Board.

(b) The Environmental Appeals Board, upon receipt of notice from the hearing clerk that no notice of intention to appeal has been filed, or if filed, not perfected pursuant to § 209.31, may, on its own motion, within the time limits specified in § 209.30(b), review the decision of the administrative law judge. Notice of the Environmental Appeals Board's intention to review the decision of the administrative law judge shall be given to all parties and shall set forth the scope of such review and the issues which shall be considered and shall make provision for filing of briefs.

11. Section 209.33 is revised to read as follows:

§ 209.33 Decision on appeal or review.

(a) Upon appeal from or review of the administrative law judge's decision, the Environmental Appeals Board shall consider such parts of the record as are cited or as may be necessary to resolve the issues presented and, in addition shall to the extent necessary or desirable exercise all the powers which the Environmental Appeals Board could have exercised if it had presided at the hearing.

(b) The Environmental Appeals Board shall render a decision as expeditiously as possible. The Environmental Appeals Board shall adopt, modify, or set aside the findings, conclusions, and rule or order contained in the decision of the administrative law judge and shall set forth in its decision a statement of the reasons or bases for its action. The Environmental Appeals Board's decision shall be the final order in the proceeding.

(c) In those cases where the Environmental Appeals Board determines that it should have further information or additional views of the parties as to the form and content of the rule or order to be issued, the Environmental Appeals Board, in its discretion, may withhold final action pending the receipt of such additional information or views, or may remand the case to the administrative law judge.

12. Section 209.34 is revised to read as follows:

§ 209.34 Reconsideration.

Within five (5) days after service of the Environmental Appeals Board's decision, any party may file a petition for reconsideration of such decision, setting forth the relief desired and the grounds in support thereof. Petitions for reconsideration under this provision shall be directed to, and decided by, the

Environmental Appeals Board. Petitions for reconsideration directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered, except in cases that the Environmental Appeals Board has referred to the Administrator's pursuant to § 209.3(k) and in which the Administrator has issued the final order. Any petition filed under this subsection must be confined to new questions raised by the decision or final order and upon which the petitioner had no opportunity to argue before the administrative law judge or the Environmental Appeals Board. Any party desiring to oppose a petition shall file an answer thereto within five (5) days after service of the petition. The filing of a petition for reconsideration shall not operate to stay the effective date of the decision or order.

13. Section 209.35 is revised to read as follows:

§ 209.35 Conclusion of hearing.

(a) If no appeal has been taken from the administrative law judge's decision before the period for taking an appeal under § 209.31 has expired, and the period for review by the Environmental Appeals Board on its own motion under § 209.30 has expired, and the Environmental Appeals Board does not move to review such decision, the hearing will be deemed to have ended at the expiration of all periods allowed for such appeal and review.

(b) If an appeal of the administrative law judge's decision is taken under § 209.31, or if, in the absence of such appeal, the Environmental Appeals Board moves to review the decision of the administrative law judge under § 209.32, the hearing will be deemed to have ended upon the rendering of a final decision by the Environmental Appeals Board.

14. Section 209.36 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 209.36 Judicial review.

(a) * * * That officer shall be responsible for filing in the court the record on which the order of the Environmental Appeals Board is based.

PART 222—ACTION ON OCEAN DUMPING PERMIT APPLICATIONS UNDER SECTION 102 OF THE ACT

1. The authority citation for part 222 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 222.12 is amended by revising paragraphs (a), (b)(4), (c), (e), and (f) to read as follows:

§ 222.12 Appeal to the Environmental Appeals Board.

(a)(1) The Administrator delegates to the Environmental Appeals Board authority to issue final decisions in appeals filed under this part. An appeal directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation of authority to the Environmental Appeals Board does not preclude the Environmental Appeals Board from referring an appeal or a motion filed under this part to the Administrator for decision when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all parties shall be so notified and the rules in this section referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

(2) Within 10 days following receipt of the determination of the Regional Administrator pursuant to paragraph (f)(2) of § 222.11, any party to an adjudicatory hearing held in accordance with § 222.11 may appeal such determination to the Environmental Appeals Board by filing a written notice of appeal, or the Environmental Appeals Board may, on its own initiative, review any prior determination.

(b) * * *

(4) A concise statement setting forth the action which the person proposes that the Environmental Appeals Board take; and

(c) The effective date of any determination made pursuant to paragraph (f)(2) of § 222.11 may be stayed by the Environmental Appeals Board pending final determination by it pursuant to this section upon the filing of a notice of appeal which satisfies the requirements of paragraph (b) of this section or upon initiation by the Environmental Appeals Board of review of any determination in the absence of such notice of appeal.

(e) Within 45 days following the filing of a notice of appeal in accordance with this section, the Environmental Appeals Board shall render its final determination with respect to all issues raised in the appeal to the Environmental Appeals Board and shall affirm, reverse, or modify the previous determination and briefly state the basis for its determination.

(f) In accordance with 5 U.S.C. section 704, the filing of an appeal to the Environmental Appeals Board pursuant to this section shall be a prerequisite to judicial review of any determination to issue or impose conditions upon any permit, or to modify, revoke or suspend any permit, or to take any other enforcement action, under this subchapter H.

PART 223—CONTENTS OF PERMITS; REVISION, REVOCATION OR LIMITATION OF OCEAN DUMPING PERMITS UNDER SECTION 104(d) OF THE ACT

1. The authority citation for part 223 continues to read as follows:

Authority: Secs. 102, 104, 107, 108, Marine Protection Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1412, 1414, 1417, 1418).

2. Section 223.4 is amended by revising the first sentence of paragraph (d) to read as follows:

§ 223.4 Request for, scheduling and conduct of public hearing; determination.

(d) * * * Any hearing convened pursuant to this part shall be conducted by a Presiding Officer, who shall be either a Regional Judicial Officer or a person having the qualifications of the members of the Environmental Appeals Board (described in 40 CFR 1.25(e)) if assigned by the Administrator or the qualifications of a Regional Judicial Officer if assigned by the Regional Administrator, as appropriate. * * *

PART 233—404 STATE PROGRAM REGULATIONS

1. The authority citation for part 233 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

2. Section 233.53 is amended by revising the first and second sentences after the heading of paragraph (c)(3)(ii)(B) to read as follows:

§ 233.53 Withdrawal of program approval.

(c) * * *

(3) * * *

(ii) * * *

(B) * * * At no time after the issuance of the order commencing proceedings shall the Administrator, the Regional Administrator, the Regional Judicial Officer, the Presiding Officer, or any other person who is likely to advise these officials in the decisions on the case, discuss ex parte the merits of the

proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any ex parte memorandum or other communication addressed to the Administrator, the Regional Administrator, the Regional Judicial Officer, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. * * *

**PART 403—GENERAL
PRETREATMENT REGULATIONS FOR
EXISTING AND NEW SOURCES OF
POLLUTION**

1. The authority citation for part 403 continues to read as follows:

Authority: Sec. 54(c)(2) of the Clean Water Act of 1977, (Pub. L. 95-217) sections 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(b)(2)(C), 301(h)(5), 301(i)(2), 304(e), 304(g), 307, 308, 309, 402(b), 405 and 501(a) of the Federal Water Pollution Control Act (Pub. L. 92-500) as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (Pub. L. 100-4).

2. Section 403.13 is amended by revising paragraph (m)(2) to read as follows:

§ 403.13 Variances from categorical pretreatment standards for fundamentally different factors.

* * * * *

(m) * * *

(2) If the Regional Administrator declines to hold a hearing and the Regional Administrator affirms the findings of the Administrator's delegate the requester may submit a petition for a hearing to the Environmental Appeals Board (which is described in § 1.25 of this title) within 30 days of the Regional Administrator's decision.

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