

designates any compensating units for any Phase I units in the dispatch system shall be in effect for the calendar year only if dispatch system potential reduced generation is greater than zero.

(4) The list of all compensating units designated by any Phase I unit in the unit's dispatch system under a reduced utilization plan approved for the calendar year. The list shall include the potential compensating generation of each compensating unit, calculated for each compensating unit as follows:

Potential compensating generation = highest generation - actual generation + compensating generation provided to units in dispatch system

where:

(i) "Highest generation" is the figure under § 72.43(c)(4)(v) for the compensating unit, as adjusted by the Administrator in approving the reduced utilization plan.

(ii) "Actual generation" is the actual annual generation (in Kwh) for the calendar year for the compensating unit.

(iii) "Compensating generation provided to units in dispatch system" is the sum of each "shift to compensating unit", as calculated under paragraph (a)(3)(iv) of this section, that is attributed to the compensating unit in the annual compliance certification report submitted by the Phase I unit or any other unit in the Phase I unit's dispatch system.

(5) Specification of those compensating units on the list in paragraph (c)(4) of this section whose

potential compensating generation is necessary to cover the dispatch system's potential reduced generation. A compensating unit's potential compensating generation shall be deemed necessary only if the following requirement is met:

(Dispatch system potential reduced

$$\text{generation} - \sum_{i=1}^{r-1} \text{potential compensating generation}_i > 0$$

compensating generation_i) > 0

where:

(i) r = the rank of the compensating unit that the designated representative is considering for specification under paragraph (c)(5) of this section.

(ii) i = the rank of a compensating unit on the list under paragraph (c)(4) of this section.

(iii) "Dispatch system potential reduced utilization" is the figure calculated under paragraph (c)(3) of this section.

(iv) "Potential compensating generation_i" is the figure calculated under paragraph (c)(4) of this section for a compensating unit with rank i.

(v) Any reduced utilization plan that designated any compensating units for any Phase I units in the dispatch system shall be in effect for the calendar year only for compensating units whose potential compensating generation is deemed necessary under paragraph (c)(5) of this section and from which the acquisition of electrical energy is documented under paragraph (a)(6) of this section.

(6) If the unit is a designated compensating unit for any Phase I units under any other reduced utilization plans, the identification of such Phase I units whose plans are in effect for the unit and for the calendar year.

Option 2 No Paragraph (c) To Be Added

PART 73—[AMENDED]

7. The authority citation for part 73 is revised to read as follows:

Authority: 42 U.S.C. 7601 and 7651 *et seq.*

8. Section 73.52 is amended by revising paragraph (a)(3) to read as follows:

§ 73.52 EPA recordation.

(a) * * *

Option 1 for Paragraph (a)(3)

(3) If allowances specified or indicated pursuant to § 73.50(b)(1)(ii) are subject to the limitation on transfer imposed pursuant to § 72.43(d)(2) or § 72.44(h)(1)(i) of this chapter, the transfer is in accordance with such limitation; and

Option 2 for Paragraph (a)(3)

(3) If allowances specified or indicated pursuant to § 73.50(b)(1)(ii) are subject to the limitation on transfer imposed pursuant to § 72.44(h)(1)(i) of this chapter, the transfer is in accordance with such limitation; and

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Part VI

**Environmental
Protection Agency**

40 CFR Part 761

**Polychlorinated Biphenyls (PCBs);
Reclassification of PCB and PCB
Contaminated Transformers; Proposed
Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 761**

[OPPTS-66015; FRL-3948-8]

RIN 2070-AC39

**Polychlorinated Biphenyls (PCBs);
Reclassification of PCB and PCB-
Contaminated Transformers**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the requirements that govern the reclassification of transformers from a PCB (≥ 500 ppm PCBs) or a PCB-Contaminated (≥ 50 - < 500 ppm PCBs) status to a lower regulatory status as a PCB-Contaminated or a non-PCB (< 50 ppm PCBs) Transformer. This proposed rule would change the methods used to reclassify transformers by: Eliminating the 50° Centigrade (C) requirement for all PCB and PCB-Contaminated Transformers; eliminating the "in-service use" requirement for all transformers with a PCB concentration of $< 1,000$ ppm PCB; modifying the 90-day requirement for post-retrofill testing of PCB Transformers with a PCB concentration $< 1,000$ ppm PCB; eliminating the post-retrofill testing requirement for PCB-Contaminated Transformers after retrofill; and specifying the procedures that must be followed during a retrofill for these units. This proposed rule would amend the procedure for reclassification of certain transformers and reduce the regulatory and economic burden on those in the regulated community who wish to take advantage of the reclassification procedure.

DATES: Written comments must be received on or before January 3, 1994. If persons request time for oral comment by December 3, 1993, EPA will hold an informal hearing in Washington, DC on or about January 18, 1994. If a hearing is requested, the exact time and location of the hearing will be published in the *Federal Register* at least 30 days before the hearing.

ADDRESSES: Three copies of comments identified with the docket number OPPTS-66015 must be submitted to: TSCA Public Docket Office (TS-793), Office of Pollution Prevention and Toxics, Rm. NE G004, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E-543B, Environmental

Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551, FAX: (202) 554-5603 (document requests only).

SUPPLEMENTARY INFORMATION: Section 6(e) of the Toxic Substances Control Act (TSCA) bans the manufacture, processing, distribution in commerce, and use of PCBs unless the PCBs are totally enclosed. Section 6(e) gives EPA authority, however, to authorize these PCB activities if the Administrator finds that they will not present an unreasonable risk of injury to human health or the environment. In the *Federal Register* of May 31, 1979 (44 FR 31514), EPA permitted routine servicing but prohibited rebuilding of PCB Transformers (40 CFR 761.31(a)). Routine servicing results in minimal exposures to PCBs and allows the use of most existing transformers to continue through their useful lifetimes. Rebuilding of PCB-Contaminated Transformers was allowed based on the lower concentration and corresponding lower risks to human health and the environment. Therefore, owners of PCB Transformers could only rebuild those units if they were reclassified to < 500 ppm PCBs. The guidelines for reclassification of transformers are currently found at 40 CFR 761.30(a)(2)(v).

I. Background

EPA published a final rule in the *Federal Register* of May 31, 1979 (44 FR 31514) which, among other things, authorized the rebuilding of PCB-Contaminated Transformers with concentrations < 500 ppm. Owners of PCB Transformers who wished to rebuild these units were required to reclassify them to PCB-Contaminated status prior to rebuilding (40 CFR 761.31(a)). Reclassification is the process by which a high PCB concentration in a transformer can be converted to a lower PCB concentration. To reclassify a PCB Transformer, it must be drained, refilled with non-PCB dielectric fluid, placed in service (i.e., operated) for at least 3 months, and finally, tested to determine if the PCB concentration has been reduced. If the transformer was tested and determined to be < 500 ppm PCBs, it could then be rebuilt rather than replaced. In 40 CFR 761.30(a)(2)(v), as published in the *Federal Register* of August 25, 1982 (47 FR 37342), EPA established more specific requirements for the reclassification of PCB Transformers. The rule currently states:

A PCB Transformer may be converted to PCB-Contaminated Electric Equipment or to a non-PCB Transformer and, a transformer

that is classified as PCB-Contaminated Electrical Equipment may be reclassified to a non-PCB Transformer by draining, refilling and/or otherwise servicing the transformer. In order to reclassify, the transformer's dielectric fluid must contain less than 500 ppm PCB (for conversion to PCB-Contaminated Electrical Equipment) or less than 50 ppm PCB (for conversion to a non-PCB Transformer) after a minimum of 3 months of in-service use subsequent to the last servicing conducted for the purpose of reducing the PCB concentration in the transformer. In-service means that the transformer is used electrically under loaded conditions that raise the temperature of the dielectric fluid to at least 50° Centigrade. The Director, Exposure Evaluation Division may grant, without further rulemaking, approval for the use of alternative methods that simulate the loaded conditions of in-service use. All PCBs removed from transformers for purposes of reducing PCB concentrations are subject to the disposal requirements of § 761.60.

Also in this rule, EPA clarified the definition of "in-service use" for transformers by specifying that a minimum dielectric fluid temperature of 50° C must be reached. This temperature had been shown experimentally to be associated with a condition of light electrical loading, and to cause a release of PCBs from the internal components of the transformer into the dielectric fluid, i.e., leachback.

Alternate methods, as authorized at 40 CFR 761.30(a)(2)(v), involve simulating loaded conditions of in-service use. Based on the vast number of requests received for approval of alternate methods, it has been EPA's experience that these requests for an alternate method are typically necessary when a transformer has failed, is being serviced and is therefore not on line, or for some other reason cannot be operated under normal loaded conditions. Requests for reclassifying transformers using an alternate method have typically involved simulating in-service use or requesting that the temperature requirement of 50° C (interpreted by EPA to mean at whatever frequency the transformer normally reaches 50° C during operation, i.e., once per week, once per month, etc.) for the 90-day time period be waived.

Over the last few years, EPA has received information that questions the correlation between both the 90-day time period for testing after retrofill and the 50° C temperature requirements of reclassification, and the leachback of dielectric fluid from the internal components of a transformer. Additionally, information submitted to EPA indicates that many transformers, even under normal operating conditions, never reach 50° C because

the technical limitations of the equipment. Transformers may also fail to reach 50° C due to equipment failure, low ambient temperatures, or transformer loading restrictions (Refs. 3, 6, 7, 11, 12, 13, and 14).

EPA believes there are drawbacks associated with attempting to comply with the 50° C temperature requirement by simulating in-service use of the transformers. These include safety risks to maintenance personnel, fire hazards associated with energizing or insulating equipment which is not designed to withstand heavy loads or increased temperatures, and the economic and resource commitment that must be borne by the transformer owners (Ref. 4). EPA solicits comments on the validity and accuracy of these drawbacks and seeks data concerning whether to drop the 50° C temperature requirement.

The utility industry has also suggested that the 50° C requirement has no bearing on the degree of the leachback of PCBs from the internal components of a transformer. Further, EPA has been criticized for relying on a single study which correlates 50° C with "light electric loading," and thus failing to justify the selection of the 50° C temperature requirement as a criterion for reclassification (Ref. 1 and 2).

An industry-sponsored study was conducted to assess the various regulatory criteria for the reclassification of transformers. Data collected during the study were analyzed and summarized in a report (Ref. 3). The report indicates that there is no statistical correlation between the 50° C temperature or the 90-day time requirements in accelerating the leachback of PCBs from the internal components of a wide variety of PCB and PCB-Contaminated Transformers. EPA later conducted independent statistical analyses of this data and reached the same conclusions (Ref. 4). The variables addressed by this report included an assessment of the following characteristics:

1. Transformer manufacturer.
2. Transformer KVA rating.
3. Transformer age (in years).
4. Pre-retrofill PCB concentration.
5. Whether the transformer was flushed.
6. Whether the transformer was energized (i.e., whether voltage was applied to the primary side; minimally operational).
7. Whether the transformer was loaded (i.e., fully operational).
8. Whether the transformer was heated to 50° Centigrade.
9. Post-retrofill PCB concentration.

10. Number of days from "Pre" test to "Post" test. ("Pre-test" refers to the PCB concentration measured prior to the retrofill of the transformer. "Post-test" refers to the PCB concentration measured after the retrofilling procedure.)

Study data were collected from more than 380 transformers that were retrofilled by several dozen utility companies. EPA's assessment of the data, however, focused only on the 263 transformers for which the submitted data were deemed complete. The data revealed that of the 175 retrofilled transformers with pre-retrofill PCB concentrations of <500 ppm and not energized to reach 50° C, 99.43 percent were reduced to <50 ppm PCBs. The concentrations were tested both immediately after and 90 days following the retrofill. Only one transformer (0.57 percent of the units) was found to have an asymptotic (leveling off) PCB concentration >50 ppm (that concentration was 53 ppm). Further examination of 88 retrofilled, unenergized transformers, with pre-retrofill PCB concentrations ≥ 500 ppm, but <1,000 ppm, show that only 8 (9.0 percent) had asymptotic post-retrofill concentrations >50 ppm. The mean asymptotic post-retrofill concentration for these eight transformers was 64.4 ppm. EPA's assessment of the relevant data from actual transformers indicates that there is no correlation or direct relationship between either elevated temperatures of dielectric fluid or a 90-day in-service time period prior to testing, and an increase in the leaching of PCBs from the inner core and coil of the transformer into the newly retrofilled fluid (Ref. 4).

The conclusion which these data strongly support is that retrofilled, unenergized transformers with pre-retrofill PCB concentrations <500 ppm very rarely have PCB concentrations >50 ppm after retrofill, therefore, EPA is proposing to eliminate the post-retrofill testing requirement for these units. In addition, EPA is proposing to eliminate the 50° C and modify the 90-day time requirements for testing PCB Transformers containing <1,000 ppm PCBs.

II. Proposed Changes to the Reclassification Provision

Based upon the statistical data which suggest there is no strong evidence to support a correlation between temperature and the leachback of PCBs in a transformer, EPA is requesting comments on its proposal to modify the current regulations. The primary changes are as follows:

1. Eliminate the 50° C temperature requirement for all transformers undergoing reclassification.

2. Eliminate the 90-day "in-service use" requirement for all transformers with a PCB concentration <1,000 ppm.

3. Allow PCB Transformers with a PCB concentration <1,000 ppm to be initially tested after a 21-day time period rather than after 90 days, if a properly conducted retrofill was conducted. Then, if the results of the post-retrofill test are <25 ppm PCB, the transformer may be reclassified to non-PCB status. If the results are ≥ 25 - <500 ppm PCB, it may be reclassified to PCB-Contaminated status.

4. Allow immediate reclassification rather than a 90-day post-retrofill test of PCB-Contaminated Transformers to non-PCB status, after a properly conducted retrofill. An owner or operator would be able to assume, for purposes of compliance with the proposed reclassification requirements, that a properly reclassified transformer is regulated in accordance with its reclassified status. However, because of the potential for the concentration to "creep" upward, or due to errors in the reclassification process, the transformer owner would remain responsible and liable for any violation incurred if the PCB concentration of a transformer, even after a properly conducted retrofill, is tested and found to exceed the designated PCB-Contaminated or non-PCB levels.

The owner would be required to keep records, as proposed at § 761.180(a)(3), to substantiate that quality controlled and assured laboratory analyses were employed for all of the PCB concentration measurements, and that the proper reclassification procedures were followed. EPA recognizes gas chromatography as an accurate method for determining the concentration and nature of PCBs in oil (ASTM D 923-86 and 923-89). Accurate records are necessary in the event of an EPA inspection and/or subsequent PCB violation.

Owners of mineral-oil transformers who wish to take advantage of the reclassification provisions in this proposed rule would be required to test their units to determine the actual PCB concentration prior to retrofill. They could not assume that prior to retrofill the concentration is between 50 and 499 ppm. Based on the actual pre-retrofill PCB concentration in the dielectric fluid, EPA proposes, that for the purpose of identifying the procedures to be used in reclassifying transformers, the transformers be categorized into three groups by PCB concentrations that are: (1) ≥ 50 ppm but <500 ppm, (2)

≥ 500 but $< 1,000$ ppm, and (3) $\geq 1,000$ ppm PCB. However, the standard PCB concentration categories (< 50 ppm for non-PCB, 50 ppm to < 500 ppm for PCB-Contaminated, and ≥ 500 ppm for PCB) would still apply for designating the PCB reclassification status and for complying with all of the PCB regulatory provisions. Deviations from the requirements of this proposed rule would still require a waiver from EPA before undertaking such activity.

The following chart of the proposed modifications to the regulatory requirements for reclassification is provided to assist the reader in understanding this rule. It is not a substitute for the rule itself.

RECLASSIFICATION RULE CHART

Original concentrations	Proposed modification
< 500 PPM PCB.	Remove 50° C Remove in-service loading Drain, flush and fill No testing required.
500 - < 1000 PPM PCB.	Remove 50° C Remove in-service loading Drain, flush and fill Test after 21 days. If < 25 ppm, reclassify as non-PCB. If ≥ 25 - < 500 ppm, reclassify as PCB-Contaminated. If ≥ 500 ppm, retest after a total of 90 days.
≥ 1000 PPM PCB.	Remove 50° C In-service loading is still required Drain, flush (optional) and fill Testing still required after 90 days to determine PCB status.

III. Rationale Of Proposed Modifications

A. 50° Centigrade Requirement

This rule proposes to eliminate the 50° C temperature requirement for all reclassification of PCB and PCB-Contaminated Transformers. The original intent of the 50° C requirement was to achieve a temperature that would allow the natural convection forces of the dielectric fluid to circulate within the transformer (47 FR 37354, August 25, 1982). It was believed that this oil movement promoted leaching of PCBs from the core and coil and other internal parts of the transformer into the dielectric fluid and, thus, accelerated the process of reaching PCB equilibrium. Based on an analysis of the data indicating that temperature has little bearing on the leachback of PCBs into the dielectric fluid, as discussed under Unit I. of this preamble, EPA is

soliciting comments on whether to drop the 50° C temperature requirement for all PCB and PCB-Contaminated Transformers.

B. In-Service Use Requirement

Using the same rationale as for eliminating the 50° C requirement, EPA also proposes to eliminate the "in-service use" requirement for transformers contaminated with $< 1,000$ ppm PCB. But, any transformer with a 1,000 ppm or greater PCB concentration, such as most substation power transformers, must undergo a minimum 90-day in-service use period and post-retrofill testing. The difference between small, distribution transformers and the large, substation power transformers is that distribution transformers are usually PCB-Contaminated, are more peripherally located throughout a region than the substation power systems, and are difficult and dangerous to sample after having been reconnected. Most pole-top transformers fall into this "distribution transformer" category, as do many other equivalent size power transformers such as pad-mounted transformers which are usually located on a concrete foundation. The larger power transformers contain greater volumes and higher concentrations of PCBs and, therefore, pose a potentially greater risk to the environment and human health. The in-service use requirement on the larger transformers poses less of a burden for those who operate them. Since they are essential for supplying major sources of power, most are in service on a regular basis. Furthermore, due to the design of the equipment and their locations, they can be conveniently and safely sampled while in active service.

Although there is some overlap between large, substation power transformers and typically smaller, distribution transformers, further support for distinguishing between the two categories is found in an American National Standards Institute (ANSI) publication C57 (Sections C57.12.20 through C57.12.26). ANSI indicates that distribution transformers with less than a 500 Kilovolt-ampere (KVA) rating are not required to have sampling valves. Power transformers, however, will almost always have sampling valves to allow for easy sampling of the transformer fluid (Ref. 5). Sampling valves are most typically found on transformers with a KVA rating of 500 or greater.

In a letter from Baltimore Gas and Electric (BG&E) to EPA (Ref. 12) BG&E states that distribution transformers with a KVA rating of 500 or less are not required to have sampling valves, and

that sampling these units outside of the shop environment is precarious. BG&E argues that the 500 KVA benchmark for distribution transformers is a logical breakpoint for not requiring post retrofill testing, i.e., distribution transformers 500 KVA and below need not be tested and those greater than 500 KVA should be tested. EPA is soliciting comments on the appropriateness of factoring in the KVA rating of particular transformers insofar as it relates to the type of reclassification/sampling schedule a transformer owner may opt for, or whether the pre-retrofill concentration of the transformer, regardless of KVA rating, should be the only criteria. In addition, if KVA rating should be factored in, is there a corresponding PCB concentration that should be associated with that KVA rating, i.e., should testing be required of a transformer with ≥ 500 KVA and ≥ 1000 ppm PCB or should testing be required of only those transformers ≥ 500 KVA regardless of PCB concentration. EPA's analysis of the data that were submitted for review looked exclusively at the PCB concentration of the transformers and did not factor the KVA rating into the reclassification equation. EPA, therefore, solicits data to support the relevance of including KVA rating into the reclassification equation.

C. Post Retrofill 90-Day Testing Requirement

1. *Elimination of post-retrofill testing requirement for transformers < 500 ppm PCBs.* This rule proposes to eliminate the 90-day, post-retrofill test requirement for transformers containing pre-retrofill concentrations of < 500 ppm PCBs, thereby allowing for immediate reclassification of PCB-Contaminated Transformers to non-PCB status after a properly conducted retrofill. Based on the data and rationale provided in Unit III.C.1 of this preamble, routine testing of retrofilled PCB-Contaminated Transformers may not be necessary to verify that PCB levels are < 50 ppm. EPA is soliciting comments on whether PCB-Contaminated Transformers with a PCB concentration of < 500 ppm should be immediately reclassified to non-PCB status (i.e., < 50 ppm) after a properly conducted retrofill procedure as proposed in § 761.30(a)(2)(v). A "properly conducted retrofill" would mean a procedure where: (a) The PCB dielectric fluid is drained from the transformer and stored and disposed of pursuant to the storage and disposal requirements of 40 CFR 761.65 and 761.60 and the manifest requirements at § 761.207 to § 761.209; (b) the transformer is flushed with no less than

10 percent of the transformer's volume (as reflected on the original nameplate) with a dielectric fluid that contains <2 ppm PCBs or with solvent in which the solubility of PCBs is 5 percent or more by weight (the flush material must be stored and disposed of in accordance with § 761.65 and § 761.60 and the manifest requirements of § 761.207 to § 761.209 must be adhered to); and (c) the transformer is refilled with <2 ppm PCB dielectric fluid. If no nameplate exists that provides volume information, the transformer height, width and depth would be measured to estimate the volume.

2. *Transformers with a PCB concentration ≥ 500 ppm but <1,000 ppm.* EPA is soliciting comment on its proposal to modify the 90-day requirement of § 761.30(a)(2)(v) for testing PCB Transformers with ≥ 500 ppm but <1,000 ppm PCBs. Transformers with PCB concentrations $\geq 1,000$ ppm PCBs will continue to be subject to the requirement to test the fluid 90 days after the retrofill.

To take advantage of the shortened post-retrofill testing requirement, i.e., 21 days vs. 90 days, for transformers between ≥ 500 and >1,000 ppm, the transformer would be required to undergo a properly conducted retrofill.

A statistical review conducted by EPA of the data submitted for 380 transformers of varying concentrations indicates that a properly conducted retrofill process removes a very high percentage of the PCBs (Ref. 4). A comparison of PCB concentration levels, at various points of time after a retrofill, indicates that leachback occurs at the highest rate over the first few days and becomes statistically insignificant over time. Of all of the transformers tested, the vast majority which showed asymptotic (leveling off) PCB levels above 10 percent of the original PCB concentration had relatively low initial PCB concentrations (i.e., <200 ppm PCB). This means that a transformer with a pre-retrofill PCB concentration of 200 ppm may retain up to 25 percent of the original PCBs and still fall below the 50 ppm criterion for reclassification as a non-PCB Transformer. Over 80 percent of the transformers which were tested 90 days after such a retrofill, retained less than 8 percent of the original PCB concentration.

A post-retrofill measurement of the PCB level of the dielectric fluid would be required for reclassification to non-PCB status (i.e., <50 ppm) for all transformers with a PCB concentration ≥ 500 ppm. If the original PCB concentration of a transformer is ≥ 500 ppm but <1,000 ppm PCB, the post-retrofill measurement would be required

to be taken at least 21 days after the last retrofill. If 21 days after retrofill the PCB concentration in the transformer is <25 ppm, the transformer would be immediately reclassified to non-PCB status. The existing transformer retrofill data indicate that the asymptotic PCB concentration in properly retrofilled transformers has a low statistical probability to ever increase as much as 200 percent over their tested post-21-day PCB concentration. Transformers that have a PCB concentration ≥ 25 ppm but <500 ppm after 21 days could be immediately reclassified to PCB-Contaminated status. If non-PCB status is still desired, retesting would be required 90 days after the initial retrofill. If the 90-day retest shows a PCB concentration of <50 ppm, the transformer would be immediately reclassified to non-PCB status. If the retest shows ≥ 50 - <500 ppm PCB it would be reclassified to PCB-Contaminated status.

EPA is proposing 25 ppm as the maximum concentration allowable for designation as non-PCB status after the 21-day test based on its analysis of existing industry test data. EPA solicits comment on whether this new limit is reasonable given the results of existing or new industry test data. Would setting the limit higher than 25 ppm be reasonable since there is a low statistical probability for the PCB concentration in a range above 25 ppm to exceed 50 ppm after 90 days? Alternatively, is a limit lower than 25 ppm justified? EPA also solicits comment on whether setting a limit of 25 ppm for non-PCB status would impose an unnecessary burden on retrofillers that desire non-PCB status due to the potential for test results to fall between 25 ppm and 50 ppm after the 21-day test and still be less than 50 ppm after 90 days.

If reclassification of transformers ≥ 500 ppm - <1000 ppm PCB is not achieved after one retrofill, EPA is proposing that 90 days elapse between each subsequent retrofill. The goal is to achieve a stable equilibrium between the PCBs within the internal components and the transformer core's dielectric fluid. Use of this approach is at the discretion of the transformer owner or operator. Notwithstanding a "properly conducted retrofill," the transformer owner or operator would remain responsible and liable for any subsequent violations associated with the reclassification of any transformer due to potential statistical deviations, laboratory calibration errors, variations in the design of the different models of transformers, etc.

3. *Transformers $\geq 1,000$ ppm.* PCB Transformers with a PCB concentration

$\geq 1,000$ ppm must still be drained, refilled, and tested after a minimum of 90 days of in-service use, as currently specified at 40 CFR 761.30(a)(2)(v), in order to determine whether the transformer has been reclassified. However, under this proposal, the requirement to reach the 50° C temperature level would be eliminated. EPA lacks information on whether a properly conducted retrofill and/or the elimination of the post-90-day test after retrofill for transformers $\geq 1,000$ ppm PCBs is warranted. EPA solicits comments and/or data on this issue.

The proposed modifications to the reclassification requirements of § 761.30(a)(2)(v) should eliminate the need for submission of individual waiver requests to EPA, especially for those transformers <1,000 ppm PCBs. If, however, the transformer owner wished to deviate in any way from the specifications of the modifications contained in this proposed rule (e.g., by not employing a "properly conducted retrofill" as defined in Unit III.C.1 of this preamble and as proposed at § 761.30(a)(2)(v), by failing to wait the designated amount of time prior to conducting the post-retrofill, or by failing to obtain a laboratory analysis of the post-retrofill PCB concentration, etc.), the transformer would not be reclassified and the owner could be subject to an enforcement action if the owner is not in compliance with all of the appropriate regulatory provisions.

4. *Electromagnets, switches, and voltage regulators ≥ 500 ppm PCBs.* Currently, the PCB regulations at § 761.30(h)(2)(v) allow for the reclassification to non-PCB or PCB-Contaminated status of those voltage regulators, switches and electromagnets that are ≥ 500 ppm PCBs. The regulation does not require these pieces of electrical equipment to reach 50° C but does require a minimum of 3 months of in-service use subsequent to the last servicing conducted for purposes of lowering the concentration of this equipment. In this proposed rule, EPA is soliciting comments and requesting supporting data on whether the proposed criteria in this rule for PCB and PCB-Contaminated Transformers are also appropriate or viable for these other pieces of electrical equipment. In § 761.30(h)(2)(v), as is already the case in § 761.30(a)(2)(v), EPA is proposing to change the approval authority for granting the use of alternate methods to simulate the loaded conditions of in-service use from the Assistant Administrator to the Director of the Chemical Management Division. EPA solicits comments on this proposed change in approval authority.

In addition, EPA is proposing recordkeeping requirements pursuant to § 761.180(a)(3) for this electrical equipment undergoing reclassification.

IV. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, issued February 17, 1982, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this proposed rule would not be a "major rule" as that term is defined in section 1(b) of the Executive Order because the annual effect of the rule on the economy will be considerably less than \$100 million; it will not cause any noticeable increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of U.S. enterprises to compete with foreign enterprises in domestic or foreign markets. This proposed rule would, in fact, mitigate the burden on industry to comply with requirements for reclassifying PCB and PCB-Contaminated Transformers. This proposed rule was submitted to the Office of Management and Budget (OMB) for review prior to publication, as required by Executive Order 12291.

B. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (the Act), 5 U.S.C. 603, requires EPA to prepare and make available for comment an initial regulatory flexibility analysis in connection with rulemaking. The initial regulatory flexibility analysis must describe the impact of the rule on small business entities. Section 605(b) of the Act, however, provides that section 603 of the Act "shall not apply to any proposed or final rule if the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA considers a small business to be one whose annual sales revenues are less than \$40 million. This cutoff is in accordance with EPA's definition of a small business for purposes of reporting under section 8(a) of TSCA, which was published in the *Federal Register* of November 16, 1984 (49 FR 45430).

In accordance with section 605(b) of the Act, the Administrator certifies that this proposed rule, if promulgated, would not have a significant adverse economic impact on a substantial

number of small business entities. Rather, it would relieve the burden placed on business by modifying the current regulations. In addition, EPA is sending a copy of this proposed rule to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., authorizes the Director of OMB to review certain information collection requests by Federal Agencies. EPA has determined that the recordkeeping requirements of this proposed rule constitute a "collection of information" as defined at 44 U.S.C. 3502(c).

The information collection requirements of this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act. An amended Information Collection Request document has been prepared by EPA (OMB Control numbers 2070-0112 and 2070-0061). The public recordkeeping burden for this collection of information is estimated to be 15 minutes per each reclassification project. These are records that are already generated by the respondent. This estimate is based on the need to maintain these documents on file at the facility.

Comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to the Chief, Information Policy Branch (PM-223), Environmental Protection Agency, 401 M St., SW, Washington, DC, 20460. These comments should also be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503, marked ATTENTION: Desk Officer for EPA. The final rule will respond to any OMB or public comments on the information collection requirements in this proposal.

V. Public Record

In accordance with the requirements of section 19(a)(3) of TSCA, EPA is issuing the following list of documents which constitute the record of this proposed rulemaking. This record includes basic information considered by the Agency in developing this proposal. The official records of previous PCB rulemakings are incorporated by reference as they exist in the TSCA Public Docket. A full list of these materials is available for inspection and copying in the TSCA Public Docket Office. However, any Confidential Business Information (CBI) that is part of the record for this

rulemaking is not available for public review. A public version of the record, from which CBI has been excluded, is available for inspection. The address for the TSCA Public Docket Office appears under the "ADDRESSES" section of this proposed rule.

A. Previous Rulemaking Records

(1) USEPA. "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions." Final Rule. 44 FR 31514, (May 31, 1979).

(2) USEPA. "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Equipment." Final Rule. 47 FR 37342, (August 25, 1982). Docket #OPTS-62015C.

B. References

(1) "Equilibrium Study of PCBs Between Transformer Oil and Transformer Solid Materials," by Electric Power Research Institute (EPRI). (December 3, 1981).

(2) Letter from C. H. Manger of Baltimore Gas and Electric Company to Denise Keehner, USEPA/OPTS/EED, challenging the 50° C temperature criterion of reclassification. (July 27, 1987).

(3) Baltimore Gas and Electric Company. "PCB-Contaminated Distribution Transformer Reclassification Study." Baltimore Gas and Electric Company, Electric Test Department, Paul J. Frey. (August 1986).

(4) Memorandum from Dan Reinhart to Tony Baney, "Background Report on Empirical Basis for Proposed Changes to Reclassification Criteria for PCB and PCB-Contaminated Transformers", USEPA/OPTS/OPPT/EED/DBB, undated.

(5) American National Standards Institute, Inc., The Institute of Electrical and Electronics Engineers, Inc., Distribution, Power, and Regulating Transformers. Standard numbers: (a) C57.12.20-1988, (b) C57.12.21-1980, (c) C57.12.22-1989, (d) C57.12.23-1986, (e) C57.12.24-1988, (f) C57.12.25-1981, and (g) C57.12.26-1987.

(6) Excerpt from PCB Seminar Notebook, San Diego, California, October 3-9, 1989, Sponsored by the Electrical Power Research Institute, "Reclassification: Simulating In-service Use", H. Carl Manger, Baltimore Gas and Electric.

(7) Letter from Richard E. Bell, Resource Planning Corporation to Carl Manger, Baltimore Gas and Electric. Results of analysis from transformer retrofill data. (April 24, 1989).

(8) Letter from Don Clay, Director, Office of Toxic Substances, EPA, to Tim Hardy, Kirkland and Ellis. What constitutes in-service use and simulation of in-service use for purposes of reclassifying electrical transformers containing PCBs. (June 13, 1984).

(9) Letter from Joseph J. Merenda, Director, Exposure Evaluation Division, EPA, to Edward Karapetian, Department of Water and Power the City of Los Angeles. Response to request to waive the 50° C and 90-day testing

requirements for reclassification of 95,000 pole-top transformers. (November 29, 1990).

(10) Letter from Joseph J. Merenda, Director, Exposure Evaluation Division, EPA, to Edward Karapetian, Department of Water and Power the City of Los Angeles. Response to request to waive the 50° C and 90-day testing requirements for reclassification of 95,000 pole-top transformers. (May 22, 1991).

(11) Memorandum from Dan Reinhart, EPA/OPTS/EED, to Joe Davia, EPA/OPTS/EED, "Examination of the Relationship Between PCB Leaching and Load Level in Transmission Transformers by Baltimore Gas and Electric Company." (May 20, 1988).

(12) Letter from H. C. Manger, Baltimore Gas and Electric Company to Jan Canterbury, EPA/OPTS/EED. Possible changes to the regulations regarding reclassification of oil-filled transformers containing PCBs. (July 24, 1991).

(13) Letter from Gil Addis, Electric Power Research Institute to Jan Canterbury, EPA/OPTS/EED. Reclassification of Mineral Oil transformers contaminated with PCB, and Askarel transformers. (November 6, 1990).

(14) Letter from Dana S. Myers, S.D. Myers Transformer Consultants to Jan Canterbury, EPA/OPTS/EED. Average operating temperature of an askarel transformer. (August 16, 1991).

(15) PCB Residues in Transformer Carcasses. EPRI EL-6237, Project 2028-19, Final Report, August 1989. Prepared by the General Electric Company, Pittsfield, Massachusetts.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: November 4, 1993.

Carol M. Browner,
Administrator, Environmental Protection Agency.

Therefore, it is proposed to amend 40 CFR Chapter I, as follows:

PART 761—[AMENDED]

1. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

2. In § 761.30 by revising paragraphs (a)(1)(iii)(C)(2)(iii), (a)(2)(v), and (h)(2)(v), to read as follows:

§ 761.30 Authorizations.

* * * * *

- (a) * * *
- (1) * * *
- (iii) * * *
- (C) * * *
- (2) * * *

(iii) Once a retrofilled transformer has been installed for reclassification purposes, it must follow the procedures specified in paragraph (a)(2)(v) of this section.

* * * * *

(2) * * *

(v) A PCB Transformer that has been tested and determined to have a concentration between ≥ 500 and $< 1,000$ ppm PCBs may be reclassified to a PCB-Contaminated Transformer or a non-PCB Transformer, and a PCB-Contaminated Transformer may be reclassified to a non-PCB Transformer by first performing a properly conducted retrofill. A properly conducted retrofill means the PCB dielectric fluid is drained from the transformer and stored and disposed of in accordance with §§ 761.60 and 761.65 and the manifest requirements of §§ 761.207 to 761.209 must be adhered to. Then the transformer must be flushed with dielectric fluid below 2 ppm PCB or a solvent in which PCBs are at least 5 percent soluble by weight using no less than 10 percent of the original nameplate volume. If no nameplate exists that provides volume information, the transformer must be flushed with PCB dielectric fluid containing less than 2 ppm PCB or a solvent in which PCBs are at least 5 percent soluble by weight using no less than 10 percent of the estimated volume of the transformer. The flushed dielectric fluid must be stored and disposed of in accordance with the requirements of §§ 761.60 and 761.65 and the manifest requirements of §§ 761.207 and 761.209 must be adhered to. The transformer must be refilled with dielectric fluid below 2 ppm PCB.

(A) After properly retrofilling the transformer in accordance with the requirements in paragraph (a)(2)(v) of this section, the reclassification must be conducted as follows:

(1) A PCB Transformer that has been tested and determined to have PCB concentrations between ≥ 500 and $< 1,000$ ppm must be tested by a laboratory using an EPA-approved test method at least 21 days after the retrofill. The PCB Transformer may be reclassified to a non-PCB status if testing shows that the post-retrofill PCB concentration is < 25 ppm. If the post-retrofill PCB concentration is ≥ 25 ppm but < 500 ppm, the transformer may be reclassified to PCB-Contaminated status. If non-PCB status is still desired, the PCB Transformer must be re-tested 90 days after the initial retrofill to determine if it may be reclassified to a PCB-Contaminated status if the test shows a post retrofill concentration of ≥ 50 but < 500 ppm, or non-PCB status, if the post retrofill concentration is < 50 ppm.

(2) A transformer that has been tested and determined to be PCB-Contaminated (50 to < 500 ppm) may be

reclassified immediately to a non-PCB Transformer (< 50 ppm).

(B) A PCB Transformer that has been tested and determined to be $\geq 1,000$ ppm PCBs must be operated electrically under loaded conditions for 90 days after retrofill. After 90 days, the transformer must be analyzed for PCB concentration by a laboratory using EPA-approved testing methods. If the test shows a PCB concentration of 50–499 ppm, the transformer may be reclassified to PCB-Contaminated status. If the test shows a PCB concentration of < 50 ppm, the transformer may be reclassified to non-PCB status. The Director, Chemical Management Division may grant, without further rulemaking, approval for the use of alternative methods that simulate the loaded conditions of electrical operation.

(C) If the owner still wishes to reclassify the transformer but the test indicates failure to achieve the desired lower PCB status, the entire process as specified in paragraph (a)(2)(v)(A) or (a)(2)(v)(B), as appropriate, of this section must be repeated.

(D) Transformer owners that are reclassifying or have reclassified their transformers must keep records pursuant to § 761.180(a)(3).

(E) If, after reclassification, the transformer is tested and found to contain a higher PCB concentration, (i.e., ≥ 50 ppm if non-PCB status was desired or ≥ 500 ppm PCB if PCB-Contaminated status was desired) the reclassification is void, and the transformer is classified based on its actual concentration. The process as specified in paragraph (a)(2)(v)(A) or (a)(2)(v)(B), as appropriate, of this section must be repeated if reclassification is still desired. The transformer owner remains liable for any subsequent violation incurred if the PCB concentration of the transformer is found to exceed the designated PCB-Contaminated or non-PCB level after reclassification.

* * * * *

(h) * * *

(2) * * *

(v) An electromagnet, switch or voltage regulator with a PCB concentration of at least 500 ppm may be converted to PCB-Contaminated Electrical Equipment or to non-PCB status and PCB-Contaminated Electrical Equipment may be reclassified to non-PCB status by draining, refilling and/or otherwise servicing the equipment. In order to be reclassified, the equipment's dielectric fluid must contain less than 500 ppm PCB (for conversion to PCB-Contaminated Electrical Equipment) or

less than 50 ppm PCB (for conversion to a non-PCB classification) after a minimum of 3 months of in-service use subsequent to the last servicing conducted for the purpose of reducing the PCB concentration in the equipment. In-service use means that the transformer is used electrically under loaded conditions. The Director, Chemical Management Division may grant, without further rulemaking, approval for the use of alternative methods that simulate the loaded conditions of in-service use. All PCBs removed from this equipment for

purposes of reducing PCB concentrations are subject to the disposal requirements of § 761.60. In addition, records must be kept pursuant to § 761.180(a)(3).

* * * * *
3. In § 761.180 by adding paragraph (a)(3), to read as follows:

§ 761.180 Records and monitoring.

* * * * *
(a) * * * * *
(3) Transformer owners and owners of electromagnets, switches, and voltage regulators that are reclassifying or have reclassified such equipment must keep

the following documentation for at least 3 years after the equipment has been disposed of:

- (i) The pre-retrofill concentration of the equipment.
- (ii) The retrofill and reclassification schedule and procedure.
- (iii) A copy of the analysis indicating the equipment's reclassified status (i.e., final PCB concentration).

* * * * *
[FR Doc. 93-28116 Filed 11-17-93; 8:45 am]
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Federal Register

Thursday
November 18, 1993

Part VII

**Corporation for
National and
Community Service**

45 CFR Part 2550
Requirements and General Provision for
State Commissions and Alternative
Administrative or Transitional Entities;
Interim Final Rule

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE**45 CFR Part 2550****Requirements and General Provision for State Commissions and Alternative Administrative or Transitional Entities**

AGENCY: Corporation for National and Community Service.

ACTION: Interim final rule.

SUMMARY: The Corporation for National and Community Service (the Corporation) is issuing this interim final rule concerning requirements and funding for State Commissions on National and Community Service (as well as for alternative or transitional entities which may be approved by the Corporation to perform the same functions) as authorized by the National and Community Service Act of 1990, as amended (the Act). These requirements and funding provisions are intended to help States meet unmet human, educational, and public safety needs by providing assistance to States in building service infrastructure and carrying out the statutory mandates necessary to receive funding from the Corporation. This rulemaking governs the awarding of administrative grants to States. The Corporation will soon be issuing a proposed rule for public comment on its national and community service grant programs.

DATES: The interim rule is effective November 18, 1993.

Comments must be received on or before January 3, 1994.

ADDRESSES: Comments may be mailed to the Office of General Counsel, The Corporation for National and Community Service, Room 9200, 1100 Vermont Avenue, NW., Washington, DC, 20525. Comments received may also be inspected at room 9200 between 9:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Terry Russell (Acting General Counsel), (202) 606-5000.

SUPPLEMENTARY INFORMATION: The Corporation's mission is to engage Americans of all ages and backgrounds in service at the community level. This service will address the Nation's human, educational, environmental, and public safety needs to achieve direct results. States will play a major role in achieving these goals. They will develop comprehensive national service plans, assemble applications for funds, and administer service programs. States will conduct these activities through nonpartisan or bipartisan State

Commissions or Alternative Administrative Entities (AAEs).

\$11 million will be available for fiscal year 1994 to make grants to States for the purpose of establishing and operating State Commissions on National and Community Service. These State Commissions (or AAEs approved by the Corporation, as explained in the rule below) should become functional prior to a State's applying for and receiving program funds during fiscal year 1994. Accordingly, the Corporation is publishing this rule in interim final form so as to be able to make these grants to the States as soon as possible.

This interim final rule explains the structure and duties of the State Commissions and alternative or transitional entities, and explains the conditions States must meet in order to receive administrative grants for the purpose of establishing or operating such commissions or entities. The National and Community Service Act of 1990, as amended (the Act) (42 U.S.C. 12501 et seq.), is fairly detailed on many of these issues. All provisions of the Act on these issues have been included in this interim final rule. There are a number of instances, however, where the Act is less detailed, requiring the Corporation to make certain policy decisions. Those policy decisions, along with alternative options and the rationale behind the decisions, are listed below.

Administrative Grants to States

Section 501 of the Act states that the Corporation must set aside not less than 40 percent of any administrative appropriation for the purpose of making grants to the State Commissions. For fiscal year 1994, the Corporation was appropriated \$25 million for administrative costs; of this money, Congress earmarked \$11 million (or 44 percent) to be set aside for grants to State Commissions.

The Act provides little guidance and few restrictions on how the Corporation can or should distribute this \$11 million among the States, specifying only that any grants the Corporation makes to States for the purpose of establishing or operating State Commissions or alternative or transitional entities must be between \$125,000 and \$750,000, inclusive. The Act does not specify whether a State may receive more than one grant, who qualifies as a State, or how the size of any grants should be determined.

(1) *Who qualifies as a State?* The rule provides that the 50 States, the District of Columbia, and Puerto Rico are eligible as "States" to receive grants to establish and operate State

Commissions. Requiring the establishment of State Commissions for Indian tribes and territories other than Puerto Rico would impose an onerous regulatory burden on them.

(2) *By what date must a State notify the Corporation of its intent to apply for an administrative grant?* States can submit requests for administrative funds at any time. However, States that have not requested authorization for a State Commission, AAE, or Transitional Entity by February 1, 1994, will not be eligible to apply under subtitles B or C of the Act for fiscal year 1994 program funds.

(3) *Can a State receive more than one administrative grant in a given year?* The rule provides that no State eligible to receive more than one administrative grant. If Congress had intended the Corporation to be able to offer more than one grant to a given State, it clearly would not have set a maximum for the amount of a single grant.

(4) *How will the administrative grant money be distributed among the eligible States?* The Corporation considered several different options for allocating funds among the States, including geographical size, population, existing service infrastructure, program development and others. The \$125,000 minimum level of the grants reflects the fact there are certain fixed costs, e.g., minimum personnel costs, that every State must bear regardless of size, population, or existing infrastructure. Similarly, the \$750,000 maximum ensures that no one State will receive a disproportionately large grant and encourages States to keep bureaucracy to a minimum.

After weighing the positive and negative aspects of a number of different options, the Corporation decided to distribute the grants according to a population-based formula.

There are clearly shortcomings in distributing the grants solely according to State population. A State's population is not necessarily the most accurate determinant of a State's reasonably expected costs for the State Commission; all of the additional factors mentioned above will play a role as well. Indeed, in future years, the Corporation may base the size of its administrative grants to States on some or all of these more subjective factors. In fiscal year 1994, however, it is necessary to make these grants as soon as possible, and it is impossible to do a comprehensive assessment of the precise expected costs of each State's State Commission. The Corporation therefore deemed it prudent, in the interest of expediency and equity, to adopt an objective calculus for the

distribution of these grants. State population was the only truly objective and readily available criterion with a strong, if imperfect, correlation to expected State Commission costs.

Once the decision was made to base the size of a State grant on a State's relative population, a number of further sub-options were considered. Preliminarily, the ratio of each State's population to the national population (including Puerto Rico) was multiplied by \$11 million, yielding a raw distribution of grants which arranged from roughly \$20,000 to \$1.3 million. When the statutorily mandated maximum and minimum levels were imposed on this raw distribution, 24 States received the minimum and 3 States received the maximum amounts. The Corporation felt this was inequitable because it left States with widely different populations receiving the same size grants. For instance, Oregon and Wyoming would have received the same minimal \$125,000 grant despite the fact that Oregon's population is over six times that of Wyoming. To compensate for this, the Corporation designed a series of models that used multipliers of between .4 and 1.0 to bring the raw distribution grant of each State closer to the average grant.

The multiplier of .5 was selected because it produced a population distribution which very nearly fit within the parameters of the \$125,000 minimum and \$750,000 maximum. Under this model, the raw grant for each State is exactly half-way between the district population distribution and the average overall grant (\$11,000,000/52). Specifically the raw material for each State is determined by the following calculus:

$$((\$11mm * (State\ population/total\ State\ population)) - (\$11mm/.52) \square * .5) + (\$11mm/52)$$

Any State that falls below the minimum or above the maximum receives the minimum or maximum grant, respectively. Because the aggregate amount that some States are below the minimum is greater than the aggregate amount that other States are above the maximum, the actual grant (as opposed to the raw grant) available to each State will be slightly less (not more than \$1,100 less, however) than the above formula would indicate.

The population figures used to determine the distribution were the most recent estimates available from the United States Bureau of the Census (July 1992). The precise amount for which each State is eligible to apply are listed in the table below:

State	Allocation
Alabama	\$193,438
Alaska	125,000
Arkansas	156,599
Arizona	186,995
California	750,000
Colorado	179,321
Connecticut	175,315
Delaware	125,000
District of Columbia	125,000
Florida	391,669
Georgia	248,867
Hawaii	130,357
Idaho	128,386
Illinois	352,307
Indiana	225,784
Iowa	165,374
Kansas	159,248
Kentucky	185,362
Louisiana	196,639
Maine	131,947
Maryland	209,802
Massachusetts	232,631
Michigan	284,605
Minnesota	200,730
Mississippi	161,177
Missouri	215,843
Montana	125,000
Nebraska	139,811
Nevada	133,897
New Hampshire	129,319
New Jersey	270,869
New Mexico	139,281
New York	489,830
North Carolina	250,817
North Dakota	125,000
Ohio	339,271
Oklahoma	173,853
Oregon	168,871
Pennsylvania	360,319
Puerto Rico	185,205
Rhode Island	127,072
South Carolina	182,141
South Dakota	125,000
Tennessee	212,261
Texas	480,016
Utah	144,199
Vermont	125,000
Virginia	240,940
Washington	214,635
West Virginia	144,177
Wisconsin	210,820
Wyoming	125,000

None of the above should in any way be construed as implying that a State is entitled to an administrative grant. This interim final rule lays out very specific conditions which States must meet in order to receive a grant.

State Commissions

The Corporation made a number of policy decisions with regard to State Commissions specifically and with regard to any entity to be approved by the Corporation to perform the duties of a State Commission. Except where otherwise indicated, all policy issues listed under this State Commission subsection also apply to AAEs and Transitional Entities. (Collectively, these three entities are referred to in this rule as "State entities.")

(5) *May the head of the State educational agency designate another individual from the agency to serve on the State Commission or AAE in his or her place?* Yes. The Act provides that the head of the State education agency sits on the State Commission or Alternative Administrative Entity. The rule provides that the head of each State educational agency is a voting, ex officio member of the State Commission or AAE, and he or she may designate another individual from the agency to serve in his or her place on the State Commission or AAE. The Corporation made this decision to give the States greater flexibility.

(6) *Can individuals other than those listed in the legislation be appointed as voting members of the State Commissions or AAEs?* Yes. The legislation provides a list of types of individuals who must be and may be appointed to State Commissions or AAEs. By this rulemaking, the Corporation has determined that the list is non-exhaustive, and that types of individuals other than those listed may be appointed. This policy decision is intended to remove any categorical constraints that would unnecessarily restrict a State's capacity to appoint the highest quality individuals as members of the State Commission or AAE.

(7) *Should State Commissions allow the Corporation representative to vote?* No. State Corporation representatives are not technically restricted by Federal law from voting on the State Commissions; however, the Corporation strongly believes that State decisions should remain autonomous. Accordingly, we recommended that Corporation representatives serve only in an advisory capacity.

(8) *Are State Commissions required to notify the Corporation if individuals who would otherwise have been ineligible to vote on a given issue (because of a potential conflict-of-interest) were allowed to vote in order to achieve a quorum?* Yes. The Act provides that any voting member of a State Commission or AAE who, in the one-year period before the submission of a program's application, was or still is an officer, director, trustee, full-time volunteer, or employee of that program or entity applying for assistance, must recuse him- or herself from the administration of the grant program under which the application was submitted. Such individuals also are prohibited from being involved in the development or preparation of a grant application, or any discussion or decision regarding the provision of assistance (including approved national service positions) within the grant

program to which such a program applies, including selection, oversight, evaluation, continuation, suspension, or termination. If, however, as a result of members being disqualified from voting on applications by this rule, the number of voting members of the State Commission or AAE is insufficient to establish a quorum for the purpose of making decisions regarding the provision of assistance or approved national positions to programs or organizations, then voting members otherwise excluded from participation may participate in the administration of the grant program. In the event this occurs, the State Commission must document the event and report to the Corporation within 30 days of the vote. This requirement was put in place to ensure accountability, to avoid conflict of interest, and to provide documentation in the event of a grievance procedure.

(9) *Are State Commissions required to select which programs they would like to provide funding to prior to applying to the Corporation for funding?* Yes. The Act implies that Congress intended for State Commissions to select programs (including subtitle C programs and community-based service learning programs authorized under subtitle B of the Act) they would like to fund through a competitive process prior to applying to the Corporation for funds. This rule transforms Congressional intent into Corporation policy.

Alternative Administrative Entities (AAEs)

The Act gives the Corporation wide latitude in determining the qualification criteria for AAEs. There are two opposing considerations which the Corporation took into account in establishing these criteria. On the one hand, the Corporation had to set up enough safeguards to guarantee the establishment of an informed and politically non-partisan or bipartisan body committed to the cause of service—such safeguards as those employed by the Act in the State Commission model. On the other hand, the Corporation did not want to establish overly rigorous regulatory criteria for AAEs which would restrict or prohibit the participation of States that had in good faith set out to establish an entity devoted to furthering national and community service.

(10) *Should AAEs be subject to the same qualification criteria as State Commissions?* With few exceptions, yes. In order to ensure that any approved AAEs are likely to be able to work effectively with the Corporation, the Corporation has determined that AAEs

should, except for those items listed below, be required to meet the same qualification criteria as State Commissions. The following exceptions are in place to give States the flexibility to establish State entities which are designed with a similar purpose and mission as the State Commissions, but which are unable to meet one or more of the State Commission requirements:

- In certain instances, the Corporation may choose not to require an AAE to numerically demonstrate nonpartisan or bipartisan political composition. This exception allows for the participation of those States in which it is illegal to request political party affiliation information from prospective members. Nonetheless, the Corporation expects the selection process to be politically neutral.
- The Corporation may allow an AAE, given compelling circumstances, to have more than 25 voting members. This provision accommodates States with existing bodies containing more than 25 voting members as well as for certain other compelling cases.
- The Corporation may allow members of an AAE, who would otherwise be appointed by the chief executive officer of a State, to instead be appointed in another reasonable manner.

Transitional Entities

The Corporation recognizes that in certain instances States will be unable, despite their best efforts, to establish a State Commission or AAE in a timely manner. In many States, legislation is necessary to establish such an entity, and there may be other legitimate impediments to the immediate establishment of a State Commission or AAE. Absent a provision allowing for Transitional Entities, some States would be unable to participate in the first year of the national service programs. In order to involve all States that wish to participate, the Transitional Entity provision was created.

Under certain circumstances, the provision allows the Corporation, for States that can demonstrate the need, to approve a State agency to function as the State Commission for a finite period of time. (Transitional Entities may under no circumstance, however, be approved subsequent to the expiration of the 27 month transitional period.) Because the Act provides little detail with regard to Transitional Entities, most of the provisions in this rule involved Corporation policy decisions, which are as follows:

(11) *Under what circumstances will the Corporation approve a Transitional Entity to be used in lieu of the State*

Commission or AAE? Because of the inclusive nature of State Commissions and AAEs, the Corporation views such entities as significantly preferable to a Transitional Entity. Consequently the Corporation will only approve a Transitional Entity if a State is legitimately and demonstrably unable to establish a State Commission or AAE in time to be eligible to perform its duties. In addition, a State must a) provide the Corporation with assurances that substantive steps are being taken toward the establishment of a State Commission or AAE; and b) explain how it will perform an open and inclusive planning process in a bipartisan or nonpartisan manner.

(12) *For what period of time will the Corporation approve Transitional Entities?* Up to 12 months. The precise period of time will be determined on a case-by-case basis for each State. At the end of the first period of approval, a State may reapply to have a Transitional Entity continue to perform the duties of the State Commission or AAE; however, in order to receive an extension of any sort, the State must demonstrate, in addition to the initial requirements, that substantial progress has been made toward the establishment of a State Commission or AAE. These limitations are included to encourage the prompt establishment of a State Commission or AAE.

(13) *What funds are Transitional Entities eligible to receive?* An approved Transitional Entity may apply for and receive both administrative and program funds from the Corporation. As stated earlier, the Corporation will only grant approval of a Transitional Entity if a State cannot establish a State Commission or AAE. However, because the Corporation wishes to fully include such States despite administrative or legal barriers that may exist, approved Transitional Entities have precisely the same duties and responsibilities, and access to Corporation funding, as do State Commissions and AAEs.

Miscellaneous Requirements:

States should be advised that because the assistance provided under the authority of this rule constitutes Federal financial assistance for the purposes of title VI of the Civil Rights Act of 1964 (which bars discrimination based on race, color, or national origin), title IX of the Education Amendments of 1972 (which bars discrimination on the basis of gender), the Rehabilitation Act of 1973 (which bars discrimination on the basis of disability), and the Age Discrimination Act of 1975 (which bars discrimination on the basis of age), State entities will be required to comply with

the aforementioned provisions of Federal law.

States will be expected to expend corporation grants in a judicious and reasonable manner, consistent with pertinent provisions of Federal law and regulations. States must keep records according to Corporation guidelines, including records which fully disclose the amount and disposition by the State of the proceeds of a Corporation grant. The inspector general of the Corporation (or other authorized official) shall have access, for the purpose of audit and examination, to the books and records of the State which may be related or pertinent to the Corporation grant.

States should further be advised that Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and Administrative Requirements for Grants and Cooperative Agreements to other than State and Local Governments, as well as regulations for the Privacy Act, Freedom of Information Act, Sunshine Act, Government-wide Debarment and Suspension, and Government-wide Requirements for Drug-Free Workplace will also be published prior to awarding administrative grants to States.

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

The Corporation has separately submitted, under the terms of the Paperwork Reduction Act, an application package to be used by States when applying for Administrative grants from the Corporation for the purpose of establishing and/or operating a State Commission or alternative entity. To request a copy of this application, please contact the Corporation for National and Community Service at the address listed above.

As required by the Regulatory Flexibility Act, it is hereby certified that this final rule will not have a significant impact on small business entities. The provisions of the Paperwork Reduction Act do not apply as this action will not create any new record-keeping or reporting burdens or substantially increase costs to the Government and the public.

List of Subjects in 45 CFR Part 2550

Grant programs—Social programs.

For the reasons set forth in this preamble, the Corporation for National and Community Service is hereby amending chapter XXV in title 45 of the Code of Federal Regulations as follows:

CHAPTER XXV—CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

1. The heading for chapter XXV is revised as set forth above.

2. Part 2550 is added to read as follows:

PART 2550—REQUIREMENTS AND GENERAL PROVISION FOR STATE COMMISSIONS, ALTERNATIVE ADMINISTRATIVE ENTITIES AND TRANSITIONAL ENTITIES

Sec.

- 2550.10 What is the purpose of this part?
 2550.20 Definitions.
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 2550.40 How does a State get Corporation authorization and approval for the entity it has chosen?
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Authority: 42 U.S.C. 12501 *et seq.*

§ 2550.10 What is the purpose of this part?

(a) The Corporation for National and Community Service (the Corporation) seeks to meet the Nation's pressing human, educational, environmental and public safety needs through service and to reinvigorate the ethic of civic responsibility across the Nation. If the Corporation is to meet these goals, it is critical for each of the States to be actively involved.

(b) The Corporation will distribute nearly \$200 million in grants under subtitle C of the Act (hereinafter, "subtitle C") to help establish, operate and expand national service programs. At least two-thirds of these funds will go to the States, which will then subgrant to State agencies or local programs. However, in order to be eligible to apply for program funding and/or approved national service positions with an educational award, each State is required to establish a State Commission on National and Community Service to administer the State program grantmaking process and to develop a State plan. The Corporation may, in some instances approve Alternative Administrative Entities

(AAEs) or allow a State agency to perform the duties of the State Commission. (For the purposes of this part, a State agency which has been authorized by the Corporation to perform State Commission duties is called a "Transitional Entity".)

(c) The Corporation recognizes that establishing and operating State Commissions involves significant effort and cost. Therefore, grants of between \$125,000 and \$750,000 will be distributed to the States to cover the Federal share of operating the State Commissions, AAEs, or Transitional Entities. (For the purposes of this part, notwithstanding the definition of "State" that appears in the National and Community Service Act of 1990, as amended (the Act), "State" means the 50 States, the District of Columbia, and Puerto Rico.) In order to receive any Corporation grant, however, a State must commit to establishing a State Commission or AAE as soon as possible.

(d) The purpose of this part is to provide States with the basic information essential to participate in the subtitle C programs. Of equal importance, this part gives an explanation of the preliminary steps States must take in order to receive money from the Corporation. This part also offers guidance on which of the three State entities States should seek to establish, and it explains the composition requirements, duties, responsibilities, restrictions, and other relevant information regarding State Commissions, AAEs, and approved Transitional Entities.

§ 2550.20 Definitions.

(a) AAE. Alternative Administrative Entity.

(b) *Administrative costs.* As used in this part, those costs incurred by a State in the establishing and operating a State entity; the specific administrative costs for which a Corporation administrative grant may be used as defined in the Uniform Administrative Requirements for Grants and Agreements to State and Local Governments.

(c) *Alternative Administrative Entity (AAE).* A State entity approved by the Corporation to perform the duties of a State Commission, including developing a three-year comprehensive national service plan, preparing applications to the Corporation for funding and approved national service positions, and administering service program grants; in general, an AAE must meet the same composition and other requirements as a State Commission, but may receive waivers from the Corporation to accommodate State laws that prohibit inquiring as to the political affiliation of

members, to have more than 25 voting members (the maximum for a State Commission), and/or to select members in a manner other than selection by the chief executive officer of the State.

(d) *Approved National Service Position.* A national service program position for which the Corporation has approved the provision of a national service educational award as one of the benefits to be provided for successful completion of a term of service.

(e) *Corporation.* As used in this part, the Corporation for National and Community Service established pursuant to the National and Community Service Trust Act of 1993 (42 U.S.C. 12651).

(f) *Corporation representative.* Each of the individuals employed by the Corporation for National and Community Service to assist the States in carrying out national and community service activities; the Corporation representative must be included as a member of the State Commission or AAE.

(g) *Indian tribe.* (1) An Indian tribe, band, nation, or other organized group or community, including—

(i) Any Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)), whether organized traditionally or pursuant to the Act of June 18, 1934 (commonly known as the "Indian Reorganization Act"; 48 Stat. 984, chapter 576; 25 U.S.C. 461 et seq.); and

(ii) Any Regional Corporation or Village Corporation as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1602 (g) or (j)), that is recognized as eligible for the special programs and services provided by the United States under Federal law to Indians because of their status as Indians; and

(2) Any tribal organization controlled, sanctioned, or chartered by an entity described in paragraph (g)(1) of this section.

(h) *Older adult.* An individual 55 years of age or older.

(i) *Service-learning.* A method under which students or participants learn and develop through active participation in thoughtfully organized service that is conducted in and meets the needs of a community and that is coordinated with an elementary school, secondary school, institution of higher education, or community service program, and with the community; service-learning is integrated into and enhances the academic curriculum of the students, or the educational components of the community service program in which the participants are enrolled, and it provides time for the students or

participants to reflect on the service experience.

(j) *Service learning programs.* The totality of the service learning programs receiving assistance from the Corporation under subtitle B of the Act, either directly or through a grant-making entity; this includes school-based, community-based, and higher education-based service-learning programs.

(k) *State.* As used in this part, the term *State* refers to each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(l) *State Commission.* A bipartisan or nonpartisan State entity, approved by the Corporation, consisting of 15–25 members (appointed by the chief executive officer of the State), that is responsible for developing a comprehensive national service plan, assembling applications for funding and approved national service positions, and administering national and community service programs in the State.

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

(n) *State entity.* A State Commission, AAE, or Transitional Entity that has been authorized by the Corporation to perform the duties of a State Commission.

(o) *Transitional Entity.* An existing State agency which has been authorized by the Corporation to perform the duties of a State Commission; the Corporation will not authorize the use of a Transitional Entity unless a State is demonstrably unable to establish a State Commission or AAE.

§ 2550.30 How does a State decide which of the three entities to establish?

(a) Although each State's chief executive officer has the authority to select an administrative option, the Corporation strongly encourages States to establish State Commissions which meet the requirements in this part as quickly as possible. The requirements for State Commissions were established to try to create informed and effective entities.

(b) The Corporation recognizes that some States, for legal or other legitimate reasons, may not be able to meet all of the requirements of the State Commissions. The AAE is essentially the same as a State Commission; however, it may be exempt from some of the State Commission requirements. A State that cannot meet one of the waivable requirements of the State Commission (as explained in § 2550.60), and which can demonstrate this to the

Corporation, should seek to establish an AAE.

(c) Over the long term, States that wish to participate in the Corporation's grant programs must have either a State Commission or an AAE approved by the Corporation. Some States, due to legal or other procedural requirements, may be unable to establish one of these two entities in time to participate in fiscal years 1994 or 1995. Therefore, during the 27-month period beginning on September 21, 1993 and ending on December 21, 1995, a State may apply to the Corporation for authorization to use a Transitional Entity.

(d) A State should consider applying to have a Transitional Entity approved only if it can demonstrate that it is impossible, for legal or procedural reasons, to establish a State Commission or AAE in time to participate in the national service programs.

(e) Regardless of which entity a State employs, each State is required to solicit broad-based, local input in an open, inclusive, non-political planning process.

§ 2550.40 How does a State obtain Corporation authorization and approval for the entity it has chosen?

(a) To receive approval of a State Commission or AAE, a State must formally establish an entity that meets the corresponding composition, membership, authority, and duty requirements of this part. (For the AAE, a State must demonstrate why it is impossible or unreasonable to establish a State Commission; an approved AAE, however, has the same rights and responsibilities as a State Commission.) Once the entity is established, the State must provide written notice—in a format to be prescribed by the Corporation—to the chief executive officer of the Corporation of the composition, membership, and authorities of the State Commission or AAE and explain how the entity will perform its duties and functions. Further, the State must agree to, first, request approval from the Corporation for any subsequent changes in the composition or duties of a State Commission or AAE the State may wish to make, and, second, to comply with any future changes in Corporation requirements with regard to the composition or duties of a State Commission or AAE. If a State meets the applicable requirements, the Corporation will approve the State Commission or AAE.

(b) If the Corporation rejects a State application for approval of a State Commission or AAE because that application does not meet one or more

of the requirements of §§ 2250.50 or 2550.60, it will notify the State of the reasons for rejection and offer assistance to make any necessary changes. The Corporation will reconsider revised applications within 14 working days of resubmission.

(c) To receive approval to use an existing State agency as a Transitional Entity, a State must, first, satisfactorily demonstrate why it is unable to establish a State Commission or AAE, and, second, explain how it will carry out the duties of the State Commission and conduct a broad-based, open and inclusive planning process in a non-political manner. In addition, in order to receive any administrative funds from the Corporation, a State must commit to establish a State Commission or AAE as soon as possible, and prior to the expiration of the 27-month transition period ending on December 21, 1995. Administrative grants will only be given for up to 12-month periods. If a Transitional Entity wishes to receive an additional administrative grant subsequent to the expiration of an initial 12-month administrative grant, that State entity must demonstrate satisfactory progress toward establishment of a State Commission or AAE.

§ 2550.50 What are the composition requirements and other requirements, restrictions or guidelines for State Commissions?

The following provisions apply to both State Commissions and AAEs, except that AAEs may obtain waivers from certain provisions as explained in § 2550.60.

(a) *Size of the State Commission and terms of State Commission members.* The chief executive officer of a State must appoint 15–25 voting members to the State Commission (in addition to any non-voting members he or she may appoint). Voting members of a State Commission must be appointed to renewable three-year terms, except that initially a chief executive officer must appoint a third of the members to one-year terms and another third of the members to two-year terms.

(b) *Required voting members on a State Commission.* A member may represent none, one, or more than one category, but each of the following categories must be represented:

- (1) A representative of a community-based agency or organization in the State;
- (2) The head of the State education agency or his or her designee;
- (3) A representative of local government in the State;

(4) A representative of local labor organizations in the State;

(5) A representative of business;

(6) An individual between the ages of 16 and 25, inclusive, who is a participant or supervisor of a service program for school-age youth, or of a campus-based or national service program;

(7) A representative of a national service program;

(8) An individual with expertise in the educational, training, and development needs of youth, particularly disadvantaged youth; and

(9) An individual with experience in promoting the involvement of older adults (age 55 and older) in service and volunteerism.

(c) *Appointment of other voting members of a State Commission.* Any remaining voting members of a State Commission are appointed at the discretion of the chief executive officer of the State; however, although this list should not be construed as exhaustive, the Corporation suggests the following types of individuals:

(1) Educators, including representatives from institutions of higher education and local education agencies;

(2) Experts in the delivery of human, educational, environmental, or public safety services to communities and persons;

(3) Representatives of Indian tribes;

(4) Out-of-school or at-risk youth; and

(5) Representatives of programs that are administered or receive assistance under the Domestic Volunteer Service Act of 1973, as amended (DVSA) (42 U.S.C. 4950 et seq.).

(d) *Appointment of ex officio, non-voting members of a State Commission.* The chief executive officer of a State may appoint as ex officio, non-voting members of the State Commission officers or employees of State agencies operating community service, youth service, education, social service, senior service, or job training programs.

(e) *Other composition requirements.* To the extent possible, the chief executive officer of a State shall ensure that the membership of the State Commission is balanced with respect to race, ethnicity, age, gender, and disability characteristics. Not more than 50% plus one of the members of a State Commission may be from the same political party. In addition, the number of voting members of a State Commission who are officers or employees of the State may not exceed 25% of the total membership of that State Commission.

(f) *Selection of Chairperson.* The chairperson is elected by the voting

members of a State Commission. To be eligible to serve as chairperson, an individual must be an appointed, voting member of a State Commission.

(g) *Vacancies.* If a vacancy occurs on a State Commission, a new member must be appointed by the chief executive officer of the State to serve for the remainder of the term for which the predecessor of such member was appointed. The vacancy will not affect the power of the remaining members to execute the duties of the Commission.

(h) *Compensation of State Commission members.* A member of a State Commission may not receive compensation for his or her services, but may be reimbursed (at the discretion of the State) for travel and daily expenses in the same manner as employees intermittently serving the State.

(i) *The role of the Corporation representative.* The Corporation will designate one of its employees to serve as a representative to each State or group of States. This individual must be included as an ex officio member on the State Commission, and may be designated as a voting member by the chief executive officer of a State. However, because the Corporation wishes to encourage State autonomy in the design and development of the State plan and in State national service programs, States are discouraged from allowing the Corporation representative to vote. In general, the Corporation representative will be responsible for assisting States in carrying out national service activities.

§ 2550.60 From which of the State Commission requirements is an Alternative Administrative Entity exempt?

(a) An AAE is not automatically exempt from any of the requirements that govern State Commissions. However, there are three specific State Commission requirements which the Corporation may waive if a State can demonstrate that one or more of them is impossible or unreasonable to meet. If the Corporation waives a State Commission requirement for a State entity, that State entity is, de facto, an AAE. The three criteria which may be waived for an AAE are as follows:

(1) *The requirement that a State's chief executive officer appoint the members of a State Commission.* If a State can offer a compelling reason why some or all of the State Commission members should be appointed by the State legislature or by some other appropriate means, the Corporation may grant a waiver.

(2) *The requirement that a State Commission have 15–25 members.* If a State compellingly demonstrates why its

commission should have a larger number of members, the Corporation may grant a waiver.

(3) *The requirement that not more than 50% plus one of the State Commission's voting members be from the same political party.* This requirement was established to prevent State Commissions from being politically motivated or controlled; however, in some States it is illegal to require prospective members to provide information about political party affiliation. For this or another compelling reason, the Corporation may grant a waiver.

(b) Again, any time the Corporation grants one or more of these waivers for a State entity, that entity becomes an AAE; in all other respects an AAE is the same as a State Commission, having the same requirements, rights, duties and responsibilities.

§ 2550.70 What are the composition or other requirements for Transitional Entities?

Because a Transitional Entity is by definition contained within a State agency, there are no membership or composition requirements. If a State takes the necessary steps to obtain approval for a Transitional Entity (listed in § 2550.40(c)), it meets the requirements of a Transitional Entity.

§ 2250.80 What are the duties of the State entities?

The duties of each of the three eligible State entities—States Commissions, AAEs and Transitional Entities—are precisely the same. The duties listed in this section apply to all three, and they are jointly referred to as "State entities." Functions described in paragraphs (a) through (d) of this section require policymaking and may not be delegated to another State agency or nonprofit organization. Functions described in paragraphs (e) through (j) of this section are non-policymaking and may be delegated to another State agency or nonprofit organization. The duties are as follows:

(a) *Development of a three-year comprehensive national and community service plan and establishment of State priorities.* The State entity must develop and annually update a Statewide plan for national service that is consistent with the Corporation's broad goals of meeting human, educational, environmental and public safety needs and that meets the following minimum requirements:

(1) The plan must be developed through an open and public process (such as through regional forums or hearings) that provides for maximum

participation and input from national service programs within the State, and from other interested members of the public.

(2) The outreach process must, to the maximum extent practicable, include input from representatives of established State service programs, representatives of diverse, broad-based community organizations that serve underserved populations, and other interested individuals, including young people; the State entity should do so by creating State networks and registries or by utilizing existing ones.

(3) The plan may contain such other information as the State Commission considers appropriate and must contain such other information as the Corporation may require.

(b) *Pre-selection of subtitle C programs and preparation of application to the Corporation.* Each State must:

(1) Administer a competitive process to select national service programs to be included in any application to the Corporation for funding; and

(2) Prepare an application to the Corporation to receive funding and/or educational awards for the programs selected pursuant to paragraph (b)(1) of this section.

(c) *Preparation of Service Learning applications.* (1) The State entity is required to assist the State education agency in preparing the application for subtitle B school-based service learning programs.

(2) The State entity may apply to the Corporation to receive funding for community-based subtitle programs after coordination with the State Educational Agency.

(d) *Administration of the grants program.* After subtitle C and community-based subtitle B funds are awarded, States entities will be responsible for administering the grants and overseeing and monitoring the performance and progress of funded programs.

(e) *Evaluation and monitoring.* State entities, in concert with the Corporation, shall be responsible for implementing comprehensive, non-duplicative evaluation and monitoring systems.

(f) *Technical assistance.* The State entity will be responsible for providing technical assistance to local nonprofit organizations and other entities in planning programs, applying for funds, and in implementing and operating high quality programs. States should encourage proposals from underserved communities.

(g) *Program development assistance and training.* The State entity must

assist in the development of subtitle C programs; such development might include staff training, curriculum materials, and other relevant materials and activities. A description of such proposed assistance must be included in the State comprehensive plan referred to in paragraph (a) of this section. A State may apply for additional subtitle C programs training and technical assistance funds to perform these functions. The Corporation will issue notices of availability of funds with respect to training and technical assistance.

(h) *Recruitment and placement.* The State entity, as well as the Corporation, will develop mechanisms for recruitment and placement of people interested in participating in national service programs.

(i) *Benefits.* The State entity shall assist in the provision of health and child care benefits to subtitle C program participants, as will be specified in the regulations implementing the subtitle C programs.

(j) *Activity ineligible for assistance.* A State Commission or AAE may not directly operate or run any national service program receiving financial assistance, in any form, from the Corporation.

(k) *Make recommendations to the Corporation with respect to priorities within the State for programs receiving assistance under DVSA.*

(l) *Coordination.* (1) Coordination with other State agencies.—A State entity must coordinate its activities with the activities of other State agencies that administer Federal financial assistance programs under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.) or other appropriate Federal financial assistance programs.

(2) *Coordination with volunteer service programs.*—In general, the State entity shall coordinate its functions (including recruitment, public awareness, and training activities) with such functions of any division of ACTION, or the Corporation, that carries out volunteer service programs in the State. Specifically, the State entity may enter into an agreement with a division of ACTION or the Corporation to carry out its functions jointly, to perform its functions itself, or to assign responsibility for its functions to ACTION or the Corporation.

(3) In carrying out the activities under paragraphs (l) (1) and (2) of this section, the parties involved must exchange information about the programs carried out in the State by the State entity, a division of ACTION or the Corporation, as well as information about opportunities to coordinate activities.

§ 2550.90 Are there any restrictions on the activities of the members of State Commissions or Alternative Administrative Entities?

To avoid a conflict of interest (or the appearance of a conflict of interest) regarding the provision of assistance or approved national service positions, members of a State Commission or AAE must adhere to the following provisions:

(a) *General restriction.* Members of State Commissions and AAEs are restricted in several ways from the grant approval and administration process for any grant application submitted by an organization for which they are currently, or were within one year of the submission of the application, officers, directors, trustees, full-time volunteers or employees. The restrictions for such individuals are as follows:

(1) They cannot assist the applying organization in preparing the grant application;

(2) They must recuse themselves from the discussions or decisions regarding the grant application and any other grant applications submitted to the Commission or AAE under the same program (e.g., subtitle B programs or subtitle C programs); and

(3) They cannot participate in the oversight, evaluation, continuation, suspension or termination of the grant award.

(b) *Exception to achieve a quorum.* If this general restriction creates a situation in which a Commission or AAE does not have enough eligible voting members to achieve a quorum, the Commission or AAE may involve some normally-excluded members subject to the following conditions:

(1) A Commission or AAE may randomly and in a non-discretionary manner select the number of refused members necessary to achieve a quorum;

(2) Notwithstanding paragraph (b)(1) of this section, no Commission or AAE member may, under any circumstances,

participate in any discussions or decisions regarding a grant application submitted by an organization with which he or she is or was affiliated according to the definitions in paragraph (a) of this section; and

(3) If recused members are included so as to achieve quorum, the State Commission or AAE must document the event and report to the Corporation within 30 days of the vote.

(c) *Rule of construction.* Paragraph (a) of this section shall not be construed to limit the authority of any voting member of the State Commission or AAE to participate in—

(1) Discussion of, and hearings and forums on, the general duties, policies and operations of the Commission or AAE, or general program administration; or

(2) Similar general matters relating to the Commission or AAE.

§ 2550.100 Do State entities or their members incur any risk of liability?

(a) *State liability.* Except as provided in paragraph (b) of this section, a State must agree to assume liability with respect to any claim arising out of or resulting from any act or omission by a member of the State Commission or AAE, within the scope of the service of that member.

(b) *Individual liability.* A member of the State Commission or AAE shall have no personal liability with respect to any claim arising out of or resulting from any act or omission by that member, within the scope of the service of that member. This does not, however, limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act or omission outside the scope of the service of that member. Similarly, this part does not limit or alter in any way any other immunities that are available under applicable law for State officials and employees not described in this

section; nor does this part affect any other right or remedy against the State or any person other than a member of a State Commission or AAE.

§ 2550.110 What money will be available from the Corporation to assist in establishing and operating a State Commission, Alternative Administrative Entity, or Transitional Entity?

(a) *Range of grants.* The Corporation may make administrative grants to States of between \$125,000 and \$750,000 (inclusive) for the purpose of establishing or operating a State Commission or AAE; these grants will be available to States which have Corporation-approved Transitional Entities only if those States commit to establishing a Corporation-approved State Commission or AAE prior to the expiration of the transitional period.

(b) *Limitation on Federal share.* Notwithstanding the amounts specified in this section, the amount of a grant that may be provided to a State under this subsection, together with other Federal funds available to establish or operate the State Commission or AAE, may not exceed 85 percent of the total cost to establish or operate the State Commission or AAE for the first year for which the State Commission or AAE receives an administrative grant under this section.¹ In subsequent years, the Corporation will establish larger matching requirements for States so that by the fifth and subsequent years of assistance, the Federal share does not exceed 50 percent.

Terry Russell,

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¹ See OMB Circulars A-102 and A-122. Copies of the circulars may be obtained from the Office of Administration, EOP Publications, 725 17th Street, NW., Room 2200, New EOB, Washington, DC 20503.