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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children (WIC); Drug and Other Harmful Substance Abuse Information and Referrals

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends regulations governing the Special Supplemental Food Program for Women, Infants and Children (WIC) to comply with the mandates of Section 3201 of the Anti-Drug Abuse Act of 1988, enacted November 18, 1988. The rule delineates WIC's role in screening participants and making referrals to drug and other harmful substance abuse counseling, treatment and education programs. The rule also integrates responsibilities for the provision of information about the dangers of abusing drugs and other harmful substances into the nutrition education provided through the WIC Program. The intended effect of this rule is to increase WIC participants' access to information about the dangers of the use of drugs and other harmful substances during pregnancy and while breastfeeding and to facilitate referrals of participants for counseling and treatment, as appropriate.

In addition, this rule amends regulations governing the WIC Program to comply with the mandates of the Child Nutrition and WIC Reauthorization Act of 1989, enacted November 10, 1989, which requires WIC State agencies to include in their State plan of program operation and administration a plan to coordinate operations under the program with alcohol and drug abuse treatment services. This reauthorization also

requires State agencies to ensure that each local agency maintains and makes available for distribution to WIC adult participants and applicants, as appropriate, a list of local resources for substance abuse counseling and treatment.

EFFECTIVE DATE: March 29, 1993.

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SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This final rule has been reviewed under Executive Order 12291, and has been classified to be not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual impact on the economy of \$100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Furthermore, this rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Pursuant to that review, it was determined that this rule does not have a significant economic impact on a substantial number of small entities. State and local agencies will be most affected because of the additional program administration and education involved, however, the effect on these small entities will be minimal. Participants and applicants will be affected because of the distribution of the list of local resources for drug and other harmful substance abuse counseling and treatment. Pregnant, postpartum, and breastfeeding women and parents or caretakers of infants and

children will be affected because of the provision of information about the dangers of the use of drugs and other harmful substances and the potential for referrals to counseling and treatment.

Paperwork Reduction Act

The reporting requirements established in the proposed rulemaking of March 30, 1990, in §§ 246.4, 246.7, and 246.11 were reviewed by the Office of Management and Budget under Control Number 0584-0386 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). No changes in the reporting/recordkeeping burden have been incorporated into the final rule.

Executive Order 12372

The WIC Program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the WIC Program, the administrative procedures are as follows:

- (1) Local agencies and vendors—State agency hearing procedures issued pursuant to 7 CFR 246.18;
- (2) Applicants and participants—State agency hearing procedures issued pursuant to 7 CFR 246.9;
- (3) Sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 246.19—administrative appeal in accordance with 7 CFR 246.22; and
- (4) Procurement by State or local agencies—administrative appeal to the

extent available under 7 CFR 246.24(b) and 3016.36.

Background

This final rule has three purposes: the codification of the self-implementing provisions of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690); the augmentation, pursuant to the intent of the Child Nutrition Act of 1966, as amended, of the categories of substances which should be included in the WIC Program's drug abuse information and referral activities by adding a definition of the term "other harmful substances"; and the codification of the requirements of the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101-147) pertaining to coordination of Program operations with alcohol and drug abuse counseling and treatment services and provision of abuse education.

Section 3201 of Public Law 100-690, the Anti-Drug Abuse Act of 1988, amended section 17 of the Child Nutrition Act of 1966 (CNA) to require enhanced emphasis on the provision of drug abuse information and referrals to WIC participants. The WIC Program provides supplemental foods, nutrition education, and health and social service referrals to program participants. Since enactment of Public Law 95-627 in 1978, program regulations have required that health and social service referrals include the referral of participants, when appropriate, to alcohol and drug abuse counseling. Section 3201 of Public Law 100-690 further emphasizes WIC's role in this area by mandating that the program provide drug abuse education. The legislation specifically defines drug abuse education for the WIC Program to be the provision of information concerning the dangers of drug abuse and referrals for drug abuse counseling and treatment.

For the purpose of this regulation, the Department is using the two terms "drug" and "other harmful substances." Use of the term "other harmful substances" allows this final regulation to augment the term "drug" as defined in Public Law 100-690. The term "other harmful substances" includes substances such as tobacco, prescription drugs and over-the-counter medications that can be harmful to the health of the WIC population, especially the pregnant woman and her fetus. The use of both of these terms permits the Department's definitions to encompass the definition of the term "alcohol and other drugs" which is used by the Center for Substance Abuse Prevention (CSAP), U.S. Department of Health and Human Services, when communicating drug abuse prevention messages. In order to

promote coordination at the Federal level and adhere to the CSAP guidelines, the term "alcohol and other drugs" is used interchangeably with the two terms "drug" and "other harmful substances" in many of the drug abuse prevention education materials developed by USDA. See the more extensive explanation and definitions which follow in this preamble in section 2. Additions to definitions (§ 246.2).

The document entitled *Healthy People 2000: National Health Promotion and Disease Prevention Objectives*, prepared by the Public Health Service, U.S. Department of Health and Human Services, contains a national strategy for improving the health of the nation. The objectives are organized under four broad categories—health promotion, health protection, preventive services, and surveillance and data systems. With its statutory mandate to serve as an adjunct to good health care, the WIC Program can play an important role in helping to achieve some of these long-term health objectives. Several of the health objectives relate directly to increasing abstinence from tobacco, alcohol and other drug use by pregnant women. Although there is no statutory requirement that the Department coordinate WIC Program goals with DHHS' health objectives, the Department does have a mandate to coordinate WIC Program operations with other health and social services programs, including many administered by DHHS. Therefore, in an effort to further improve the health status of WIC participants, the Department takes these objectives into consideration whenever feasible. The Department believes that the WIC Program can help attain the following *Healthy People 2000* goals: promote smoking cessation during pregnancy; increase the proportion of service providers who screen for alcohol and other drug use problems and provide counseling and referral as needed; reduce the rate of fetal alcohol syndrome; and, increase abstinence from use of tobacco, alcohol, cocaine, and marijuana by pregnant women.

Low birth weight and prematurity, both of which are associated with an increased risk of infant mortality, are the most serious known consequences of maternal drug use. By providing drug abuse prevention information and referrals, the WIC Program can also contribute to the attainment of two additional *Healthy People 2000* health objectives: Reduce the infant mortality rate; and reduce low birth weight and very low birth weight.

By improving the health of infants and children through the provision of nutritious, supplemental foods, health

care referrals, nutrition education and information about the dangers to the fetus of drug and other harmful substance use, the WIC Program can assist in the attainment of the health component of the first of the President's six National Goals for Education: "By the year 2000, all children in America will start school ready to learn." One of the objectives of this goal is, "children will receive the nutrition and health care needed to arrive at school with healthy minds and bodies, and the number of low birth weight babies will be significantly reduced through enhanced pre-natal systems."

A child must be physically and emotionally healthy in order to learn. Ensuring that a child arrives at school healthy and well nourished and ready to learn begins with the health of their parents and the care the child received prenatally. Early, high-quality prenatal care, including attention to maternal nutrition, illness, smoking and alcohol or other drug use, is critical to improving pregnancy outcomes, especially low birth weight. For example, women who are substance abusers are less likely to get prenatal care. In addition, parents or caretakers of infants and children who use drugs or other harmful substances may not be able to provide their infants and young children with the nurturing necessary to enable them to be physically and emotionally healthy in order to learn and be successful in school.

The Department of Health and Human Services' *Healthy Start* initiative has the goal of reducing infant mortality by 50 percent in 5 years in 15 U.S. communities with extremely high infant mortality rates. Through grants administered by the Health Resources and Services Administration, medical and social services providers in these 15 *Healthy Start* Communities will work collaboratively to develop new and innovative means to deliver services that meet the needs of pregnant women and infants. Each community that received a grant is tailoring its program to its special needs and population groups by developing creative plans to deal with teenage pregnancy, inadequate prenatal care, poor nutrition, smoking, alcohol and other drug abuse. Clearly, the WIC Program, by providing referrals to health care providers and drug and other harmful substance abuse counseling, treatment and education programs, will be an important resource in assisting the selected communities in this effort.

The legislative emphasis on the problem of drug use during pregnancy results from continuing concerns about the infant mortality rate in the United

States and the number of infants born with health problems associated with the drug use of their mothers. The WIC Program was included under Public Law 100-690 because of its experience in providing direct services to low-income, high-risk pregnant, postpartum and breastfeeding women as well as the program's ability to link this high-risk population with needed social services through referrals and service coordination. Congress realistically limited WIC Program involvement to the provision of drug abuse information and referrals. This limitation is based on the recognition that the complex nature of drug use and the physiology of addiction demand specialized professional assistance. The WIC Program can encourage and assist women and teenage girls who have or are at risk for drug and other harmful substance use problems to seek necessary comprehensive prevention, education, counseling and treatment services offered by community drug treatment specialists. By warning women about the dangers of abusing drugs and other harmful substances and making appropriate referrals, WIC contributes to the broader goal of decreasing the incidence of drug abuse among pregnant women, perinatal addiction, and infant mortality and morbidity.

The legislation and this rule recognize that WIC's overall effectiveness in this effort is dependent upon the availability of professional drug abuse prevention, education, counseling and treatment resources and commitments of the health community at large. Further, the rule recognizes that WIC's effectiveness in providing drug and other harmful substance abuse information and referrals will be limited if drug-abusing individuals avoid or discontinue participation in the WIC Program. Therefore, this rule incorporates the legislative mandates in a manner that depends appropriately on external expertise and will not act as a barrier to program participation.

Some WIC Program activity in the area of drug and other harmful substance abuse prevention already exists. In addition to current regulations that require referrals to be made to alcohol and drug abuse counseling as part of the WIC Program's role as an adjunct to health care, it is routine for many WIC local agencies to warn pregnant and breastfeeding women about the dangers of using alcohol, tobacco and other drugs and harmful substances. Most WIC State agencies consider alcohol, tobacco and drug abuse as nutritionally-related risk criteria for certification purposes. Also,

many WIC State and local agencies are involved in special initiatives that address the problem of drug and other harmful substance use during pregnancy and while breastfeeding.

The amendments to Program regulations made necessary by Public Law 100-690 reflect Congressional intent that there be very little change from current operations. A review of the legislative history indicates the recognition that most of the WIC responsibilities mandated by Public Law 100-690 are already common practice. In debating the Anti-Drug Abuse Act of 1988, Senator Leahy stated that the drug abuse education responsibilities required by Public Law 100-690, especially the referrals, are "likely already being done in most instances" (134 Cong. Rec. 17,316 (daily ed. Oct. 21, 1988, statement of Sen. Leahy)). The Senator further stated that Congress does not intend the drug abuse education efforts to "reduce or impair each State agency's operation of WIC nutrition education efforts, WIC nutrition risk assessments and the other vital aspects of the WIC Program." Rather, Congress emphasizes WIC's responsibility to refer participants with possible drug or alcohol problems to appropriate counseling or treatment where it is locally available.

The provisions of Public Law 100-690 make it necessary to include explicit reference in program regulations to WIC's responsibility to provide drug and other harmful substance abuse information and to reemphasize WIC's role in making referrals to drug and other harmful substance abuse counseling, treatment and education programs. Program operation will be primarily affected in agencies in which such efforts are not already underway.

It is important to note that State efforts will be facilitated by legislatively mandated Federal responsibilities for identifying effective methods for providing drug abuse information and referrals and developing and distributing materials. The Department, as required by Public Law 100-690, conducted a study of appropriate methods of drug abuse education in the WIC program. The study report, entitled "A Study of Appropriate Methods of Drug Abuse Education for Use in the WIC Program," was published in January 1990, and distributed to all WIC State and local agencies. The report presents practical information about drug abuse prevention which can be applied to decisions about drug abuse education in WIC. The report also emphasizes that drug abuse assessment, counseling and treatment services must be provided by drug abuse prevention

professionals. It stresses that WIC's appropriate complementary role is to provide information about the dangers of drug abuse and to make referrals to appropriate drug abuse services.

The following materials have been or are currently being developed by the Department to assist WIC local agency professionals with their drug abuse prevention information and referral activities and to warn WIC participants about the dangers of alcohol and other drug use during pregnancy and while breastfeeding:

- A brochure in English entitled "Pregnant? Drugs and Alcohol Can Hurt Your Unborn Baby" and a companion poster in English and Spanish were developed to warn WIC participants about the dangers of alcohol and other drug use during pregnancy and breastfeeding. These materials were distributed to WIC State agencies in January 1991. The brochure should be available in Spanish in early Fiscal Year 1993.

- A videotape entitled "Lifelines: To Healthy Babies" has been developed to warn participants about the dangers of alcohol and other drug use during pregnancy and breastfeeding. A companion leader's guide for WIC professionals to use with participants in discussing the dangers of alcohol and other drug use during pregnancy is currently under development. The videotape and companion guide will be available for distribution in early Fiscal Year 1993.

- A resource manual entitled "Providing Drug Abuse Information and Referrals in the WIC Program: A Local Agency Resource Manual" has been developed to assist WIC local agency staff. It contains information about the following: The various types of drugs; the dangers of drug use during pregnancy and breastfeeding; methods for screening for drug use and presenting anti-drug use messages; how to identify local drug abuse resources and establish referral networks; and selected professional and participant materials. The manual will be available for distribution in early Fiscal Year 1993.

- A videotape entitled "The WIC Connection: Substance Use Information and Referral" has been developed to assist WIC local agency staff in meeting the drug abuse information and referral requirements. A companion piece which will outline effective interviewing, screening and referral techniques is currently under development. These materials will be available for distribution in early Fiscal Year 1993.

Section 123(a)(4) of Public Law 101-147, which amended section 27(f)(1)(C)(iii) of the CNA, requires WIC State agencies to include in their State plan of operation and administration a plan to coordinate operations under the program with alcohol and drug abuse treatment services. State agency plans to coordinate operations with alcohol and drug abuse counseling services were already required. Section 123(a)(3)(D) of Public Law 101-147, which amended section 17(e)(4) of the CNA, requires State agencies to ensure that each local agency maintains and makes available for distribution a list of local resources for substance abuse counseling and treatment.

The proposed rule, published on March 30, 1990 (55 FR 11946), provided for a 60-day comment period, which ended on May 29, 1990. During that period, 15 comments were received from a variety of sources, including State and local health professionals, other State agency staff and a non-profit public interest group. The Department would like to thank all of the commenters who responded to the proposed rule. Their comments were helpful in formulating this final rule.

All provisions of the proposed rule are being finalized as proposed except for the paragraph (n) in § 246.7 and new paragraph (a)(3) in § 246.11. The proposed language in § 246.7(n) was revised to clarify that if a State agency determines that screening is necessary to fulfill referral requirements for drug and other harmful substance abuse, the State agency must require local agencies to undertake screening as part of their referral process. The proposed paragraph in § 246.11(a)(3) would have required distribution of anti-drug and other harmful substance abuse materials to all pregnant, postpartum and breastfeeding women and to parents or caretakers of infants and children applying for and participating in the Program. In response to comments that such a wide distribution of materials would be a waste of resources, the proposed paragraph is revised in this final rule to require the provision of anti-drug and other harmful substance abuse information, which does not necessarily have to be in the form of written materials, to all categories of adult participants and to parents or caretakers of child participants. Anti-drug and other harmful substance abuse information may also be provided to WIC Program applicants and pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children participating in local agency services other than the WIC

Program, as deemed appropriate by State and local WIC agencies.

The remainder of this preamble discusses each provision, the major concerns expressed by commenters regarding each provision, and the rationale behind the decisions embodied in this final rule.

1. Drug and Other Harmful Substance Abuse Prevention Specified in General Purpose and Scope (Section 246.1)

Public Law 100-690 amended section 17(a) of the CNA by adding a specific reference to drug abuse as one of the health problems to be addressed by the WIC Program. The legislation amends the last sentence in section 17(a) to read: "The program shall serve as an adjunct to good health care, during critical times of growth and development, to prevent the occurrence of health problems, including drug abuse, and improve the health status of these persons" (Pub. L. 100-690, sec. 3201). To parallel this amendment to the CNA and the associated concern for other harmful substances, the proposed rule added specific reference to drug and other harmful substance abuse to § 246.1.

The Department received five comments concerning the reference to drug and other harmful substance abuse prevention in the general purpose and scope of the WIC Program. Three commenters were supportive. Two commenters questioned whether this requirement is within the mission of the WIC Program, including one who suggested that it is not appropriate to identify a specific health problem in this section without addressing other critical health problems. This change, however, reflects Congress' decision to make drug abuse an area of focus for the WIC Program. Although the explicit reference to the prevention of the occurrence of health problems, including drug and other harmful substance abuse, in the Program's legislative purpose statement is new, as indicated previously, State agency activity and interest in the potential problems of drug and other harmful substance abuse among WIC's target population is not.

Because drug and other harmful substance use is associated with low birthweight, prematurity and other major causes of infant death and disability, the Department believes it is appropriate and within the mission of the WIC Program to address this problem. Further, it was Congress' clear intent in enacting Public Law 101-147 and the WIC-related provisions of Public Law 100-690 that WIC play a role in drug and other harmful substance abuse referrals. In addition,

coordination of WIC Program services with programs serving the same population, within the legislated parameters of the WIC Program, may help further the goals set forth by the President as described earlier in this preamble. Therefore with the exception of one change discussed in §§ 246.7 and 246.11 this rule will be adopted as proposed.

2. Additions to Definitions (Section 246.2)

Section 3201 of Public Law 100-690 added the definition of "drug abuse education" to section 17(b) of the CNA. Section 3201 of the legislation stipulates that, for WIC, "Drug abuse education" means—(A) the provision of information concerning the dangers of drug abuse; (B) the referral of participants who are suspected drug abusers to drug abuse clinics, treatment programs, counselors, or other drug abuse professionals; and (C) the provision of materials developed by the Secretary * * *." This definition outlines the role Congress envisioned as feasible for the WIC Program, to inform but not necessarily educate WIC participants about the dangers of drug abuse and to make appropriate referrals. In order to make clear the role envisioned for WIC by Congress, the term "drug abuse education" is not used in program regulations. Rather, the regulatory amendments reference the relevant components of drug abuse education for WIC as defined by the legislation: drug abuse information and referrals.

In connection with this, definitions for the terms "drug" and "other harmful substances" were proposed to be added to program regulations. The term "drug" is defined in section 3601 of Public Law 100-690 as "(A) a beverage containing alcohol, (B) a controlled substance, or (C) a controlled substance analogue." However, the scientific literature also attributes serious health problems of pregnant women and their fetuses to the use of substance not addressed by this definition. Since the CNA of 1966, as amended, states that the purpose of the WIC Program is to prevent the occurrence of health problems, including drug abuse, the restricted definition of drugs stipulated in Public Law 100-690 does not address the full range of substances that could be harmful to maternal and fetal health. Therefore, the Department also proposed to add a definition of the term "other harmful substances," which includes "such substances as tobacco, prescription drugs and over-the-counter medications, that can be harmful to the health of the WIC population, especially the pregnant woman and her fetus."

Three commenters addressed the proposed additions to the definitions. One commenter agreed with the definitions. One commenter suggested that the definition "other harmful substances" is too broad and one commenter suggested that the Department should change the definition of "other harmful substances" to include: "(a) drugs, as defined above; and (b) substances such as tobacco, prescription drugs * * *".

The Department agrees that defining both "drugs" and "other harmful substances" is cumbersome. However, to be legally sufficient, it is necessary to use the definition of "drug" as defined in Public Law 100-690. Furthermore, it is also important to augment this definition and to include a definition of other substances that are not addressed in Public Law 100-690, but which are nonetheless harmful to the WIC population. Therefore, the definitions of "drugs" and "other harmful substances" are adopted as proposed in this final rule.

As stated previously, CSAP, U.S. Department of Health and Human Services, encourages use of the term "alcohol and other drugs" when communicating drug abuse prevention messages. In addition to illegal drugs, this term includes tobacco, prescription drugs and over-the-counter medications. The fact that alcohol is a drug is emphasized. Therefore, in order to promote coordination at the Federal level and to be consistent with the CSAP guidelines, the Department has used the term "alcohol and other drugs" in various materials it has developed for both WIC participants and professionals. This term encompasses both the WIC regulatory definitions for "drug" and "other harmful substances" in § 246.2 and is used interchangeably with these two terms defined in this rulemaking.

3. State Plan (Section 246.4)

One addition was proposed to be made to § 246.4(a)(8), which outlines responsibilities for referrals to health and social services, to comply with the referral requirements stipulated in Public Law 100-690.

WIC's responsibility to refer participants to alcohol and drug abuse treatment and education programs was proposed to be added to § 246.4(a)(8). The proposed rule amended § 246.4(a)(8) to reference "drug and other harmful substance abuse counseling, treatment and education programs" to be consistent with the newly defined terms in the proposal and the Congressional intent that the role of the WIC Program is to refer possible

drug-abusing participants not only to necessary professional alcohol and drug abuse counseling, but also to treatment and education services, when such services are available (134 Cong. Rec. 17,316 (daily ed. Oct. 21, 1988, statement of Sen. Leahy)).

Six comments were received on this proposal. The majority of commenters supported the provision as proposed. One commenter suggested that WIC's role should be to coordinate and refer participants to counseling, treatment and education programs only, and this role is adequately described in § 246.4(a)(8). The Department believes, however, that these actions alone would not fulfill the legislative mandate, which specifically defines drug abuse education as including the provision of information concerning the dangers of drug abuse. Therefore, § 246.4(a)(8) is adopted in this final rule as originally proposed.

One commenter requested clarification about the categories of participants which should be referred to such services. Since section 3201 of Public Law 100-690 specifically includes referrals of pregnant, postpartum and breastfeeding participants in its definition of "drug abuse education," clearly it is the intent of the Congress that referrals should be provided to all categories of adult participants. However, local agencies may also provide referrals to parents or caretakers of infant and child participants, when appropriate. Pursuant to Public Law 100-690, referrals may also be provided to pregnant, postpartum and breastfeeding women and to caretakers of infants and children participating in local agency services other than the program, as deemed appropriate by local agencies. Providing referrals to all categories of participants and to caretakers reflects concern about the effects of drug and other harmful substance abuse on maternal health, the health of the fetus and newborn, and the impact on the nurturing and care of young children when their mothers or caretakers are using drugs and other harmful substances.

Concern was expressed by one commenter that referral of participants to drug abuse counseling can be time consuming. To allow flexibility for the development of appropriate referral protocols at the State level based on local program and legal requirements, the Department is not including specific requirements for referral protocols in these regulatory amendments. A referral can be accomplished simply by providing all adult participants and caretakers of participating infants and

children with the list of local substance abuse counseling and treatment resources which Public Law 101-147 and this regulation require WIC local agencies to maintain and make available for distribution. Receiving such a resource list may prompt some participants and caretakers to voluntarily seek out counseling or group support services. Some State agencies may, however, opt to develop a more formal referral system wherein a staff member initiates contact with a substance abuse counseling or treatment agency on behalf of an interested participant. Information about developing appropriate referral protocols is included in the resource manual entitled "Providing Drug Abuse Information and Referrals in the WIC Program: A Local Agency Resource Manual" that the Department has developed for WIC professionals.

Section 246.4(a)(9) of the proposed rule would require that a description of the methods that will be used to provide drug and other harmful substance abuse information be included in the State plan of operation and administration's description of nutrition education goals and action plans. This revision provides a mechanism for State planning and allows Departmental review of State compliance with the mandate.

Of the four comments received on this Section of the proposal, two commenters were opposed, stating that including a description of methods that will be used to provide drug and other harmful substance abuse information in the description of nutrition education goals and action plans implies that this is a part of nutrition education. One commenter noted that past experience identifying and referring alcohol abusers has not been entirely successful, and urged the provision of effective staff training.

The rationale for including a description of the methods that will be used to provide drug and other harmful substance abuse information in the State plan description of nutrition education goals and action plans is that abuse of drugs and other harmful substances is incompatible with good nutrition. Tobacco, alcohol and other drugs tend to suppress appetite and can, therefore, interfere with healthy eating habits and normal weight gain during pregnancy. Cigarette smoking may affect maternal nutrition (and consequently, fetal nutrition) in the following ways: the increased metabolic rate in smokers can lead to the lower availability of calories; and exposure to tobacco may increase iron requirements and decrease the availability of certain nutrients such as vitamin B12, amino acids, vitamin C,

folate, and zinc. Alcohol consumption may be related to decreased dietary intake, impaired metabolism and absorption of nutrients, and altered nutrient activation and utilization. Interactions between alcohol and deficiencies of such nutrients as protein and zinc may also play a role in the etiology of alcohol-related effects in the fetus. Therefore, the Department continues to believe that inclusion of drug and other harmful substance use information in the provision of nutrition education is appropriate, and § 246.4(a)(9) is adopted by this final rule as originally proposed.

Additionally, § 246.4(a)(11)(ii) was proposed to be revised to require that methods for providing drug and other harmful substance abuse information to participants be described in the local agency procedure manual. This change is necessary to reinforce the responsibility of State agencies for providing local agencies with the guidance or materials to facilitate incorporation of drug and other harmful substance abuse information in nutrition education.

Also, to implement the goals of coordinating WIC services with those of other counseling and treatment services, as set forth in section 123(a)(3)(D) of Public Law 101-147, which amended Section 17(e) of the Child Nutrition Act of 1966, 42 U.S.C. 1786(e), a new paragraph 246.4(a)(11)(v) was proposed to be added to require that the local agency procedure manual include instructions on coordinating operations under the program with drug and other harmful substance abuse counseling and treatment services.

One commenter addressed both of the proposed local agency procedure manual requirements. The commenter was opposed to the requirements and objected to incorporating drug and other harmful substance abuse information in nutrition education. As described previously, however, the rationale for including drug and other harmful and substance abuse information with nutrition education is that abuse of drugs and other harmful substances is incompatible with good nutrition because it can affect dietary intake, nutritional status, and metabolism.

Another commenter addressed only the proposed requirement that methods for providing drug and other harmful substance abuse information be described in the local agency procedure manual. The commenter was opposed and stated that the requirement is unnecessary because the appropriateness of particular methods and services varies among communities. The Department acknowledges that the

extent and pervasiveness of drug and other harmful substance abuse problems, and, therefore, the appropriateness of particular methods and services, do vary greatly from community to community. The Department believes, however, that the local agency procedure manual requirement is the most effective way to reinforce the responsibility of the State agencies for providing local agencies with the guidance or materials to facilitate incorporation of drug and other harmful substance abuse information in nutrition education. Therefore, the referral requirement and the inclusion in the State plan of the procedure to be used in making such referrals, are adopted in this final rule as proposed.

4. Provision of List of Local Resources for Substance Abuse Counseling and Treatment; and Screening for Drug and Other Harmful Substance Abuse (Section 246.7)

Section 123(a)(3)(D) of Public Law 101-147 revised section 17(e) of the CNA to require the State agency to ensure that each local agency maintains and makes available for distribution to WIC participants and applicants, as appropriate, a list of local resources for substance abuse counseling and treatment. Section 246.7(a) was proposed to be revised to incorporate this requirement. It should be pointed out, however, that it was neither the intent of Congress nor of the Department that there be documentation in case files that applicants or WIC participants were provided with this list.

The Department received eight comments addressing the requirement to maintain and make available a list of local resources for substance abuse counseling and treatment. All of these commenters supported the general concept, but expressed concern about the unavailability of services and barriers to treatment, especially for low-income pregnant women. As previously stated in the background section, the legislation and this rule recognize that WIC's overall effectiveness in this effort is dependent upon the availability of professional substance abuse resources and commitments of the health community at large. The Department also recognizes that reaching women who are dependent on drugs or other harmful substances with health information and encouraging them to follow through on referrals can be difficult, and not always successful. Simply handing out a list of referral resources is unlikely to help these women. However, the Department believes that receiving such a resource

list may prompt some participants and applicants to voluntarily seek out counseling or group support services. These individuals might include nondependent drug and other harmful substance users and cigarette smokers who are sufficiently motivated to assume responsibility for their own health.

The Department is aware that resources in many communities are limited and that often programs are filled to capacity. Some WIC agencies may find that participants referred for assessment and then diagnosed as dependent on drugs or other harmful substances cannot be accommodated. Even those areas with limited or no substance abuse treatment resources, however, are likely to have hotlines or self-help groups which may be able to provide assistance. The list of local resources maintained by WIC local agencies should include a listing of hotlines and self-help groups for alcohol and other drug users (e.g., Alcoholics Anonymous, Narcotics Anonymous, Cocaine Anonymous, Al-Anon Family Groups, Adult Children of Alcoholics, Women for Sobriety) as well as local smoking cessation programs sponsored by organizations such as the American Lung Association and American Cancer Society. Staff should be realistic with participants about the availability of resources. Therefore, in light of the support generally expressed by commenters, § 246.7(a) is adopted unchanged by this final rule.

As noted in the preamble to the proposed rule, Public Law 100-690 does not include specific requirements for assessing drug abuse by WIC participants. Further, the Department believes drug use assessments could create barriers to program participation by discouraging drug-using women from applying for or participating in the program. Most States already include some basic screening for alcohol, tobacco and other drug use as part of WIC's medical or nutritional assessment since abuse by pregnant women is identified as a nutritional risk criterion in current WIC regulations at § 246.7(d)(2)(iv). Individual States may deem additional screening necessary to effectively fulfill WIC's drug and other harmful substance abuse information and referral responsibilities.

In the WIC Program, screening for drug and other harmful substance use is not intended to diagnose, but to detect warning signs of drug and other harmful substance use and to uncover potential problems. The results of such screening are not intended to be definitive and, if appropriate, should be followed by a referral for assessment. The assessment

process is an in-depth evaluation of the extent of an individual's problems with drugs and other harmful substances and should be conducted by a professional trained in drug and other harmful substance abuse assessment, counseling and treatment.

In the proposed rule a paragraph was added to § 246.7(n) which would permit State agencies to require screening for the use of drugs and other harmful substances. This paragraph stipulated that, where such screening is required, it must be limited to the minimum extent necessary to facilitate drug and other harmful substance abuse information and referral responsibilities. Any screening WIC State agencies determine to be necessary to fulfill the requirements of this regulation would be integrated into the medical or nutritional assessment performed during a participant's certification process. In the proposed rule, it was the intention of the Department that such screening should be reasonably related to the mandated referral requirement. Screening was not required to meet the minimum referral obligations, but if screening was performed, it was proposed that it must be reasonably related to the mandated referral requirement in order to be considered an allowable WIC cost.

Six comments addressing screening were received. Four commenters opposed regulations that would permit screening, stating that it:

- (1) Would be a drain on nutrition assessment and education resources;
- (2) Would require a level of skill not obtainable through in-service training alone; and
- (3) Could discourage drug-abusing women from participating in WIC.

One commenter suggested that a public health nurse has the medical training or is more adept in evaluating and screening for the effects of drugs and other harmful substances than a WIC nutritionist, and recommended that referral be made in conjunction with the public health nurse at the time of prenatal visits at the clinic, not during WIC certification. The commenter also questioned the validity of screening and referring for drugs and other harmful substances, since most nutritional risk criteria are based on self-declaration by the client or on diagnosis by the physician in conjunction with current treatment in a drug or other harmful substance abuse treatment program.

One commenter stated that screening for tobacco, alcohol and other drugs has been incorporated into the certification process for some time, and one commenter suggested that screening

would be more effective if there were mandatory drug testing.

Comments which opposed the proposed provision permitting screening were given serious consideration by the Department. Since referrals are required by Public Law 100-690 as a part of drug abuse education, however, some very basic screening may be necessary to effectively fulfill WIC's drug and other harmful substance abuse information and referral responsibilities. The Department continues to believe that screening WIC participants for drug and other harmful substance use is well within the Congressional mandate that WIC refer participants who are suspected drug abusers to drug abuse clinics, treatment programs, counselors, or other drug abuse professionals. As previously discussed, this final regulation allows State agencies flexibility in deciding the extent and type of screening activities, if any, which will be appropriate for that State's particular WIC population. If a State agency determines screening is necessary, asking a limited number of questions during certification in order to screen for drug and other harmful substance use would be an adequate and reasonable method for determining which WIC participants need referral for assessment. Many State agencies already include some basic screening as part of the medical or nutritional assessment.

In response to the concern expressed that screening would be a drain on nutrition assessment and education resources, the sponsoring legislators made it clear that the drug abuse information and referral efforts are not meant to reduce or interfere with WIC's primary and ongoing responsibilities. Although some basic screening may be necessary to assist in fulfilling the referral mandate, WIC staff are not expected to diagnose drug and other harmful substance abuse problems or to provide in-depth counseling. Through established linkages and coordination with local resources, suspected drug and other harmful substance users are to be referred to existing assessment agencies for professional evaluation, as appropriate. Special in-service staff training should be sufficient to provide the skills necessary for conducting minimal basic screening activities.

In response to the commenter suggesting mandatory drug testing, the Department believes that such testing would serve as a barrier to program participation. In addition, the costs related to mandatory testing could lead to a diversion of resources which would run counter to Congressional intent that WIC's drug abuse information and

referral activities not detract from other vital program services. And finally, such a requirement would impose a condition on eligibility not authorized by current legislation.

Concern was expressed by several commenters that the proposed regulation made no mention of the need for participant consent when screening for the use of drugs and other harmful substances to the extent needed to fulfill the referral mandate. Pub. L. 100-690 does not address the issue of confidentiality pertaining to WIC's drug and other harmful substance abuse referral activities. However, in response to this concern, the Department would like to clarify that current WIC regulations at 7 CFR 246.26(d) and instructions pertaining to confidentiality of information (FNS Instruction 800-1 "WIC Program—General Administration: Confidentiality") apply in the unusual situations of providing information on drug and other harmful substance use in general nutrition education sessions, handing out brochures, providing a list of local resources for counseling and treatment or performing minimal basic screening for purposes of informal or formal referral for further assessment.

If an agency carries out activities beyond the minimum mandates of Public Law 100-690 and has drug and alcohol abuse specialists, whose primary function is to conduct screening and referral activities, or has a separate unit whose primary function is drug and alcohol abuse diagnosis, treatment, or referral for treatment, the information obtained on WIC participants may also be subject to the Department of Health and Human Services' (DHHS) "Confidentiality of Alcohol and Drug Abuse Patient Records" regulations (42 CFR part 2). WIC agencies performing activities which cause DHHS confidentiality regulations to apply must adhere to these regulations or potentially face criminal penalty. DHHS confidentiality regulations specifically mandate, for example, the content of written release forms, the notice of DHHS's Federal confidentiality requirements, and security of the records which contain alcohol and other drug abuse information. It is not anticipated, however, that DHHS regulations will apply to the basic minimal screening activities that will characterize the majority of WIC local agency efforts in support of the legislative mandate to provide drug abuse information and referrals. It is not the intent of the Department to require State agencies to go beyond the mandates of Public Law 100-690 and hire drug and alcohol

abuse specialists or otherwise conduct drug and other harmful substance abuse information and referral activities in such a way as to be subject to DHHS' confidentiality regulations.

In addition to Federal regulations, once WIC agencies screen participants for drug and other harmful substance use, they may, depending on the answers given, possess information deemed confidential by the State or by the code of ethics governing the professional conduct of the screener.

Participant consent issues are discussed in detail in the resource manual entitled "Providing Drug Abuse Information and Referrals in the WIC Program: A Local Agency Resource Manual" that the Department has developed for WIC professionals. It must be emphasized that before State and local WIC agencies develop screening procedures, all relevant legal issues need to be resolved. Current State laws and reporting requirements about prenatal drug use must be considered. Applicable statutes for the protection of client confidentiality and specific State regulations governing consent by emancipated minors must also be considered. Laws governing these issues vary from State to State. WIC State agencies should consult with State legal counsel prior to developing screening procedures.

Finally, a commenter suggested that since the intent of the drug and other harmful substance abuse information and referral policy seems to be for the WIC Program to initiate outreach for drug and other harmful substance abuse programs, it may be more cost-effective for those facilities working with drug and other harmful substance abuse rehabilitation to have copies of WIC outreach brochures for referral to WIC. It should be emphasized that the primary intent of providing drug and other harmful substance abuse information and referrals is not for the WIC Program to initiate outreach for drug and other harmful substance abuse programs, per se. The intent of WIC's drug and other harmful substance abuse information and referral responsibilities is to increase participants' access to information about the dangers of the use of drugs and other harmful substances during pregnancy and while breastfeeding and to facilitate referrals of participants for counseling and treatment and thereby contribute to the broader goal of decreasing perinatal addiction, infant mortality and morbidity, and the incidence of drug and other harmful substance abuse among pregnant women.

For the reasons discussed above, the Department has decided to finalize

§ 246.7 (a) and (n) essentially as proposed. The only change has been to reorganize § 246.7(n) to make clear that a State agency shall mandate screening when the State agency determines that screening is necessary to fulfill the referral and other harmful substance abuse information requirements.

5. Provision of Information to Participants About the Dangers of Drug and Other Harmful Substance Use (Section 246.11)

Section 3201(3) of Public law 100-690 added drug abuse education to services required to be provided by the WIC Program. Section 17(e)(1) of the CNA, as amended, states in part that the State agency shall ensure that nutrition education and drug abuse education is provided to all pregnant, postpartum, and breastfeeding participants in the program; and that the State agency may also provide nutrition education and drug abuse education to pregnant, postpartum and breastfeeding women who do not participate in the program.

In response, the Department proposed to add a paragraph to § 246.11(a) of the regulations which would outline requirements regarding the provision of drug and other harmful substance abuse information to WIC Program participants and parents or caretakers of infant and child participants. Section 246.11(a)(3) was proposed to clarify the extent and scope of WIC's involvement in drug and other harmful substance abuse information efforts.

This proposed paragraph would require that information about the dangers of using drugs and other harmful substances be integrated into the nutrition education provided by the WIC Program. Consistent with Congressional intent, the goal of WIC's information provision effort about the use of drugs and other harmful substances would be the heightened awareness among WIC participants about the dangers of such use, especially during pregnancy and while breastfeeding.

State agencies would have the discretion to determine who at the local agency level can most reasonably provide drug and other harmful substance abuse information. The delivery of such information would not necessarily have to be the responsibility of WIC nutritionists.

It would continue to be the responsibility of the State and local agencies to determine the appropriate amount of emphasis to be placed on drug and other harmful substance abuse information within nutrition education, based on the magnitude of the drug and other harmful substance abuse problem

among the State or local WIC population. Proposed § 246.11(a)(3) was not intended to diminish the traditional goals of the nutrition services component of the WIC Program; rather, it was designed to permit attention to the problem of abusing drugs and other harmful substances in the larger context of the WIC Program. The proposal did not specify a minimum amount of time to be spent on providing drug and other harmful substance abuse information.

The Department received twelve comments concerning the integration of drug and other harmful substance abuse information into the nutrition education provided through the WIC Program. Five commenters were supportive of the requirement and provided suggestions for the materials to be distributed, stating that they should be appropriate for a semi-literate and multicultural population. Five commenters also discussed the inclusion of drug and other harmful substance abuse prevention information as part of the one-sixth nutrition education requirement.

Seven commenters opposed the requirement to integrate drug and other harmful substance abuse information into the nutrition education provided through WIC, stating that this would undermine the current level of nutrition education. Another concern was that it would imply that dissemination of written information through distribution of materials is nutrition education. Concern was also expressed that it is not an effective way to get drug-abusing women into treatment programs, and distributing materials that are not targeted to those who need them will be a waste of program resources. One of these commenters suggested incorporating information about the dangers of abusing drugs and other harmful substances into Subpart D, Participant Benefits, as a new and separate section.

Another commenter stated that making the provision of information on drugs and other harmful substance abuse an integral part of nutrition education infers that the provision of this information is the responsibility of the nutritionist, despite a later statement which gives States discretion in determining who at the local level will provide this information. The commenter indicated that this inference is contradictory to the intent of retaining WIC's traditional role as a provider of nutrition services. If the State elects to have a health professional other than the nutritionist (or the individual providing nutrition information) provide drug and other harmful substance information, such integration

could result in nutrition counseling which contains no nutrition information or nutrition counseling provided by individuals with no expertise on the subject matter.

As discussed earlier in relation to the revised State Plan requirements, the Department has carefully considered suggestions by those commenters who oppose the requirement to integrate drug and other harmful substance abuse information in the nutrition education provided through WIC. The strategy of integrating information about the danger of abusing drugs and other harmful substances in nutrition education is, however, intended to reflect current knowledge about the effectiveness of delivering anti-drug and other harmful substance abuse messages in the context of advice about positive lifestyle choices such as healthy eating. The Department believes that this approach most closely resembles current WIC local agency practices for warning pregnant women about the danger of abusing drugs and other harmful substances. The purpose of this requirement is to ensure that WIC provides drug and other harmful substance abuse information to program participants while retaining its traditional role as a provider of nutrition services. In addition, as previously noted, abuse of drugs and other harmful substances is incompatible with good nutrition.

In response to the concern that providing drug abuse information is not an effective way to get drug abusing women into treatment, the Department believes that for many participants, a clear presentation of basic information about the potential reproductive hazards of using drugs and other harmful substances may be enough to change attitudes and behaviors. Further, many pregnant women are already abstinent and only need reinforcement of this chosen lifestyle. Many participants do not use drugs and other harmful substances and will welcome information that can help them assure healthier pregnancies.

For other clients, a goal of total abstinence during pregnancy is not achievable because they used drugs or other harmful substances before confirming their pregnancy or before receiving and understanding prevention information. Some of these women, however, may be persuaded to stop using drugs or other harmful substances. They need to know that stopping use at any time, even late in pregnancy, can decrease risk of harm to the developing fetus and improve parenting practices. The Department acknowledges that reaching women who are dependent on drugs or other harmful substances with

health information and encouraging them to follow through on referrals can be difficult, and frequently unsuccessful.

In response to the commenters' concern that distribution of drug and other harmful substance abuse materials to all pregnant, postpartum and breastfeeding women and to parents or caretakers of infants and children applying for and participating in WIC would be a waste of resources, in § 246.11(a)(3) of this final rule the Department is deleting the requirement that drug and other harmful substance abuse information be provided to WIC applicants. As required by section 17(e)(1) of the CNA, final § 246.11(a)(3) further makes clear that drug and other harmful substance abuse information may be provided to pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children participating in local agency services other than the WIC Program, as the local agency deems appropriate.

In addition, § 246.11(a)(3) of this final rule specifies the provision of drug and other harmful substance abuse information, rather than the actual distribution of drug and other harmful substance abuse materials. Thus, under the final rule it is not a requirement that written drug and other harmful substance abuse materials be distributed to all the listed categories of participants and caretakers; however, for the reasons cited in section 3 of this preamble, information about the dangers of drug and other harmful substance use must be communicated to all these groups in some manner. As one example, a participant could receive information by viewing the video "Lifelines: To Healthy Babies" and would not necessarily have to receive a brochure containing information.

The inclusion of drug and other harmful substance abuse information as a component of nutrition education also means that, as stipulated in § 246.14(c)(1) of the current regulations, costs incurred for providing drug and other harmful substance abuse information may be counted toward the requirement that an amount equal to one-sixth of the State agency's administrative grant or expenditures be spent on nutrition education. However, the proposed rule would have amended § 246.14(c)(1) to make clear that costs incurred for screening for drug and other harmful substance use and making referrals to drug and other harmful substance abuse services would not contribute toward fulfillment of the one-sixth requirement. This rule would not preclude States from funding drug and

other harmful substance abuse initiatives with their WIC administration and program services grants, except as provided in the new § 246.14(c)(9), which is discussed in section 6 of this preamble, and in new § 246.7(n), as discussed in section 4 of this preamble.

With respect to commenter concern that materials should be appropriate for multi-cultural populations, the Department notes that the provision of drug and other harmful substance abuse education materials in languages other than English as required by the amendment to section 17(f)(14) of the CNA is already reflected in WIC regulations, given the longstanding requirement for bilingual nutrition education materials in § 246.11(c)(3).

The Department received five comments discussing the consequence of including drug and other harmful substance abuse prevention information in nutrition education, i.e., that provision of such information may be counted toward the one-sixth nutrition education requirement. One commenter supported this result and four commenters opposed it, stating that resources are insufficient and this would diminish the nutrition education component. In response to the concern that WIC is not adequately funded to conduct these activities, the Department would like to reiterate that no new major requirements are being imposed and that, in fact, most of the WIC responsibilities mandated by Public Law 100-690 are already common practice. It should also be noted that recent legislative (Pub. L. 101-147) and regulatory changes to the administrative funding formula will generate more, and more stable, administrative and service grants, thus ensuring States' ability to perform this program function effectively. For the reasons discussed above, no change is made to this provision in the final rule.

6. Costs for Drug and Other Harmful Substance Abuse Screening and Referral (Section 246.14)

Section 246.14(c)(9) was proposed to be added to identify drug and other harmful substance abuse screening and referral as allowable administrative and program services costs. The screening would be limited to the level deemed necessary by the State agency to determine when referrals to drug and other harmful substance abuse counseling and treatment services are appropriate. Proposed § 246.14(c)(9) also indicated that laboratory tests for the purpose of drug and other harmful substance use screening would not be allowable WIC administrative and

program services costs. As stated previously, the Department believes that allowing the cost of laboratory tests may lead to a diversion of resources which would run counter to Congressional intent that WIC's drug and other harmful substance abuse information and referral activities not detract from other vital program services.

The Department received six comments concerning the provision that the cost, exclusive of laboratory tests, of screening for drug and other harmful substance use and making referrals to drug abuse services would be considered an allowable administrative and program services cost. All six commenters expressed concern that WIC is not adequately funded to conduct these activities. Two of these commenters suggested limiting WIC's involvement in providing drug and other harmful substance abuse information and referrals, and four commenters recommended additional funding and personnel.

The Department's rationale behind the strategy of integrating information about the danger of abusing drugs and other harmful substances into the nutrition education provided through WIC has been previously discussed in section 5 of this Preamble. It logically follows that the costs incurred for providing this information may be counted toward the nutrition education expenditure requirement. Further, should a State agency determine that screening is not a necessary part of the referral process, it may not be treated as an allowable expense. Therefore, no change is made to this provision in the final rule.

Finally, pursuant to the review and approval of the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), § 246.28 is amended to reflect the appropriate document control numbers.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance programs, WIC, Women.

For the reasons set out in the preamble, 7 CFR part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: Secs. 123 and 213, Pub. L. 101-147, 103 Stat. 877 (42 U.S.C. 1786); sec. 3201,

Pub. L. 100-690, 102 Stat. 4181 (42 U.S.C. 1786); sec. 645, Pub. L. 100-460, 102 Stat. 2229 (42 U.S.C. 1786); secs. 212 and 501, Pub. L. 100-435, 102 Stat. 1645 (42 U.S.C. 1786); sec. 3, Pub. L. 100-356, 102 Stat. 669 (42 U.S.C. 1786); secs. 8-12, Pub. L. 100-237, 101 Stat. 1733 (42 U.S.C. 1786); secs. 341-353, Pub. L. 99-500 and 99-591, 100 Stat. 1783 and 3341 (42 U.S.C. 1786); sec. 815, Pub. L. 97-35, 95 Stat. 521 (42 U.S.C. 1786); sec. 203, Pub. L. 96-499, 94 Stat. 2599 (42 U.S.C. 1786); sec. 3, Pub. L. 95-627, 92 Stat. 3611 (42 U.S.C. 1786).

2. In § 246.1, the fourth sentence is revised to read as follows:

§ 246.1 General purpose and scope.

* * * The Program shall serve as an adjunct to good health care during critical times of growth and development, in order to prevent the occurrence of health problems, including drug and other harmful substance abuse, and to improve the health status of these persons.* * *

3. In § 246.2, the definitions of *Drug* and *Other harmful substances* are added in alphabetical order to read as follows:

§ 246.2 Definitions.

* * * * *

Drug means:

- (a) A beverage containing alcohol;
- (b) A controlled substance (having the meaning given it in section 102(6) of the Controlled Substance Act (21 U.S.C. 802(6)); or
- (c) A controlled substance analogue (having the meaning given it in section 102(32) of the Controlled Substance Act (21 U.S.C. 802(32)).

* * * * *

Other harmful substances means other substances such as tobacco, prescription drugs and over-the-counter medications that can be harmful to the health of the WIC population, especially the pregnant woman and her fetus.

* * * * *

4. In § 246.4:

- a. Paragraph (a)(8) is revised;
- b. paragraph (a)(9) is revised;
- c. paragraph (a)(11)(ii) is revised;
- d. the word "and" is removed at the end of paragraph (a)(11)(iii);
- e. the period at the end of paragraph (a)(11)(iv) is removed, and "and" is added in its place; and
- f. a new paragraph (a)(11)(v) is added.

The revisions and addition read as follows:

§ 246.4 State plan.

(a) * * *

(8) A description of how the State agency plans to coordinate program operations with special counseling services and other programs, including, but not limited to, the Expanded Food and Nutrition Education Program (7

U.S.C. 343(d) and 3175), the Food Stamp Program (7 U.S.C. 2011-2032), the Early and Periodic Screening, Diagnosis and Treatment Program (title XIX of the Social Security Act), the Aid to Families with Dependent Children (AFDC) Program (42 U.S.C. 601-615), the Maternal and Child Health (MCH) Program (42 U.S.C. 701-709), the Medicaid Program (42 U.S.C. 1396 et seq.), family planning, immunization, prenatal care, well-child care, drug and other harmful substance abuse counseling, treatment and education programs, and child abuse counseling.

(9) The State agency's nutrition education goals and action plans, including a description of the methods that will be used to provide drug and other harmful substance abuse information, and to meet the special nutrition education needs of migrant farmworkers and their families, Indians, and homeless persons.

* * * * *

(11) * * *

(ii) Methods for providing nutrition education, including drug and other harmful substance abuse information, to participants, including homeless individuals;

* * * * *

(v) Instructions on coordinating operations under the program with drug and other harmful substance abuse counseling and treatment services.

* * * * *

5. In § 246.7:

- a. A new sentence is added at the end of paragraph (a); and
 - b. a new paragraph (n) is added.
- The additions read as follows:

§ 246.7 Certification of participants.

(a) * * * Local agencies shall maintain and make available for distribution to all pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children applying for and participating in the Program a list of local resources for drug and other harmful substance abuse counseling and treatment.

* * * * *

(n) *Drug and other harmful substance abuse screening.* When a State agency determines that screening is necessary to fulfill the referral requirements in this part, the State agency must require screening for the use of drugs and other harmful substances. When such screening is required, it shall:

(1) Be limited to the extent the State agency deems necessary to fulfill the referral requirement of § 246.4(a)(8) of this part and the drug and other harmful substance abuse information requirement of § 246.11(a)(3) of this part, and

(2) Be integrated into certification process as part of the medical or nutritional assessment.

6. In § 246.11:

a. A new paragraph (a)(3) is added; and

b. paragraph (b)(1) is revised.

The addition and revision read as follows:

§ 246.11 Nutrition education.

(a) * * *

(3) As an integral part of nutrition education, the State agency shall ensure that local agencies provide drug and other harmful substance abuse information to all pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children participating in the program. Drug and other harmful substance abuse information may also be provided to pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children participating in local agency services other than the Program.

(b) * * *

(1) Stress the relationship between proper nutrition and good health with special emphasis on the nutritional needs of pregnant, postpartum, and breastfeeding women, infants and children under five years of age, and raise awareness about the dangers of using drugs and other harmful substances during pregnancy and while breastfeeding.

* * *

7. In § 246.14:

a. In paragraph (c)(1) introductory text, the eighth sentence is revised; and
b. A new paragraph (c)(9) is added.

The revision and addition read as follows:

§ 246.14 Program costs.

* * *

(c) * * *

(1) * * * The cost of dietary assessments for the purpose of certification, the cost of prescribing and issuing supplemental foods, and the cost of screening for drug other harmful substance use and making referrals to drug and other harmful substance abuse services shall not be applied to the one-sixth minimum amount required to be spent on nutrition education. * * *

* * *

(9) The cost, exclusive of laboratory tests, of screening for drug and other harmful substance use and making referrals for counseling and treatment services.

* * *

8. In § 246.28, in the table:

a. The OMB control number for § 246.4 is removed; and

b. OMB control numbers for §§ 246.4 (a)(8), (9), (11), 246.7 (a) and (n) and 246.11(a)(3) are added.

§ 246.28 OMB control numbers.

7 CFR Part 246 section where requirements are described	Current OMB control no.
4(a) (8), (9), (11)	0584-0386
7(a)	0584-0386
7(n)	0584-0386
11(a)(3)	0584-0386

Dated: February 18, 1993.

George A. Braley,

Acting Assistant Secretary for Food and Consumer Services

[FR Doc. 93-4317 Filed 2-25-93; 8:45 am]

BILLING CODE 3419-30-M

Rural Electrification Administration

7 CFR Part 1703

Distance Learning and Medical Link Grant Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby adds a regulation concerning the Distance Learning and Medical Link Grant Program. This final rule will promulgate regulations for a program that will provide grants for distance learning and medical link projects benefiting rural areas. The regulation is necessary to implement a rural development program created by the Rural Economic Development Act of 1990. The program will provide grants to rural community facilities, such as schools, hospitals, and medical centers, to encourage, improve, and make affordable the use of advanced telecommunications and computer networks to provide educational and medical benefits to people living in rural areas and to improve rural opportunities. The regulation will establish REA's policy, the method of selecting projects to receive grants and allocating the available funds, the method of determining the beneficiaries of the program, the requirements for the application to be submitted to REA, the method of notifying potential applicants of maximum and minimum amounts of grant funds that will be considered for a single application, and the

requirements for qualifying for expedited telephone loan consideration and determination.

EFFECTIVE DATE: This regulation is effective on March 29, 1993.

FOR FURTHER INFORMATION CONTACT:

Blaine D. Stockton, Jr., Assistant Administrator, Economic Development and Technical Services, Rural Electrification Administration, telephone number (202) 720-9552.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Order.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule: (1) Will not preempt any State or local laws, regulations, or policies; (2) Will not have any retroactive effect; and (3) Will not require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act

The Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Distance Learning and Medical Link Grant Program has been designed specifically to benefit small rural educational and health organizations, thus enhancing the rural environment for business formation and expansion. In response to the proposed rule some comments were received indicating that the Distance Learning and Medical Link Grant Program is too complex for those who intend to apply for grants under the program. Notwithstanding the inherent complexity of the highly technical Distance Learning and Medical Link Grant Program, REA has crafted a regulation which addresses the complexities, while requiring a minimum amount of documentation to support a grant application in order to ensure prudent use of grant funds. Further, since the application for grants under the program are discretionary, regulatory requirements will apply only to those entities which choose to apply for funding. For those relatively few entities which encounter difficulty meeting regulatory requirements for application, REA's Rural Development

Assistance Staff is available as a source of assistance.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The OMB control number for these requirements is 0572-0096.

The public reporting and recordkeeping burden for this collection of information is estimated to average 1.85 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comment of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Department of Agriculture, Clearance Office, Office of Information Resources Management, room 404-W, Washington, DC 20250, and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, NEOB, Washington, DC 20503.

National Environmental Policy Act Certification

The Administrator has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require the preparation of an environmental impact statement or environmental assessment.

Intergovernmental Review

The Administrator has determined that this program is subject to the provisions of Executive Order 12372 that requires intergovernmental consultation with State and local officials. For detailed information, concerning the requirements of the Order, refer to the final rules published in 7 CFR part 3015, subpart V; 48 FR 29100, June 24, 1983.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.855, Distant Learning and Medical Link Grants. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Comments

On May 26, 1992, REA published a proposed rule at 57 FR 21900 for a new program that would provide grant funds for distance learning and medical link projects to provide educational and medical benefits to people living in rural areas. This action was necessary to comply with Title XXIII, Subtitle D, Chapter 1 of the Rural Economic Development Act of 1990 (Act) (7 U.S.C. 950aaa *et seq.*). The purpose of the program is to provide incentives for local telephone exchange carriers, rural community facilities, and rural residents to improve the quality of phone service, to provide access to advanced telecommunications services and computer networks, and to improve rural opportunities. It is believed that the incentives of this program will contribute to achieving these Federal goals. Furthermore, a goal of the Federal Government is to make affordable advanced telecommunications available to rural residents, including services such as reliable facsimile document and data transmission, multifrequency tone signaling services, 911 emergency service with automatic number identification, interactive audio and visual transmissions, voice mail services designed to record, store, and retrieve voice messages, and other advanced telecommunications services.

REA received 44 comments regarding the proposed rule, which were taken into consideration in preparing the final rule. Comments were received from the following:

- (1) Tennessee Exceed and Visions Five Group.
- (2) College of Agriculture and Life Sciences, Texas A&M University.
- (3) Phillips County Community College, Arkansas.
- (4) Steuben Rural Electric Cooperative, Inc.
- (5) Mayo Foundation, Mayo Clinic.
- (6) Ira Davenport Memorial Hospital, Inc., Bath, New York.
- (7) Community Memorial Hospital, Crawford, Nebraska.
- (8) Cavalier Electric Cooperative, Inc.
- (9) U.S. West Communications, Inc.
- (10) Annette Island Medical Service Unit, Alaska.
- (11) Communication and Technology, USDA Extension Service.
- (12) Mountain Area Health Education Center, North Carolina.
- (13) United States Telephone Association.
- (14) North Central Regional Educational Laboratory, Illinois.
- (15) Idaho COG.
- (16) Iowa Methodist Medical Center.
- (17) Association of America's Public Television Stations.

(18) National Telephone Cooperative Association.

(19) Deaconess Development Foundation, Montana.

(20) The Agricultural Satellite Corporation.

(21) National Rural Electric Cooperative Association.

(22) Center for Health Services Communication, East Carolina University.

(23) Mississippi Educational Network.

(24) Covington Electric Cooperative, Inc.

(25) Police Jury, Parish of Cameron, Louisiana.

(26) Council For Educational Development and Research.

(27) Northwest Kansas Area Health Education Center.

(28) The University of the State of New York.

(29) Valley Rural Health Cooperative, North Dakota.

(30) Regional Laboratory for Educational Improvement of The Northeast & Islands.

(31) Appalachia Educational Laboratory.

(32) New Hampshire Public Television.

(33) Southwestern Bell.

(34) East River Electric Power Cooperative.

(35) Heartland Community College, Illinois.

(36) Satellite Educational Resources Consortium, Inc.

(37) Montana State Board of Nursing.

(38) Telemedical Interactive Consultative Services, Inc.

(39) Reed, Veach, Wurdeman & Associates, Inc., Nebraska.

(40) University of Missouri-Rolla.

(41) Tele-Systems Associates, Inc.

(42) Standing Rock College, North Dakota.

(43) Honorable David R. Obey, U.S. House of Representatives.

(44) Software Valley Corporation, West Virginia.

Overall, REA received widespread support for the proposed rule, and six respondents expressed unqualified support. Other respondents generally expressed support, but made specific comments.

By far, the greatest concern on the part of the responding organizations was the definition of "rural" contained in § 1703.102. The proposed definition was adapted from the definition contained in Webster's Third New International Dictionary (1981) and based on a case involving the Alaska National Interests Lands Conservation Act, *Kenaitze Indian Tribe v. State of Alaska*, 860 F.2d 312, 316-317 (9 CA 1988). REA believes that under the holding of that case, the

absence of a statutory definition of "rural" in the Act means that REA must define the term in its commonly understood sense. However, this does not mean that REA must use the same methodology used by the court to arrive at what the common meaning of "rural" is when used in the Act. That methodology used by the court employed definitions used by Webster's and the Bureau of the Census (Census Bureau). Although REA adopted this approach in the proposed rule, the commenters generally found the definition to be unduly restrictive in two respects.

First, commenters objected to the element of the definition of "rural" that required the economy of a rural area to be centered on "agriculture and ranching." Commenters pointed out that rural economies often center on other occupations, such as mining, timber production, and tourism. REA recognizes this and agrees that there is no evidence in the Act or its legislative history evidencing a Congressional intention to exclude rural communities that depend upon occupations other than agriculture and ranching from participating in the program. Therefore, REA has expanded the definition of rural in the rule by using the somewhat broader interpretation of "rural" found in *The American Heritage Dictionary of the English Language*, Third Edition (1992). As redefined, a rural area must be "sparsely settled or agricultural country." Thus, communities that are sparsely settled but do not depend on agriculture or ranching would be considered "rural" for purposes of the rule.

Second, commenters objected to the exclusion of communities having populations of 2,500 or more persons. Although they recognized that this has been the historic standard used by the Census Bureau, they pointed out that neither the Act nor its legislative history suggests REA is limited to using the Census Bureau's methodology, and Congress itself has in various statutes defined "rural" as encompassing communities much larger than 2,500 persons. Although REA recognizes that in authorizing other programs, Congress has employed a wide range of definitions of "rural" which often included much larger communities, Congress did not do so in this case. REA does not think that such an omission represents a Congressional intention that REA should feel free to choose a definition of "rural" from among statutes having no legal relevance to this program. Instead, REA believes it demonstrates an intention that REA administratively adopt a definition that

is consistent with the common meaning and that does not exclude communities that are generally perceived as being rural in character. Based on responses to the proposed rule, it appears that the problem is more complex than the relatively simple dictionary definitions and Census Bureau definitions are capable of resolving. Where a community's eligibility to receive a grant for these important services depends on its being properly classified as "rural," a more rigorous definition seems warranted.

REA's implementation of a revised rural definition consists of two parts: (1) qualifying a project as serving a rural area; and (2) once a project has been determined to serve a rural area, prioritizing that project for grant funding based on the degree of rurality of its service area compared with other projects.

Qualifying a Project as Rural

Research revealed a considerable body of professional literature from various disciplines recognizing the problem of defining "what is rural" in formulating contemporary rural policy. Bell, "The Fruit of Difference: The Rural-Urban Continuum as a System of Identity," *Rural Sociology*, Vol. 57, No. 1 at 65-82 (1992). Willits et al., "Popular Images of 'Rurality': Data from a Pennsylvania Survey," *Rural Sociology* Vol. 55, No. 4 at 559-578 (1990). Butler, *Rural-Urban Continuum Codes for Metro and Nonmetro Counties*, AGES 9028, United States Department of Agriculture, Economic Research Service (April 1990). Deavers, "What is Rural?" *Policy Studies Journal*, Vol. 20 No. 2 at 184-189 (1992). Hewitt, "Defining 'Rural' Areas: Impact on Health Care Policy and Research," Health Program, Office of Technology Assessment, United States Congress (July 1989). *Rural Conditions and Trends*, Economic Research Service, United States Department of Agriculture, Vol. 3, No. 1 (Spring 1992). *Rural Conditions and Trends*, Economic Research Service, United States Department of Agriculture, Vol. 2, No. 4 (Winter 1991/92). Although "rural" is commonly understood to mean "not urban," the concepts of "rural" and "urban" exist as part of a continuum. Rarely does a clear line of demarcation exist between what is "rural" and what is "urban." Research revealed broad support for the more sophisticated approach to defining "rural" which was developed by analysts of the Economic Research Service of the United States Department of Agriculture (ERS).

"The [ERS] typology, which is a mixture of economic and social/political dimensions, is

useful for three reasons: it generally conforms with people's intuitive understanding of rurality; in a small number of categories it captures a wide variety of the most important social and economic characteristics influencing development among nonmetro counties; and it recognizes the continuing political significance of counties while at the same time illustrating that economic and political geography are different." Deavers, 187 footnotes omitted.

The ERS typology (See Appendix A to Subpart D of Part 1703—ERS Rural-Urban Continuum Scale) classifies nonmetropolitan counties on two dimensions: (1) the aggregate size of their urban populations, and (2) proximity/adjacency to metropolitan counties. The urban population follows the Census Bureau's definition. Urbanized counties are distinguished from less urbanized counties by the size of the urban population. A nonmetropolitan county's adjacency to a "metropolitan statistical area" (MSA) is defined both by shared boundaries and commuting patterns. The ERS approach emphasizes three important characteristics of rural areas that in combination make them different from urban areas: (1) small scale, low density settlement (i.e. small towns and open country), (2) distance from large urban centers (physical distance, remoteness due to geographic barriers, cultural and social isolation), and (3) specialization of the local economy (either physical or natural resource based, such as farming or dominated by a single relatively large manufacturing employer).

The ERS typology offers several particular advantages to REA in administering this program. First, it is consistent with the use of the term "rural" in the Act. Second, it is likely to produce results consistent with the holding in *Kenaitze Indian Tribe v. Alaska*. Third, the county-based classification system is objective and easy for REA to administer and for applicants to understand. Fourth, the methodology has gained wide acceptance. Fifth, the methodology has been developed and continues to be refined by an agency within this Department which is readily accessible to REA personnel and which is recognized for its technical expertise in rural demographic issues.

REA has modified the final rule in order to implement the ERS typology. The definition of "rural" has been revised to mean "any area of the county that REA determines to be sparsely settled or agricultural country." These two elements, sparse settlement or agricultural use, are generally associated with common perceptions of rurality and at least one element must be present for the project service area to be

considered "rural". The definition has been adapted from the American Heritage Dictionary. REA will employ the ERS rural urban continuum scale in determining whether the definition has been satisfied. A new § 1703.108 has been added to do this.

Section 1703.108 provides two general methods for qualifying as rural. If the project service area is located entirely within counties that are all among the lowest four categories of the continuum, they are categorically "rural" and the rural eligibility requirement is met. In all other cases, REA will determine rurality of the project service area on a case-by-case basis using features such as population size and density, urbanization, adjacency and relationship to metropolitan areas, and principal economic activity. If such analysis by REA shows that the project service area is rural, it will be so determined and the eligibility requirement is met. Where such analysis reveals that a project can reasonably be expected to benefit both urban and rural residents, REA, in order to establish eligibility, may make an appropriate allocation of the grant to assure that grant funds primarily benefit only residents of the rural areas. Provision has been made for applicants to appeal to the Administrator in those instances where the initial determination is that the project service area is not rural.

REA has added a working definition for "project service area" which is a concept REA used in defining "rural" in the final rule. The definition is consistent with the approach used in the proposed rule of emphasizing the location of the residences of the users of the project, as contrasted with the site of the project itself, in determining whether a project is eligible for funding under this subpart.

Ranking Eligible Projects for Funding

REA employs the ERS Rural Urban Continuum Scale to rank applications for funding priority once basic eligibility requirements have been established. The degree of rurality enhances the likelihood that a project will be funded. Thus even though projects that serve both rural and urban residents may sometimes qualify for funding, the inclusion of a non-rural population within a project's service area will lessen its chances for funding.

To implement the ranking system and limit the complexity of the rule, § 1703.118, Criteria for ranking applications, has been reformatted and split into three sections, § 1703.117, § 1703.118 and § 1703.119, to simplify reading and reference. Sections

1703.117 and 1703.119 as written in this final rule contain the contents of § 1703.118 as written in the proposed rule. Section 1703.118 contains the new ranking system that looks at the rural community from the county level and classifies that county based on both population and proximity to metropolitan areas, i.e., rurality.

Further, in implementing a ranking system, REA considered numerous comments stating that aggregate county population change and density ranking criteria contained in proposed rule § 1703.118(a)(2)(iii) and (iv), respectively, may not be accurate because population declines or sparsity in a rural area may be offset by an increase or heavy concentration of urban population. Therefore, REA has determined it appropriate to eliminate those ranking criteria of county population density and population decline (totalling 25 points maximum), and replace with the ranking system based on the degree of "rurality" (totalling 60 points maximum).

Under this system, the end user sites and hubs (as defined in § 1703.102) contained within the proposed project service area are identified. Then, that service area is given a ranking according to the population statistics of the county or counties in which the end user sites are located. Hubs which are also utilized as end user sites will be considered in the ranking; however, hubs which are not utilized as end user sites are excluded for ranking purposes. This system incorporates a framework based on the ERS typology discussed in the previous section.

In addition to the comments regarding the rural definition, other comments were received as follows.

One organization expressed a concern that linking urban and rural facilities would allow the majority of funds to be captured by urban institutions. REA believes that Congress intended primarily to benefit people, not institutions. The legislative history of the Act evidences a clear intention to use the benefits of technology to bring the advantages of sophisticated urban educational and medical resources to residents of rural areas. Thus urbanized entities will participate in the program but only for the express purpose of providing service to rural residents. Section 1703.103 has been revised to clarify REA policy with regard to participation by urban entities.

There were numerous comments regarding the definition of eligible entities. Among these comments were suggestions to include institutions such as regional educational laboratories, partnership, land grant university

consortia, public television stations, community colleges, and nonprofit telecommunications entities such as Ag*Sat and SERC. REA believes that the regulation does not exclude such entities. However, for entities such as consortia or partnerships, applicants should keep in mind that REA will require written evidence of the applicant's legal capacity to contract with REA and to carry out the purposes of the grant for which the entity is applying. Sections 1703.103 and 1703.114(b) have been revised to clarify their references to corporate authority, incorporated organizations, and other legally recognized eligible entities that may apply for grant funding.

There were three comments suggesting more flexibility in determining these entities or groups which could serve as "recognized experts" in evaluating the need for improved educational or medical services in the proposed rural area. The intent of REA is to allow applicants flexibility to submit any qualified opinions which those applicants feel will strengthen the documentation of their applications relative to need.

There were several comments and suggestions regarding the proposed method of ranking and selecting applicants. Except for changes previously discussed, REA has determined that no further changes in the ranking and selection process are warranted.

Some organizations indicated concern regarding the required consultation with local service providers. REA recognizes these concerns; however, the requirements are necessary in order to adhere to the provisions of the Act. There were also concerns expressed about REA's authority to determine if the proposed service is provided at reasonable rates. Some were concerned that the service providers would promote inferior transport facilities even though they were capable of better quality or offer a product not based on an honest financial analysis or unduly delay the project. There was concern that REA's evaluation of service at reasonable rates could conflict with the authority of the state public utilities commissions and the Federal Communications Commission. Although REA does not intend to establish telephone exchange carrier or other telecommunications carrier rates, REA will determine for the proposed project whether appropriate service from the telephone exchange carrier or telecommunications service providers will provide the necessary service for a feasible project within a reasonable timeframe.

There were concerns that the intent of the legislation was for REA to provide grants for up to 100 percent, and that no matching funds should be required. REA has taken these concerns into consideration and recognizes that the Act provides that grants may be made for up to 100 percent of a project's cost. However, REA has determined that based upon the great need for these types of projects and the limited amount of available grant funds, limiting the amount of grant participation to 80 percent would allow REA to fund more projects. Therefore, REA was not persuaded by the comments and has determined that in this regard the regulation should remain unchanged. A few suggestions were made regarding allowance for in kind contributions, including salaries. REA recognizes that many needy rural communities have difficulty in generating cash, and § 1703.104 has been revised to allow for certain "in kind" contributions to substitute for cash. These allowances will be limited to the value of (1) equipment, facilities, and activities eligible for grant funding, (2) facilities, equipment, or activities that are described in an approved telecommunications plan, and/or (3) improvements made to real property necessary to accommodate eligible equipment, or additional real property acquired or facilities constructed to accommodate eligible equipment, such as buildings in which terminal equipment and/or transmission facilities would be located. Such improvements/items must be an integral component of an approved telecommunications plan. The present value of long-term leases of eligible equipment (with duration according to recognized industry wide standards and compatible with the type of equipment leased) may also be considered.

With regards to the payment of salaries, those costs do not qualify as an in kind contribution. The Act specifically prohibits grant funds for payment of salaries; thus prohibition of salary expenses as in kind contributions is consistent with funding limitations imposed by legislation. Section 1703.104(b) (1), (2), and (3) have been added to incorporate the in kind matching criteria.

Section 1703.103 has been revised to clarify conditions under which applicants may be eligible to receive grant funding. The rule has been clarified to replace the word schools with the term educational institutions and specifically mention organizations which are eligible to apply for grant funding, including regional educational laboratories, colleges, vocational

training facilities or other educational institutions. In addition, the rule has been clarified to specifically include partnerships or consortia consisting of two or more entities, provided that at least one of those entities would be eligible individually and written evidence of legal capacity to contract with REA is submitted. The section has also been revised to clarify that while state entities operating rural community facilities are eligible for funding, state government entities which do not operate rural community facilities, or partnerships or consortia comprised of state government entities which do not operate rural community facilities, are not considered eligible applicants.

Several organizations expressed concern that § 1703.101(c) of the proposed rule indicates REA bias toward certain technologies, and thus implies that REA would give preferential treatment of certain applications based solely on the type of technology. It is REA's intent to be technologically neutral in the evaluation of project applications. The beginning language in § 1703.101(c) affirms this by stating that decisions regarding the most appropriate forms of technology for a specific area should be made by area residents and local institutions, and "...REA will not favor or mandate the use of one particular technology over another." The intent of the language in question was to conform to the provisions under the Act. REA believes that system technology should be flexible for future expansion, utilization of equipment for other purposes if needed, and integration with other systems. Section 1703.101(c) has been revised to clarify that it is generally desirable to use technology that would incidentally allow other providers or developers to purchase the elemental functions or access so other users, in addition to educational and medical users, may benefit from any transmission facilities receiving grant funding. Further, § 1703.101(c) has been revised to clarify that it is generally desirable for the project to use products and technologies that are considered open systems, and REA believes that it is desirable to use products and technologies that employ or adhere to nationally recognized standards that will permit equipment from various companies to be connected to the system, and permit the system to be connected to other systems or networks.

There was a suggestion to revise the definition of end user, to also allow use of eligible equipment by both educational institutions and medical facilities, rather than only allowing use by either an educational institution or a

medical facility. REA concurs, and the definition of end user in § 1703.102 has been revised to allow dual use. Accordingly, § 1703.103 has been revised to include as eligible entities those organizations that would incorporate a dual use of facilities.

Recommendations were made that would allow grant funds to be used for the non-recurring charges associated with design, installation and administrative costs. It is the intent of REA to fund through lease or purchase the otherwise non-recurring initial costs of equipment installation and other expenses associated with eligible equipment provided those expenses would be incurred as a non-recurring initial cost of acquisition or lease. Section 1703.104 has been revised to clarify this issue.

One organization recommended that transmission facilities owned by local exchange carriers whose service is leased to the applicant be added as an eligible purpose for funding. Although the regulation does not preclude grant funds from being used for lease or purchase of transmission facilities, REA intends to get maximum benefit for the dollars invested. Thus, considering the funding limitations for this program, it is desirable to fund those projects which rely, to the extent possible, on outside sources of funding for transmission facilities which link hubs and end user sites. Generally, direct program benefits are maximized by acquiring, to the maximum extent possible, eligible equipment which will directly benefit users at end user sites and hubs. Therefore, REA will give priority to those projects which target the highest percentage of REA grant funds for eligible equipment at end user sites and hubs. However, REA recognizes that in many cases, investment in upgraded transmission facilities may in the long term result in greater project viability through lower capital investment requirements at end user sites and hubs, lower depreciation, and/or reduced system operating costs. Therefore, REA will consider funding transmission facilities for those projects where savings of capital costs or operating expenses of end user sites will be commensurate with investment in transmission facilities. Section 1703.119(b) has been revised in the final rule to clarify REA's policy on this issue and to specifically enumerate criteria for ranking applications.

Comments were received stating that the definition of telecommunications terminal equipment in the proposed rule is too limited by defining equipment as located at the end of a circuit. Therefore, it was asserted that

REA unfairly favors particular technologies since the definition excludes over the air broadcast, satellite and related wireless transmission media. The definition of telecommunications terminal equipment in the proposed rule is consistent with the statutory definition contained in the Act. However, REA recognizes that the definition as written could be interpreted as favoring particular technologies. REA does believe the clear intent of the Act is for technological neutrality and to consider all available technologies as eligible for grant funding. For regulatory clarity and consistency with the overall thrust of the Act, REA believes that revision of the definition of telecommunications terminal equipment is both necessary and appropriate. Therefore, § 1703.102 has been revised to clarify that over-the-air broadcast, satellite, coaxial cable, optical fiber, microwave and twisted pair signals can be received by end users.

REA received numerous comments questioning whether or not the proposed rule allows funding for teacher training as well as student training. In addition, questions were raised whether or not students in remote sites could be linked together as a network. Comments were also received regarding training of medical personnel. It is REA's intent to fund eligible equipment for teacher and medical personnel training and to link together remote student sites in a network. For clarification, the definition of distance learning in § 1703.102 has been revised to include connecting teachers with other teachers and students with other students. Further revision includes connections for staff training in medical and educational applications.

REA concurs with a recommendation that eligible instructional programming should include alternative types of technologies. The definition of "instructional programming" in § 1703.102 has been revised to read: "educational programming, including computer software, which would be used for tutorial purposes in connection with eligible equipment".

A comment was made regarding the conflict of interest provision in § 1703.107. The commenting organization wanted REA to define specifically what actions on the part of an applicant would constitute a conflict of interest. REA believes that it is not practical to anticipate all possible scenarios which could constitute a serious conflict of interest or the appearance of a serious conflict of interest. With this in mind, § 1703.107

will be administered on a case by case basis by the REA Administrator.

List of Subjects in 7 CFR Part 1703

Community development, Grant programs—education, Grant programs—health care, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

Chapter XVII of Title 7 of the Code of Federal Regulations is amended as follows:

PART 1703—RURAL DEVELOPMENT

1. The authority citation for 7 CFR Part 1703 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.* and 950aaa *et seq.*

2. Subpart C is added and reserved and subpart D of part 1703 is added to read as follows:

Subpart C—[Reserved]

Subpart D—Distance Learning and Medical Link Grant Program

- | | |
|-------------------|--|
| Sec. | |
| 1703.100 | Purpose. |
| 1703.101 | Policy. |
| 1703.102 | Definitions. |
| 1703.103 | Applicant eligibility. |
| 1703.104 | Grant purposes. |
| 1703.105 | Ineligible grant purposes. |
| 1703.106 | Maximum and minimum sizes of a grant. |
| 1703.107 | Conflicts of interest. |
| 1703.108 | Determining what is rural. |
| 1703.109—1703.110 | [Reserved] |
| 1703.111 | Compliance with other Federal statutes and regulations. |
| 1703.112 | [Reserved] |
| 1703.113 | Application filing dates and location. |
| 1703.114 | Application processing and contents. |
| 1703.115 | Public notice of applications received. |
| 1703.116 | [Reserved] |
| 1703.117 | Criteria for ranking applications. |
| 1703.118 | The comparative rurality of the proposed project service area. |
| 1703.119 | Other application ranking criteria. |
| 1703.120—1703.121 | [Reserved] |
| 1703.122 | Further processing of selected applications. |
| 1703.123—1703.125 | [Reserved] |
| 1703.126 | Disbursement of grant funds. |
| 1703.127 | Reporting and oversight requirements. |
| 1703.128 | Audit requirements. |
| 1703.129—1703.134 | [Reserved] |
| 1703.135 | Grant administration. |
| 1703.136 | Changes in project objectives or scope. |
| 1703.137 | Grant termination provisions. |
| 1703.138 | Environmental information. |
| 1703.139 | Telecommunications plan. |
| 1703.140 | Expedited telephone loans. |

Appendix A to Subpart D of Part 1703—ERS Rural-Urban Continuum Scale

Subpart C—[Reserved]

Subpart D—Distance Learning and Medical Link Grant Program

§ 1703.100 Purpose.

The grants provided under this subpart D are to encourage, improve, and make affordable the use of advanced telecommunications, computer networks, and related advanced technologies to provide educational and medical benefits through distance learning and medical link projects to people living in rural areas and to improve rural opportunities.

§ 1703.101 Policy.

(a) REA recognizes that the transmission of communications and information is a vital component of the infrastructure of rural areas and is necessary to promote rural development. Enhancing communication and information transmission by making affordable advanced telecommunications, computer networks, and related advanced technologies more widely available in rural areas will improve rural opportunities, promote rural economic growth, and enhance the quality of life of rural residents. To further this objective, REA will award grants under this subpart to distance learning and medical link projects that will improve the access of people residing in rural areas to improved educational, training, and medical services, and to opportunities that rely on advanced communication and information technologies to provide such services.

(b) In providing assistance under this subpart, REA will give priority to rural areas that it believes have the greatest need of enhanced communications. REA believes that generally the need is greatest in the most sparsely populated rural areas and in rural areas that are experiencing economic hardship.

(c) REA believes that the residents of rural areas and their local institutions which serve them can best determine what are the most appropriate communications or information systems for use in their respective communities. Therefore, in administering this subpart, REA will not favor or mandate the use of one particular technology over another. REA does believe that it is generally desirable to use technology that would incidentally allow other providers or developers to purchase the

elemental functions or access so other users, in addition to educational and medical users, may benefit from any transmission facilities receiving funding under this subpart. In addition, REA believes it is generally desirable for the project to use products and technologies that are considered open systems. Further, REA believes that it is desirable to use products and technologies that employ or adhere to nationally recognized standards that will permit equipment from various companies to be connected to the system, and permit the system to be connected to other systems or networks.

(d) Applicants are encouraged to promote projects that:

- (1) Are based on sound economic and financial analysis;
- (2) Take a long-term perspective; and
- (3) Primarily benefit rural areas.

(e) REA electric and telephone borrowers are encouraged to cooperate with each other and with applicants and end users in promoting the program being implemented under this subpart.

(f) REA staff will make diligent efforts to inform potential applicants in rural areas of the program being implemented under this subpart.

§ 1703.102 Definitions.

Act—Title XXIII, subtitle D, chapter 1, of the Rural Economic Development Act of 1990 (7 U.S.C 950aaa et seq.).

Administrator—the Administrator of the Rural Electrification Administration or his or her designee.

Applicant—an eligible organization which applies for a grant under this subpart.

Approved purpose—a purpose that REA has specifically approved in the letter of agreement and scope of work covering the use of REA grant funds provided to the grantee.

Borrower—an entity that has outstanding electric or telephone REA and/or Rural Telephone Bank loans or loan guarantees under the provisions of the RE Act.

Communication satellite ground station complex—includes transmitters, receivers, and communications antennas at the earth station site together with the interconnecting terrestrial transmission facilities (cables, line, or microwave facilities) and modulating and demodulating equipment necessary for processing traffic received from the terrestrial distribution system prior to transmission via satellite and the traffic received from the satellite prior to transfer to terrestrial distribution systems.

Computer networks—computer hardware and software, terminals, signal

conversion equipment including both modulators and demodulators, or related devices, used to communicate with other computers to process and exchange data through a telecommunication network in which signals are generated, modified, or prepared for transmission, or received, via telecommunications terminal equipment and telecommunications transmission facilities.

Data terminal equipment—equipment that converts user information into data signals for transmission, or reconverts the received data signals into user information, and is normally found on the terminal of a circuit and on the premises of the end user.

Demonstration project—one which the applicant agrees in writing to:

- (1) Provide REA, if requested, with detailed information on the process used to organize and operate the project;

- (2) Permit REA and REA's guests to make reasonable visits to the project; and

- (3) Honor any other reasonable REA request to disseminate information concerning the project. Examples of information include a description of the process of incorporation, types of financing obtained, permits required by governments, amount of time required for various stages of the project, sources of technical assistance from government programs, private foundations or trade organizations, type of equipment used for the project, any experiences or lessons that the applicant will share with the public and other information which will assist REA in promoting rural opportunities to improve the use of telecommunications, computer networks, and related advanced technologies. REA will not require the disclosure of trade secrets or proprietary techniques.

Distance learning—a telecommunications link to an end user through the use of eligible equipment to:

- (1) Provide educational programs, instruction, or information originating in nonrural areas to students and teachers who are located in rural areas; or

- (2) Connect teachers and/or students, located in one rural area with teachers and/or students that are located in a different rural area. Eligible equipment— a communication satellite ground station complex, computer networks, data terminal equipment, fiber-optic cable, interactive video equipment, microwave transmission equipment, telecommunications transmission facilities and telecommunications terminal equipment.

Eligible organization—an incorporated entity that meets the requirements of § 1703.103.

End user—either or both of the following:

- (1) Rural elementary or secondary schools or other educational institutions, such as institutions of higher education, county extension services, vocational and adult training and education centers, and teacher training centers, and students, teachers and instructors using such rural educational facilities, that participate in a rural distance learning telecommunications program through a project funded under this subpart; and

- (2) Rural hospitals, primary care centers or facilities, such as medical centers and clinics, and physicians and staff using such rural medical facilities, that participate in a medical link telecommunications program through a project funded under this subpart.

End user site—a facility located in a rural area that is part of a network or telecommunications system that is utilized by end users.

Fiber optic cable—a bundle of optical transmission elements or waveguides usually consisting of a fiber core and fiber cladding that can guide a lightwave and that are incorporated into an assembly of materials that provide tensile strength and external protection.

Grant beneficiary—a person who resides in a rural area that directly benefits from a project receiving assistance with a grant provided pursuant to this subpart.

Grantee—a recipient of a grant from REA to carry out the purposes of this subpart.

Hub—originating source of a network or telecommunications system.

Instructional programming—educational programming, including computer software, which would be used for tutorial purposes in connection with eligible equipment.

Interactive video equipment—equipment used to produce and prepare for transmission audio and visual signals from at least two distant locations such that individuals at such locations can verbally and visually communicate with each other, and such equipment includes monitors, other display devices, cameras or other recording devices, audio pickup devices, and other related equipment.

Letter of agreement—a legal document executed by REA and the grantee that contains specific terms, conditions, requirements and understandings applicable to a particular grant.

Local telephone exchange carrier—a commercial, cooperative or mutual-type association or public body that provides

telephone service, through a local central switching office, to the subscribers within its designated service area, and between the local subscribers and the toll network.

Medical link—a telecommunications link to an end user through the use of eligible equipment which electronically links medical professionals at separate sites in order to exchange medical information in audio, video, graphic or other format for the purpose of providing improved health care services primarily to residents of rural areas.

Project—an undertaking to provide or improve a distance learning or medical link by using financial assistance from REA under this subpart.

Project service area—the area in which at least 90% of the persons to be served by the project are likely to reside.

RE Act—the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et seq.).

REA—the Rural Electrification Administration, an agency of the United States Department of Agriculture.

Rural—any area of the country that REA determines pursuant to § 1703.108 of this subpart to be sparsely settled or agricultural country.

Rural community facilities—facilities such as schools, libraries, hospitals, medical centers, or similar facilities, located in rural areas, or primarily used by residents of rural areas, that will use a telecommunications, computer network, or related advanced technology system to provide educational and/or medical benefits primarily to residents of rural areas.

Scope of work—a detailed plan of work that has been approved by the Administrator and that will be performed by the applicant using funds provided under the grant.

Technical assistance—(1) assistance in learning to operate equipment or systems; and

(2) studies, analyses, designs, reports, manuals, guides, literature, or other forms of creating, acquiring and/or disseminating information.

Telecommunications plan—a comprehensive rural telecommunications plan submitted by an applicant in accordance with 7 U.S.C. 2333(3) and §§ 1703.114(e) and 1703.139.

Telecommunications terminal equipment—the assembly of telecommunications equipment at the end of a circuit or path of a signal, including but not limited to over the air broadcast, satellite and microwave, normally located on the premises of the end user, that interfaces with telecommunications transmission facilities, and that is used to modify,

convert, encode, or otherwise prepare signals to be transmitted via such telecommunications facilities, or that is used to modify, reconvert or carry signals received from such facilities, the purpose of which is to accomplish the goal for which the circuit or signal was established.

Telecommunications transmission facilities—facilities that transmit, receive, or carry data between the telecommunications terminal equipment at each end of the telecommunications circuit or path. Such facilities include microwave antennae, relay stations and towers, other telecommunications antennae, fiber-optic cables and repeaters, coaxial cables, communication satellite ground station complexes, copper cable electronic equipment associated with telecommunications transmissions, and similar items.

Telephone service—telephone service as defined in section 203(a) of the RE Act (7 U.S.C. 901 et seq.).

§ 1703.103 Applicant eligibility.

To be eligible to receive a grant under this subpart, the applicant must be an incorporated organization or other legal entity which operates a school, college, vocational training facility, or other educational institution, including a regional educational laboratory, library, hospital, medical center, medical clinic or other rural community facility. The applicant may be a private or municipal corporation and may be organized on a profit or non-profit basis. The applicant may also be a partnership or consortium, consisting of two or more entities, provided that at least one of those entities would be eligible individually, and provided that the partnership or consortium provides written evidence of its legal capacity to contract with REA. The state government, other than a state government entity that operates a rural community facility, is not considered an eligible applicant. A partnership or consortium which includes a state government entity which does not operate a rural community facility, also is not considered an eligible applicant. However, if a partnership or consortium lacks the capacity to contract, each individual entity must execute the Letter of Agreement on its own behalf. The applicant must be capable of using eligible equipment to provide distance learning or medical links, and provide written evidence of its legal existence and capacity to contract. The applicant must also demonstrate its ability and willingness to carry out the purposes of the grant under which it is applying. The applicant must not be delinquent

on any obligation owed to the Federal Government (7 CFR parts 3015 and 3016).

§ 1703.104 Grant purposes.

(a) Grants may be used by eligible organizations for distance learning and medical link projects to finance up to 80 percent of the cost, including installation, of:

(1) Acquiring, by lease or purchase, eligible equipment;

(2) Acquiring, by lease or purchase, software to operate eligible equipment, including any related software;

(3) Acquiring or developing instructional programming;

(4) Providing technical assistance and instruction for using eligible equipment, including any related software;

(5) Engineering or environmental studies relating to the establishment or expansion of the phase of the project that is being financed with the REA grant; and

(6) Facilities, equipment or activities and non-recurring service charges that are described in a telecommunications plan which has been approved by the Administrator.

(b) In kind matching—generally, the applicant's 20 percent contribution is required in the form of cash. However, cash may be substituted in whole or in part with certain in-kind contributions as follows:

(1) Equipment, activities and facilities as set forth in § 1703.104(a);

(2) Improvements made to real property necessary to accommodate eligible equipment;

(3) Facilities constructed to accommodate eligible equipment, such as buildings in which terminal equipment and/or transmission facilities would be located;

(4) Real property purchased or acquired for the sole purpose of accommodating distance learning and medical link facilities;

(5) The present value of long term leases of eligible equipment, with duration according to recognized industry standards and compatible with the type of equipment leased.

(c) In kind items furnished in paragraph (b)(1) of this section will be non-depreciated or new assets with established monetary value by industry standards. The value of improvements or construction in paragraphs (b)(2) and (b)(3) of this section will be established by a qualified independent real property appraiser based on the actual cost of those improvements. The value of land in paragraph (b)(4) of this section will be established by a qualified independent real property appraiser based on a market value appraisal.

(d) In kind contributions will be an integral component of an approved telecommunications plan as set forth in § 1703.139 of this subpart.

(e) In kind contributions will not consist of eligible equipment which has been subject to depreciation, or for equipment, services and labor not eligible for grant funding as set forth in § 1703.105 of this subpart.

(f) Funding may be provided for end user sites. Funding may also be provided for hubs located in rural and non-rural areas, if they are necessary to provide distance learning and/or medical link services to rural residents at end user sites. However, funding will not be provided for sites proposed as hubs if it is not demonstrated that they are an integral part of the proposed network and are necessary to transmit distance learning and/or medical link services to end users.

§ 1703.105 Ineligible grant purposes.

(a) Grants must not be used:
(1) To fund more than 80 percent of the eligible costs of a project under this subpart;

(2) To cover the costs of installing or constructing telecommunications transmission facilities, except as provided in paragraph (c) of this section;

(3) To pay for medical equipment except medical equipment primarily used for encoding and decoding data, such as images, for transmission over a telecommunications or computer network;

(4) To pay salaries, wages or employee benefits to medical or educational personnel;

(5) To pay for the salaries or administrative expenses of the applicant;

(6) To purchase equipment that will be owned by the local telephone exchange carrier or another telecommunications service provider;

(7) For site development, the destruction or alteration of buildings, or other activities that might adversely affect the environment or limit the choice of reasonable alternatives unless and until the requirements of § 1703.111(j) have been satisfied;

(8) To duplicate services in place on the date of the completed application to REA, or replace or substitute financial support that was previously provided;

(9) To pay costs of preparing the application package for funding under this program;

(10) To refinance indebtedness incurred prior to receipt of the completed application at REA;

(11) For projects whose sole object is merely to provide links between

teachers and students who are located at the same facility;

(12) For any purpose that the Administrator has not specifically approved; or

(13) For projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*).

(b) Except as otherwise provided in § 1703.140, funds will not be used to finance a project in part when success of the project is dependent upon the receipt of additional funding under this subpart or is dependent upon the receipt of other funding that is not assured.

(c) Grants must not be used to cover the costs of telecommunications transmission facilities if the local telephone exchange carrier for the project area will install such facilities through the use of the expedited telephone loans made under the RE Act or through other financing procedures within a reasonable time period and at a cost that does not destroy the feasibility of the project, as determined by the Administrator.

(d) Except for leases provided in § 1703.104(a)(1) and (2), grants must not be used to pay the cost of recurring or operating expenses for the project.

§ 1703.106 Maximum and minimum sizes of a grant.

Applications for grants to be considered under this subpart will be subject to limitations on the proposed amounts of funding. The maximum grant amount that will be awarded for any one project in any given fiscal year will not exceed 10 percent of the appropriated funds available for all grants during the fiscal year in which the application for such project is selected. The Administrator may publish notice of the annual maximum grant amount in the *Federal Register*. An applicant submitting an application which exceeds the maximum will be notified to that effect by REA and given the opportunity to revise the application. The minimum size of a grant will be \$10,000.

§ 1703.107 Conflicts of interest.

At any time prior to the disbursement of a grant awarded under this subpart, the Administrator may disqualify an otherwise eligible project whenever, in the judgement of the Administrator, the project would create a serious conflict of interest or the appearance of a serious conflict of interest. The Administrator will notify the applicant in writing of his/her intention to disqualify the project under this section and set forth the basis for his/her determination that a serious conflict of interest or

appearance exists. Thereafter, the applicant will have 30 days from the date of such notice to file a written response with the Administrator. If the Administrator receives the applicant's response within the 30-day period, the Administrator will consider the information contained therein before making a final determination whether to disqualify the project. The Administrator will promptly notify the applicant of the final determination whether a serious conflict of interest or appearance of a serious conflict exists. If the determination is affirmative, the notice will also advise the applicant whether the project is disqualified or conditionally disqualified. If the project is conditionally disqualified, the notice will state under what circumstances the project may continue to be eligible for assistance under this subpart. The Administrator's decision under this section will be final.

§ 1703.108 Determining what is rural.

The REA Assistant Administrator for Economic Development and Technical Services shall determine whether a project service area possesses sufficient characteristics to be considered a rural area for purposes of this subpart. The Assistant Administrator shall make such determination on the following basis:

(a) The project service area is located within a non-metropolitan county that is included in one of the lowest four categories (6-9) of the ERS Rural Urban Continuum Scale (rural urban continuum) as set forth in Appendix A to this subpart. Those categories are as follows:

(1) Aggregate urban population (sum of cities, towns, villages or other incorporated communities of 2,500 or more) of less than 20,000, adjacent to a metropolitan area (category 6);

(2) Urban population of less than 20,000, not adjacent to a metropolitan area (category 7);

(3) Completely rural (no cities, towns, villages or other incorporated areas of 2,500 or greater) adjacent to a metropolitan area (category 8);

(4) Completely rural, not adjacent to a metropolitan area (category 9).

(b) In the case of project service areas not categorized as rural areas under paragraph (a) of this section, consideration will be given to the degree of rurality the area possesses taking into account such factors as:

(1) Whether the project service area is located within the boundaries of an incorporated community of 2,500 persons or more as determined by the U.S. Census Bureau;

(2) Where the county or counties in which the project service area is located

ranks or rank on the rural urban continuum;

(3) Whether natural geographic barriers or an absence of roads may impede access from the project service area to metropolitan areas;

(4) Whether the county is a spatially large county and the project service area is far from an urbanized area; and

(5) Whether the economy of the project service area centers on natural resource-based activities such as farming, ranching, mining or timber production or is highly specialized.

(c) In the case of a project that will serve end users located in more than one county, at least one of which is not categorized as rural under paragraph (a) of this section, REA will determine the rurality of the project service area case-by-case using factors such as those identified in paragraph (b) of this section. To the extent practicable, in the case of a project that is expected to benefit residents of urban areas as well as residents of rural areas, instead of rejecting an application because it benefits areas that are not rural, REA may allocate the grant accordingly to assure that grant funds primarily benefit only residents of rural areas.

(d) If a determination made under this section results in the denial of an application, the applicant may appeal such determination to the Administrator in writing setting forth the reasons why it disagrees. Thereafter, the Administrator will review the determination and decide in writing whether to sustain, reverse or modify the original determination. The Administrator's determination will be final. A copy of the Administrator's decision will be furnished promptly to the applicant.

§§ 1703.109—1703.110 [Reserved]

§ 1703.111 Compliance with other Federal statutes and regulations.

(a) *Equal opportunity and nondiscrimination requirements.* All grants made under this subpart are subject to the nondiscrimination provisions of title VI of the Civil Rights Act of 1964, as amended, (7 CFR part 15); Section 504 of the Rehabilitation Act of 1973, as amended, (7 CFR part 15b); the Age Discrimination Act of 1975, as amended, (45 CFR part 90); and Executive Order 11246, as amended by Executive Order 11375.

(b) *Architectural barriers.* All facilities financed with REA grants that are open to the public, or in which physically handicapped persons may be employed or reside, must be designed, constructed, and/or altered to be readily accessible to, and usable by

handicapped persons. Standards for these facilities must comply with the Architectural Barriers Act of 1968, as amended, and with the Uniform Federal Accessibility Standards (UFAS), (Appendix A to 41 CFR subpart 101-19.6).

(c) *Flood hazard area precautions.* In accordance with part 1788 of this title, if the project is in an area subject to flooding, flood insurance must be provided to the extent available and required under the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 through 4128). The insurance must cover, in addition to the buildings, any machinery, equipment, fixtures and furnishings contained in the buildings. REA will comply with Executive Order 11988, Floodplain Management, in considering the application for the project.

(d) *Real property acquisition.* Acquisition of real property in connection with this program is subject to 7 CFR part 21, Uniform Relocation Assistance and Real Property Acquisition for Federal and federally Assisted Programs. Owners of real property acquired under Federal or federally-assisted programs, and persons displaced from their dwellings, businesses, or farms as a result of such an acquisition, must be provided fair, consistent, and equitable treatment, as defined by 7 CFR part 21.

(e) *Drug-free workplace.* Grants made under this subpart are subject to the requirements set forth in 7 CFR part 3017, Subpart F, Drug-Free Workplace Requirements, which implements the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*). An applicant requesting a grant will be required to certify that it will establish and make a good faith effort to maintain a drug-free workplace program.

(f) *Debarment and suspension.* The requirements of Executive Order 12549, Debarment and Suspension, and 7 CFR part 3017, Subparts A through E, Governmentwide Debarment and Suspension (Nonprocurement), regarding debarment and suspension are applicable to this subpart.

(g) *Intergovernmental review of Federal programs.* This program is subject to the requirements of Executive Order 12372, Intergovernmental Review of Federal Programs and 7 CFR part 3015, Subpart V, Intergovernmental Review of Department of Agriculture Programs and Activities, which implements Executive Order 12372. Proposed projects are subject to the State and local government review process set forth in part 3015 of this title. Under the review process, State

and local governments have 60 days to comment on the proposed project. The Administrator will not give final approval to an application until the requirements of subpart V, part 3015 of this title, regarding State and local government review have been satisfied.

(h) *Restrictions on lobbying.* The restrictions and requirements imposed by 31 U.S.C. 1352, entitled "Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions" and the implementing regulation, part 3018 of this title, New Restrictions on Lobbying, are applicable to this program. The regulation that implements this statute requires applicants for a grant in excess of \$100,000 to file a certification statement regarding the use of federally appropriated funds to lobby the Executive and Legislative branches of the Federal Government and to file a disclosure form if engaged in these activities using unappropriated funds. In addition, persons that receive subgrants, contracts or subcontracts in excess of \$100,000 under a grant must file certification statements regarding lobbying the Executive and Legislative branches and, if engaged in these activities, to file disclosure forms.

(i) *Management assistance.* REA will monitor grant recipients as necessary to assure that projects are completed in accordance with the approved scope of work and that funds are expended for approved purposes. Grants made under this subpart will be administered under, and are subject to parts 3015 through 3018 of this title.

(j) *Environment.* Applicants for grants must consider the potential environmental impact of their proposed projects at the earliest planning stage and should plan development in a manner that reduces, to the extent practicable, the potential to affect the quality of the human environment adversely. Grants made under this subpart are subject to part 1794 of this chapter which contains the policies and procedures of REA for implementing a variety of Federal statutes, regulations and executive orders generally pertaining to protection of the quality of the human environment that are listed in § 1794.1 of this chapter.

§ 1703.112 [Reserved]

§ 1703.113 Application filing dates and location.

(a) Applications for funding under this subpart may be submitted to the Administrator, Rural Electrification Administration, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250-

1500. Applications should be marked "Attention: Assistant Administrator, Economic Development and Technical Services."

(b) Applicants may file applications at any time during a fiscal year period. Applications will be reviewed for eligibility and considered for funding on a quarterly basis. Application cut-off dates for consideration in a particular quarterly period are on the fourteenth day of January, April, July, and October of each year. Applications which are considered eligible but are not selected for funding in a quarter will be considered for funding in the following quarter(s) for not more than four quarters in total consideration unless withdrawn sooner by the applicant. An application considered in four consecutive quarters and not selected for funding will be returned to the applicant. The Administrator may establish a special selection period in an extraordinary circumstance.

§ 1703.114 Application processing and contents.

For instances where multiple applicants are necessary to carry out a project due to project feasibility or applicant authorities, multiple applications may be submitted jointly by the applicants. The applicants must clearly mark or otherwise identify any information in the application it deems proprietary. The application consists of:

(a) *An application form.* The applicant must provide an original and one copy of a completed SF 424 "Application for Federal Assistance." The applicant must submit a copy of the application to the State government point of contact at the same time it submits the application to REA. All applications must be accompanied by the information described in paragraphs (a) through (n) of this section.

(b) *Evidence of legal existence and authority.* The applicant must provide evidence of its legal existence and authority to execute the letter of agreement and perform the activities under the grant, and an opinion by its attorney that it is legally formed according to state statutes and has authority to execute the letter of agreement and perform the proposed activities under the grant and to comply with the provisions of this subpart.

(c) *A board resolution.* The applicant must provide a board resolution or equivalent that:

(1) Authorizes the request of a grant under this subpart in the amount required to the nearest hundred dollars; and

(2) Authorizes appropriate applicant official(s) by name or title to requisition

grant funds and execute all documents required by REA under this subpart.

(d) *Miscellaneous Federal forms.* The applicant must provide the following completed forms:

(1) "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transaction" (See 7 CFR 3017.510.);

(2) An assurance statement or certification statement required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, if appropriate;

(3) "Certification Regarding Drug-Free Workplace Requirements (Grants)" (See 7 CFR 3017.600.); and

(4) For an application for a grant in excess of \$100,000, a certification statement, "Certification Regarding Lobbying;" and, if the applicant is engaged in lobby activities described under § 1703.111(h) of this subpart, a completed disclosure form, "Disclosure of Lobbying Activities" (See 7 CFR part 3018.). Copies of these certifications are available upon request.

(e) *A telecommunications plan.* The applicant must provide a Telecommunications Plan prepared in accordance with § 1703.139 and placed in a separate section of this application entitled "Comprehensive Rural Telecommunications Plan."

(f) *A section on compliance with ranking criteria.* The applicant must provide an explanation of how the proposed project meets each of the criteria for making applications set forth in §§ 1703.117 through 1703.119.

(g) *A section on compliance with technical standards.* The applicant must provide an explanation of how the plan complies with generally accepted standards for advanced telecommunications systems and any specific technical standards otherwise established by the Administrator pursuant to published regulations.

(h) *Financial information.* The applicant must provide the latest financial information to support the need for grant funds for the project, and to show its financial capacity to carry out the proposed work. At a minimum, the information should include a balance sheet and income statement. A current audit report is preferred.

(i) *A statement of experience.* The applicant must provide a written narrative describing its demonstrated capability and experience, if any, in operating a project similar to the proposed project.

(j) *Funding commitments from other sources.* The applicant must provide evidence of commitment of funds for the project in addition to the funds

requested under this subpart. Evidence should be from an authorized representative of the source organization that the funds are available and will be used for the proposed project.

(k) *Environmental information.* The applicant must provide environmental information which shall be prepared in accordance with § 1703.138 and placed in a separate section entitled "Environmental Impact of the Project."

(l) *The proposed scope of work.* The applicant must provide a proposed scope of work which includes, at a minimum, the following:

(1) The specific activities to be performed under the project;

(2) Who will carry out the activities;

(3) The timeframes for accomplishing the project objectives and activities; and

(4) A budget reflecting the line item costs for both the grant funds and other sources of funds for the project.

(m) *The proposed evaluation methodology.* The applicant must provide a proposed method of evaluating the success of the project in meeting the objectives of the program as set forth in §§ 1703.100 and 1703.101 of this subpart and the proposed scope of work.

(n) *Supplemental information.* The applicant should provide any additional information the applicant considers relevant to the project and likely to be helpful in determining the extent to which the proposed project would further the purposes of this subpart.

§ 1703.115 Public notice of applications received.

On or about the 25th day of January, April, July, and October of each year, the Administrator will publish notice in the Federal Register of the applications received for funding under this subpart. The Administrator will also make those applications available for public inspection at the U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC, by any telecommunications provider described in section 2333(f) of the Act. For purposes of this section, applications include any information not protected by the Privacy Act of 1974, 5 U.S.C.

552a, and any other information that has not been designated as proprietary information by the applicant.

§ 1703.116 [Reserved]

§ 1703.117 Criteria for ranking applications.

The criteria in this section and §§ 1703.118 and 1703.119 will be used by the Administrator to rank applications that have been determined to be in compliance with the requirements of this subpart. Applications will be selected for funding that receive the greatest number of total points based on the following factors, subject to available funds and provisions of § 1703.119. The Administrator will make determinations regarding the reasonableness of all numbers, dollars, levels and rates, as well as the nature, cost, location and other characteristics of the application and the proposed project, to determine the number of points assigned to an application for all selection criteria. Joint applications submitted by multiple applicants as set forth in § 1703.114 will be rated as a single application.

(a) Project worthiness criteria include:

(1) The extent to which the project will encourage and improve the use of advanced telecommunications, computer networks, and related advanced technologies to provide quality educational and/or medical benefits to residents of rural areas. The Administrator will consider the overall design of the project, the manner in which the project will improve access of rural residents to improved educational, training, and medical services using advanced communication and information links, the technologies to be employed in the project, and whether the educational and/or medical benefits of the project will be made accessible to rural residents through the use of advanced telecommunications, computer networks, and related advanced technologies—up to 15 points;

(2) The nature and extent of the benefits of the project given the cost of the project. The Administrator will evaluate the applicant's analysis of the benefits and cost of the project. The applicant should quantify the benefits and cost to the extent possible and propose projects that maximize net benefits. Examples of educational benefits include offering the students in a rural school more advanced or specialized courses, meeting curriculum requirements, providing a means to train and develop the teaching staff of a rural school, establishing a means to access information that is not available locally, offering job training, continuing

education, and higher education courses or degrees to rural residents, and offering job training options for rural residents. Examples of medical benefits include affording rural physicians and medical professional access to support functions such as consulting with others on a diagnosis or the latest recommendations in treatment procedures and techniques, up-to-date health-care research, and continuing medical studies. Other benefits include retaining more patients at rural hospitals and medical facilities, preventing the closure of rural hospitals and medical facilities, retaining more medical care professionals in rural areas, and reducing the potential complications and costs of travel for patients. The Administrator will take into consideration the number of rural residents to be served or directly receive the benefits of the project. The benefit-cost analysis will consider both the recurring benefits and the non-recurring benefits to the rural residents from project. The costs will be reviewed on the basis of capital investments costs, other non-recurring costs, and the recurring costs over the life of the project. Applicants should address these costs separately. The Administrator will compare the benefits to the costs in determining the cost-effectiveness of the project and the number of points that will be assigned to an application—up to 20 points;

(3) The extent to which the proposed methods of performing the project relating to buying or leasing equipment are the most cost-effective for the type of project proposed. The application must contain information necessary for the Administrator to use accepted financial methodologies to determine whether the applicant is proposing the most cost-effective option—up to 10 points;

(4) The demonstrated capability, experience, and knowledge of the applicant and others who will be active in the proposed project for carrying out the project purpose—up to 10 points;

(5) The extent to which the proposed techniques or designs have been proven in similar projects created for the rural environment and will offer quality educational and medical benefits—up to 10 points;

(6) The project concept and design are well developed to ensure that the project has a high probability of accomplishing its objectives and will likely result in long-term success as measured by improved educational and medical benefits to rural residents—up to 10 points; and

(7) Whether or not the project will be a demonstration project and the project

can be duplicated or applied to other rural areas—up to 5 points.

(b) Criteria on the financial capabilities and needs of the applicant include:

(1) Whether the applicant is unable to finance, at reasonable rates and terms, the proposed project without the grant funds requested under this subpart—up to 60 points. REA will consider:

(i) The demonstrated financial need of the applicant based on financial statements and potential sources of revenue;

(ii) Whether the applicant has the ability to finance the entire project without grant funds or whether the addition of the grant funds will make the project feasible that otherwise would be unfeasible due to the rural nature of the affected area; and

(iii) Whether it is likely that the proposed project will be undertaken or completed in the absence of an REA grant.

(2) Evidence of additional financial support for the project. For applications that receive the highest number of points under paragraph (a)(2)(i) of this section, evidence of additional financial support for the project from non-Federal sources above the required 20 percent supplement to the project; including evidence from authorized representatives of the sources that the funds are available and will be used for the proposed project:

(i) More than 30 percent and less than 40 percent supplemental funds—5 points; or

(ii) 40 percent or more supplemental funds—10 points.

(c) Criteria on the need of the affected rural communities for the project that include:

(1) The extent to which the need for improved educational or medical services in the proposed rural area compared to other regions is well documented. REA will also consider any support by recognized experts in the related educational or medical field—up to 25 points.

(2) A comparison of the per capita personal income in the county or counties where the project or the beneficiaries are located to the state and national per capita personal income levels.

(i) If the per capita personal income level in the county where the grant beneficiaries will be located:

(A) Is less than or equal to 90 percent of the National per capita personal income level—15 points, the maximum number of points;

(B) Is equal to the National per capita personal income level—5 points; or

(C) Exceeds the National per capita personal income level by 15 percent or more—0 points.

(ii) If the per capita personal income level in the county or counties where the grant beneficiaries will be located:

(A) Is less than or equal to 90 percent of the state per capita personal income level—8 points, the maximum number of points;

(B) Is equal to the state per capita personal income level—4 points; or

(C) Exceeds the state per capita personal income level by 15 percent or more—0 points.

(iii) Per capita personal income levels falling between these national or state levels will be assigned points based on straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of 1/2 or greater equals 1.

(iv) If the project will serve grant beneficiaries in several counties, the Administrator will use a simple average (mean) of the counties for the comparison.

(v) REA will use the most recent annual per capita personal income levels it has obtained from the Bureau of Economic Analysis, U.S. Department of Commerce or other government sources and processed into a suitable format.

§ 1703.118 The comparative rurality of the proposed project service area.

This criterion is used after a project service area has been determined eligible in accordance with § 1703.108 of this subpart. The methodology contained in this section is used to evaluate the relative rurality (i.e., population and isolation) of service areas for various projects. Under this system, the end user sites and hubs (as defined in § 1703.102) contained within the proposed project service area are identified. Then, that service area is given a ranking according to the characteristics of the county(ies) in which the end user sites are located. Evaluation is based on the population of the county or counties, and the location of the county or counties relative to metropolitan statistical areas. This system incorporates a framework based on the classification of nonmetropolitan counties by urbanization and proximity to metropolitan areas, developed by analysts and demographers at the U.S.D.A. Economic Research Service (ERS), as set forth in Appendix A to this subpart.

(a) The following definitions are used in the evaluation of rurality:

(1) Metropolitan statistical area (MSA)—as defined by the Office of

Management and Budget (OMB), an MSA includes core counties containing a city of 50,000 or greater population or containing several smaller cities totaling 50,000 or greater population and a total population of at least 100,000. Additional contiguous counties are included in the MSA if they are economically and socially integrated with the core county.

(2) Metropolitan County—defined by OMB, a metropolitan county is part of an MSA and contains a place, or two adjoining places, totaling at least 50,000 in population, and has residents who are economically and socially integrated with a metropolitan core.

(3) Adjacency to Metropolitan area—the proximity of a county to a MSA measured by a shared boundary with a MSA, and having at least 2 percent of employed county residents commuting to MSA's for employment.

(b) If the end user site(s) for the project are located in a non-metropolitan county or counties (ERS Rural—Urban Continuum Scale categories 4–9 as set forth in Appendix A to this subpart) with the following characteristics:

(1) With an ERS category of 9–60 points, the maximum number of points;

(2) With an ERS category of 8–55 points;

(3) With an ERS category of 7–35 points;

(4) With an ERS category of 6–30 points;

(5) With an ERS category of 5–10 points;

(6) With an ERS category of 4–5 points; or

(7) Metropolitan Counties, ERS categories 0–3—0 points.

(c) Applicants having proposed end user sites located in a nonmetropolitan county or counties which are adjacent to a metropolitan area may receive an adjustment of up to 5 additional points, as determined by the Administrator. Applicants must document that the end users are isolated from urban centers by virtue of available mass transportation, highway infrastructure, or geography.

(d) Applicants having proposed user sites located in a metropolitan county or counties (ERS categories 0–3) may receive 10 points if the population density of the county or counties is no greater than 110 percent of the adjoining nonmetropolitan county with the lowest population density.

(e) If all the end user sites in a proposed network or system are located in a single county or in multiple counties which have the same characteristics, a rating will be assigned directly from one of the categories set forth in § 1703.118(b).

(f) If end user sites are located in multiple counties with different characteristics, a weighted average will be calculated using the following methodology:

(1) The total number of end user sites located in rural areas will be determined and be assigned a uniform percentage to be used in a weighted average formula (e.g., with 5 sites, each site would be weighted 20%). A hub will not be counted in a weighted average unless the hub is also utilized as an end user site. For purposes of ranking, if a hub also is utilized as an end user site, the hub will be considered as an end user site.

(2) The counties which contain end user sites will be identified.

(3) Each end user site will be assigned a number of points according to the classification system for the county in which it is located.

(4) The percentage value for each site determined in step 1 will be multiplied by the number of points scored from the site's county classification.

(5) The total points for each end user site, obtained from the calculations in step 4, will be added to reach a final weighted average for the project.

(g) The following example illustrates the provision of paragraph (f) of this section.

Example Calculation. Greenbriar Valley Development Authority has submitted an application for an interactive classroom network which includes a hub in a metropolitan area and 3 end user sites, located in 3 rural counties. The hub is located in a large city and is not utilized as an end user site, so the hub will not be considered part of the network or system.

The first end user site is located in the town of Midway, in Greenbriar County, which has an aggregate urban population of less than 20,000, adjacent to a metropolitan area. Thus, it has a category of 6 on the ERS Rural—Urban Continuum Scale.

The second end user site is in Lewistown, in Lewis County, which has an aggregate urban population of less than 20,000, not adjacent to a metropolitan area. Thus, it has a category of 7 on the ERS Rural—Urban Continuum Scale.

The third end user site is in the town of Rocky Creek, in Fayette County, which has an aggregate urban population of 20,000 or more, but not adjacent to a metropolitan area. Thus, it has a category of 5 on the ERS Rural—Urban Continuum Scale.

Step (1) The total number of end user sites = 3; thus each end user site receives 33% weight in the formula.

Step (2) The counties identified are Greenbriar, Lewis and Fayette.

Step (3) Greenbriar County, ERS Rural—Urban Continuum Scale category 6 = 30 points;

Lewis County, ERS Rural—Urban Continuum Scale category 7 = 35 points;

Fayette County, ERS Rural—Urban Continuum Scale category 5 = 10 points.

Step (4) Midway site—30 points x 33% = 9.9 points

Lewistown site—35 points x 33% = 11.6 points

Rocky Creek site—10 points x 33% = 3.3 points

Step (5) 9.9 + 11.6 + 3.3 = 24.8 total weighted average score

§ 1703.119 Other application ranking criteria.

(a) Proposed projects for telecommunications transmission facilities to be funded under this subpart will be jointly shared by other projects that would enhance the purpose(s) of this subpart—up to 50 points.

(b) Projects that use telecommunications transmission facilities and/or computer networks not financed through grants under this subpart for which the applicant has obtained a certification that the carrier will provide the facilities necessary for the project—up to 25 points.

(1) In determining the number of points an applicant will receive, REA will consider:

(i) Whether 0 percent of the REA grant will be used for the cost of transmission facilities and/or computer networks—25 points, the maximum number of points;

(ii) Whether less than 25 percent of the REA grant will be used for the cost of transmission facilities and/or computer networks—10 points;

(iii) Whether 25 to 40 percent of the REA grant will be used for the cost of transmission facilities and/or computer networks—5 points;

(iv) Whether over 40 percent of the REA grant will be used for the cost of transmission facilities and/or computer networks—0 points.

(2) Notwithstanding the percentage of REA financing requested for transmission facilities and/or computer networks, up to 15 additional points may be awarded for those projects in which it is clearly demonstrated that grant funded costs for transmission facilities will yield a corresponding reduction in capital costs or operating expenses of end user sites and hubs.

(c) Projects that have the greatest probability of long-term success of fulfilling the purpose and policy goals of this subpart—to 20 points.

(d) Regardless of the number of points an application may receive, the Administrator may:

(1) Limit the number of applications selected for projects located in any one state during a fiscal year;

(2) Limit the number of selected applications for an applicant during a fiscal year;

(3) Limit the number of selected applications for a particular project; and

(4) Select an application receiving fewer points than another higher scoring application if there are insufficient funds during a particular funding period to select the higher ranked application; provided, however, the Administrator may ask the applicant of the higher scoring application if it desires to reduce the amount of its application to the amount of funds available if the Administrator determines the project is feasible at the lower amount.

(e) REA reserves the right to use the region or other data it considers most appropriate if "county" data are unavailable for a particular area. In those cases, the Administrator will use data compiled on a basis of the equivalent of a county in the state, such as a parish, or on another basis that most approximates "county" level data.

§ 1703.120—1703.121 [Reserved]

§ 1703.122 Further processing of selected applications.

(a) During the period between the selection of the application and the execution of implementing documents, the applicant must inform the Administrator if the project is no longer viable or the applicant no longer desires a grant for the project. If the applicant so informs the Administrator, the selection will be rescinded and written notice to that effect shall be sent promptly to the applicant.

(b) If an application has been selected and the nature of the project changes, the applicant may be required to submit a new application to the Administrator for consideration depending on the degree of change. A new application will be subject to review in accordance with this subpart. The selection may not be transferred to another project.

(c) If state or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within 3 months of the Administrator's selection of the application, the Administrator may rescind the selection and written notice to that effect will be sent promptly to the applicant.

(d) After an applicant has submitted such additional information, if any, the Administrator determines is necessary for completing the grant documents, the Administrator will send the documents to the applicant to execute and return to REA.

(1) The grant documents will include a letter of agreement and any other legal documents the Administrator deems appropriate, including suggested forms of certifications and legal opinions.

(2) The letter of agreement will, among other things, constitute the Administrator's approval of funds for the project subject to certain terms and conditions and include at a minimum, a project description, approved purposes of the grant, the maximum amount of the grant, supplemental funds to be provided to the project and certain agreements or commitments the applicant may have proposed in its application.

(e) Until the letter of agreement has been executed and delivered by REA and by the applicant, the Administrator reserves the right to require any changes in the project or legal documents covering the project to protect the integrity of the program and the interests of the United States Government.

(f) If the applicant fails to submit, within 120 calendar days from the date of the Administrator's selection of an application, all of the information that the Administrator determines to be necessary to prepare legal documents and satisfy other requirements of this subpart, the Administrator may rescind the selection of the application and written notice to that effect will be sent promptly to the applicant.

§ 1703.123—1703.125 [Reserved]

§ 1703.126 Disbursement of grant funds.

(a) Prior to the disbursement of funds, the grantee, if it is not a unit of government, will provide evidence of fidelity bond coverage as required by § 3015.17 of this title.

(b) Grant funds will be disbursed to grantees on a reimbursement basis by the following process:

(1) An SF 270, "Request for Advance or Reimbursement," will be completed by the applicant and submitted to REA not more frequently than once a month; and

(2) After receipt of a properly completed SF 270, payment will ordinarily be made within 30 days.

(c) The grantee's share in the cost of the project will be disbursed in advance of grant funds, or if the grantee agrees, on a pro rata distribution basis with grant funds during the disbursement period. Grantee will not be permitted to provide its contribution at the end of the project.

§ 1703.127 Reporting and oversight requirements.

(a) An SF 269, "Financial Status Report," and a project performance activity report will be required of all grantees on a quarterly basis.

(b) A final project performance report will be required with the last SF 269. The final report also must provide an

evaluation of the success of the project in meeting the objectives of the program. The final report may serve as the last quarterly report.

(c) Grantees shall diligently monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Grantees are to submit an original and one copy of each report to REA. The project performance reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Reasons why established objectives were not met;

(3) A description of any problems, delays, or adverse conditions which have occurred, or are anticipated, and which may affect the attainment of overall project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(4) Objectives and timetable established for the next reporting period.

§ 1703.128 Audit requirements.

The grantee will provide an audit report in accordance with part 3015, subpart I, of this title. The audit requirements only apply to the year(s) in which grant funds are received. Audits must be prepared in accordance with generally accepted government auditing standards (GAGAS) using publication, "Standards for Audit of Governmental Organization, Programs, Activities and Functions."

§ 1703.129—1703.134 [Reserved]

§ 1703.135 Grant administration.

(a) The Administrator will review grantees, as necessary, to determine whether funds were expended for approved purposes. The grantee is responsible for ensuring that the project complies with all applicable regulations, and that the grant funds are expended only for approved purposes. The grantee is responsible for ensuring that disbursements and expenditures of funds are properly supported by invoices, contracts, bills of sale, cancelled checks, or other appropriate forms of evidence, and that such supporting material is provided to the Administrator, upon request, and is otherwise made available, at the grantee's premises, for review by the

REA representatives, grantee's certified public accountant, the office of Inspector General, U.S. Department of Agriculture, the General Accounting Office and any other officials conducting an audit of the grantee's financial statements or records, and program performance under the grant awarded under this subpart. Grantees will be required to permit REA to inspect and copy any records and documents that pertain to the project.

(b) Grants provided under this program will be administered under, and are subject to parts 3015 and 3016 of this title, as appropriate. Parts 3015 and 3016 of this title subject grantees to a number of requirements which cover, among other things, financial reporting, accounting records, budget controls, record retention and audits, bonding and insurance, cash depositories for grant funds, grant related income, use and disposition of real property and/or equipment purchased with grant funds, procurement standards, allowable costs for grant related activities, and grant close-out procedures.

§ 1703.136 Changes in project objectives or scope.

The grantee will obtain prior approval for any material change to the scope or objectives of the approved project, including changes to the scope of work or budget. Failure to obtain prior approval of changes can result in suspension or termination of grant funds.

§ 1703.137 Grant termination provisions.

(a) *Termination for cause.* The Administrator may terminate any grant in whole, or in part, at any time before the date of completion of grant disbursement, whenever it is determined that the grantee has failed to comply with the conditions of the grant. The Administrator will promptly notify the grantee in writing of the determination and the reasons for the termination, together with the effective date.

(b) *Termination for convenience.* The Administrator or the grantee may terminate a grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with further expenditure of funds. The two parties will agree upon termination conditions, including the effective date, and in the case of partial terminations, the portion to be terminated. The grantee will not incur new obligations for the terminated portion after the effective date, and will cancel as many outstanding obligations as possible. The Administrator will

allow full credit to the grantee for the Federal share of the noncancelable obligations, properly incurred by the grantee prior to termination.

§ 1703.138 Environmental information.

(a) *Grants for technical assistance projects.* For a proposal to fund a technical assistance project, the only environmental information normally required is whether or not the proposed project being studied or analyzed will be located within an area protected under the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*). Generally, the use of Federal funds to promote development on coastal barriers is strictly limited by the Coastal Barrier Resources Act.

(b) *Grants for all other projects.* Applications for a grant to fund a project that is not subject to paragraph (a) of this section must be accompanied by the information described in this paragraph. The Administrator will review supporting materials in the application and initiate an environmental review process pursuant to part 1794 of this chapter. This process will focus on any environmental concerns or problems that are associated with the project. The level and scope of the environmental review will be determined in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, (42 U.S.C. 4321 *et seq.*), the Council on Environmental Policy for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500—1508), REA's Environmental Policies and Procedures (part 1794 of this chapter) and other relevant Federal environmental laws, regulations and Executive Orders. Activity related to the project that may adversely affect the environment or limit the choice of reasonable alternatives shall not be undertaken prior to completion of REA's environmental review process.

(1) For a proposed project that only involves internal modifications or equipment additions to buildings or other structures (for example; relocating interior walls or adding computer facilities) and/or external changes or additions to existing buildings, structures or facilities requiring physical disturbance of less than 0.4 hectare (0.99 acre) the environmental information normally required is:

(i) A description of the internal modifications or equipment additions, and the external changes or additions to existing buildings, structures or facilities being proposed, the size of the site in hectares, and the general nature of the proposed use of the facilities once the project is completed, including any

hazardous materials to be used, created or discharged, any substantial amount of air emissions, wastewater discharge, or solid waste that will be generated; and

(ii) Whether the project site contains or is near a property listed or eligible for listing in the National Register of Historic Places (16 U.S.C. 470).

(2) For all other proposed projects that do not meet the requirements in paragraph (a) or (b)(1) of this section, the environmental impact discussion in the application should include:

(i) A diagram showing the general layout of the proposed facilities on the project site;

(ii) The size of the project site in hectares;

(iii) A map (preferably a U.S. Geological Survey map) of the project area indicating the boundaries of the project;

(iv) The presence of floodplains at the project site;

(v) The amount of property to be cleared, excavated, fenced or otherwise disturbed by the project;

(vi) The current land use and zoning of the project site and any vegetation on the project site;

(vii) Buildings or other major structures, including dimensions, to be constructed or modified;

(viii) The presence of wetlands or existing agricultural operations at the project site; properties listed or eligible for listing in the National Register of Historic Places on or near the project site; threatened or endangered species or critical habitat on or near the project site (16 U.S.C. 1531 *et seq.*);

(ix) The general nature of the proposed use of the facilities once the project is completed, including any hazardous materials to be used, created or discharged, any substantial amount of air emissions, wastewater discharge, or solid waste that will be generated (42 U.S.C. 4321 *et seq.*); and

(x) A copy of any environmental review, study, assessment, report or other document that has been prepared in connection with obtaining permits, approvals or other financing for the proposed project from State, local or other Federal bodies. Such material, to the extent relevant, may be used to fulfill the requirements of this section.

(3) REA may request additional environmental information in specific cases to satisfy § 1703.111(j).

§ 1703.139 Telecommunications plan.

A telecommunications plan submitted pursuant to this subpart must include:

(a) A detailed explanation of the proposed rural telecommunications system project to be funded under this subpart, how the project is to be funded,

and a description of the intended uses for the grant received from REA under this subpart. This must include a breakdown of the specific uses of the grant funds requested under this subpart and the specific uses and sources of all funds necessary to ensure completion of the project. Project costs should be limited to the amount of funds to be expended over the grant performance period;

(b) An explanation of the manner in which such plan complies with the requirements set forth under this subpart regarding how the proposed project will fulfill the purpose and policies of the Distance Learning and Medical Link Grant Program;

(c) A listing of the proposed purchases or leases of telecommunications terminal equipment, telecommunications transmission facilities, data terminal equipment, interactive video equipment, computer hardware and software systems, and components that process data for transmission via telecommunications, computer network components, communication satellite ground station equipment, or any other elements of the telecommunications system designed to further the purposes of this subpart, that the applicant intends to build or fund under a grant received under this subpart;

(d) An explanation of the special financial or other needs of the affected rural communities and of the applicant for grant assistance under this subpart;

(e) An analysis of the relative costs and benefits of proposals for leasing or purchasing of facilities, equipment, components, hardware and software, or other items; and

(f) A description of the consultations with the appropriate local telephone exchange carrier(s), if appropriate for the project, or with other telecommunications service providers appropriate for the project which include other interexchange carriers, cable television operators, enhanced service providers, providers of satellite services, and telecommunications equipment manufacturers and distributors. The plan must discuss the anticipated role of any these providers in the project. Consultations are considered necessary if the proposed project will rely on these services for project success. The description should contain, at a minimum, identification of the proposed project area, the authorized individuals representing those entities, the date of contact, and the anticipated role of the entity(s) in the proposed project. It must include an explanation of the local telephone exchange carrier or other

telecommunications service providers' capabilities relative to the proposed project and whether they will provide any portion of the needed service for the proposed project, whether their short-term plan (1 year) or long-term plan includes capability to provide the service for the proposed project, and whether the telephone exchange carrier(s) or other telecommunications service providers, as appropriate, will charge reasonable rates. If the rates to be charged are considered to be unreasonable, a basis for that determination must be provided. The Administrator will determine whether appropriate service from the telephone exchange carrier(s) or telecommunications service providers, as appropriate, can and will provide the needed service necessary to the project at reasonable rates and within a reasonable timeframe.

§ 1703.140 Expedited telephone loans.

(a) *General.* (1) The Administrator will afford expedited consideration and determination to an application for a loan or a request for advance of funds submitted by a local telephone exchange carrier pursuant to section 2334(h) of the Act (7 U.S.C. 950aaa *et seq.*).

(2) Funds obtained through the expedited procedures established by this section must be used primarily to provide advanced telecommunications services in rural areas using a telecommunications project that the Administrator has approved under this subpart.

(3) Only those elements of a telecommunications project that have not been funded in whole, or in part, with a grant made under this subpart are eligible for expedited consideration or determination under this section.

(b) *Expedited loan applications.* (1) In order to qualify for expedited consideration or determination under paragraph (a)(1) of this section, the loan application must:

(i) Be from a local telephone exchange carrier that will use the requested funds for the purpose set forth in paragraph (a)(2) of this section;

(ii) Be a completed one that complies with the requirements of part 1737, subpart C, of this chapter; and

(iii) Be received concurrently with the related grant application or within 14 days of the date notice of such application is published in the Federal Register as set forth in § 1703.115.

(2) Expedited consideration and determination of a qualifying application for a loan under this section means that within 45 days of receipt or 45 days of selection of the related grant

application, whichever occurs later, the Administrator will:

(i) Issue a characteristics letter, as set forth in part 1737, subpart I, of this chapter, to the loan applicant; or

(ii) Inform the loan applicant that its application for a loan has been denied.

(c) *Expedited advances.* (1) In order to qualify for expedited consideration or determination under paragraph (a)(1) of this section, the request for advance of funds must:

(i) Be from a local telephone exchange carrier that will use the funds for the purpose set forth in paragraph (a)(2) of this section;

(ii) Be for all or part of a loan which has received release approval pursuant to part 1737, subpart K, of this chapter; and

(iii) Be in compliance with the requirements of part 1744 of this chapter.

(2) Expedited consideration and determination of a qualifying request for advance of loan funds under this section means that the Administrator will advance funds to the borrower within 45 days of receiving a request which complies with the provision of this section.

Appendix A to Subpart D of Part 1703—ERS Rural-Urban Continuum Scale

ERS Rural-Urban Continuum Scale

Category	
	Metropolitan Counties
0	Central counties of metropolitan areas of 1 million population or more.
1	Fringe counties of metropolitan areas of 1 million population or more.
2	Counties in metropolitan areas of 250 thousand to 1 million population.
3	Counties in metropolitan areas of less than 250 thousand population.
	Nonmetropolitan Counties
4	Aggregate urban population (sum of cities, towns, villages or other incorporated communities of 2,500 or more) of 20,000 or more, adjacent to metropolitan area.
5	Aggregate urban population of 20,000 or more, not adjacent to a metropolitan area.
6	Aggregate urban population of less than 20,000, adjacent to a metropolitan area.
7	Aggregate urban population of less than 20,000, not adjacent to a metropolitan area.
8	Completely rural (no cities, towns, villages or other incorporated areas of 2,500 or greater) adjacent to a metropolitan area.
9	Completely rural, not adjacent to a metropolitan area.

Notes: Metropolitan status is that which was first announced by the Office of Management and Budget in June 1983, when the codes were first applied to results of the 1980 Census. Adjacency was determined by

physical boundary adjacency and a finding that at least 2 percent of the employed labor force in the nonmetropolitan county commuted to metropolitan central counties.

Categories prepared in Economic Development Division, Economic Research Service, USDA.

Dated: February 18, 1993.

Charles Resnick,

Acting Under Secretary, Small Community and Rural Development.

[FR Doc 93-4167 Filed 2-25-93; 8:45 am]

BILLING CODE 3410-15-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-ASW-39; Amendment 39-8489; AD 93-02-07]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 412 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc., Model 412 helicopters, that currently requires inspection of the vertical fin spar cap assembly every 20 hours time in service until the assembly is replaced with a cold-bonded assembly. This amendment requires inspection of the cold-bonded assembly every 25 hours time in service until it is replaced with a hot-bonded assembly. This amendment is prompted by reports that certain assemblies modified in accordance with AD 85-17-03R1 failed in service. The actions specified by this AD are intended to prevent failure of the vertical fin spar cap, which could cause the assembly to separate and subsequently cause loss of control of the helicopter.

DATES: Effective March 22, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 22, 1993.

Comments for inclusion in the Rules Docket must be received by April 12, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of Assistant Chief Counsel, Attention: Rules Docket No. 92-ASW-39, 4400 Blue Mound Road, Fort Worth, Texas 76106.

The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Henry, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, ASW-170, Fort Worth, Texas 76193-0170, telephone (817) 624-5168, fax (817) 740-3394.

SUPPLEMENTARY INFORMATION: On December 11, 1985, the FAA issued AD 85-17-03R1, Amendment 39-5194 (51 FR 1489, January 14, 1986), to require inspection of the vertical fin spar cap assembly every 20 hours time in service, or after completion of five flight operation days. The requirements of this inspection were eliminated if vertical fin spar modifications were accomplished in accordance with Part II of Bell Helicopter Textron, Inc. (BHTI) Alert Service Bulletin (ASB) 412-85-20, Revision B, dated November 8, 1985; these modifications included a cold-bonding process. That action was prompted by reported cracks in the left-hand vertical fin spar cap assembly, part number (P/N) 212-030-121-005. That condition, if not corrected, could result in loss of the vertical fin and subsequent loss of control of the helicopter.

Since the issuance of that AD, there have been five reported failures of the appropriately modified vertical fin spar cap assemblies. These failures (cracks) resulted from corrosion at the interface of the cold-bonded steel doublers and the aluminum fin spar cap. To further address this condition, BHTI issued ASB 412-92-65, dated August 17, 1992, which cancelled ASB 412-85-20. ASB 412-92-65 provides for repetitive inspections of the spar cap assembly, P/N 212-030-447-001, that contains cold-bonded steel doublers installed by the operator. The ASB also provides for a terminating action, replacing the -001 spar cap assembly with P/N 212-030-447-101, using hot-bonded steel doublers on a new aluminum spar cap supplied by the manufacturer. After review of ASB 412-92-65 and the associated service failures, the FAA has determined that further AD action is necessary to mandate additional inspections and to provide for newly modified assemblies.

Since an unsafe condition has been identified that is likely to exist or develop on other helicopters of this

same type design, this AD supersedes AD 85-17-03R1 to require a repetitive inspection for cracks, corrosion or doubler debonding in the spar cap assembly until replaced with a spar cap assembly, P/N 212-030-447-101. The actions are required to be accomplished in accordance with ASB 412-92-65, that was previously described.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-ASW-39." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-5194 (51 FR 1489, January 14, 1986), and by adding a new airworthiness directive (AD), Amendment 39-8489, to read as follows:

AD 93-02-07 Bell Helicopter Textron, Inc., (BHTI) Amendment 39-8489. Docket Number 92-ASW-39. Supersedes AD 85-17-03R1, Amendment 39-5194, Docket Number 85-ASW-37.

Applicability: BHTI Model 412 helicopters, serial numbers 33001 through 33120 and serial numbers 34001 through 34012, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the vertical fin spar cap assembly, which could result in loss of the vertical fin and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time in service after the effective date of this AD, inspect the vertical fin spar cap assembly, P/N 212-030-447-001, in accordance with the Accomplishment Instructions, Part I, of BHTI Alert Service Bulletin (ASB) No. 412-92-65, dated August 17, 1992, and every 25 hours time in service thereafter until it is replaced with a vertical fin spar cap assembly, P/N 212-030-447-101, in accordance with the Accomplishment Instructions, Part II, of the ASB. If any cracks, corrosion or doubler debonding is found, replace the spar cap assembly before further flight with an airworthy part in accordance with the Accomplishment Instructions, Part II, of the ASB.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, ASW-170, 4400 Blue Mound Road, Fort Worth, Texas 76106. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Rotorcraft Certification Office.

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

(d) The inspection and replacement of the fin spar cap shall be done in accordance with the Accomplishment Instructions, Parts I and II, of BHTI ASB No. 412-92-65, dated August 17, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101-0482. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 22, 1993.

Issued in Fort Worth, Texas, on January 27, 1993.

James D. Erickson,
Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93-4470 Filed 2-25-93; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 92-NM-203-AD; Amendment 39-8502; AD 93-04-01]

Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD-11 series airplanes, that requires modification of the flight compartment overhead circuit breaker panel. This amendment is prompted by an operator's report that the number 1 and number 3 display units in the cockpit went blank momentarily on several occasions. The actions specified by this AD are intended to prevent display units from going blank, which could lead to loss of display information that is critical for continued safe flight.

DATES: Effective April 2, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 2, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Brett E. Portwood, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-132L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5347; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD-11 series airplanes was published in the Federal Register on November 20, 1992 (57 FR 54730). That action proposed to require

modification of the flight compartment overhead circuit breaker panel.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 61 McDonnell Douglas Model MD-11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 22 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1.5 work hours per airplane to accomplish the required actions, and that the average labor rate is \$55 per work hour. The cost for required parts is expected to be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$1,815, or \$83 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

93-04-01 McDonnell Douglas: Amendment 39-8502. Docket 92-NM-203-AD.

Applicability: Model MD-11 series airplanes, as listed in McDonnell Douglas Model MD-11 Alert Service Bulletin A24-51, dated September 11, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent display units from going blank, which could lead to momentary loss of flight critical display information, accomplish the following:

(a) Within 90 days after the effective date of this AD, modify the flight compartment overhead circuit panel in accordance with McDonnell Douglas Model MD-11 Alert Service Bulletin A24-51, dated September 11, 1992.

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

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

(d) The modification shall be done in accordance with McDonnell Douglas Model MD-11 Alert Service Bulletin A24-51, dated September 11, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or

at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 2, 1993.

Issued in Renton, Washington, on February 19, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-4471 Filed 2-25-93; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 888

[Docket No. N-93-3550; FR-3346-N-02]

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors; Clarification

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of clarification for use of Annual Adjustment Factors.

SUMMARY: This notice clarifies the Department's instructions for using the Section 8 Annual Adjustment Factors (AAFs) that were published in the Federal Register on January 13, 1993 (58 FR 4272.)

EFFECTIVE DATE: February 26, 1993.

FOR FURTHER INFORMATION CONTACT: Michael R. Allard, Economic and Market Analysis Division, Office of Policy Development and Research, room 8224, 451 Seventh Street SW., Washington, DC 20410; (202) 708-0577;

TDD (202) 708-0770. (Telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: On January 13, 1993 (58 FR 4272), the Department published Annual Adjustment Factors (AAFs) in accordance with 24 CFR 888.202. In general, AAFs are used to adjust the Contract Rents for certain Section 8 program units. The specific application of the AAFs is determined by reference to Housing Assistance Payments contracts and to the appropriate program regulations or requirements.

The AAFs published on January 13 included: Separate AAF schedules for the 73 metropolitan areas with local Consumer Price Index (CPI) surveys; and AAFs for the metropolitan parts (exclusive of the 73 areas with CPI surveys) and the nonmetropolitan parts of the 10 HUD Regions. The January 13 publication also provided tables listing the States in each HUD region and the definitions of the 73 metropolitan areas by their corresponding counties or towns.

The Department has received numerous inquiries concerning which set of the 10 HUD Regional AAFs (metropolitan or nonmetropolitan) are to be used for areas that are not among the 73 CPI areas, and whether the AAF areas are affected by the new metropolitan area definitions released by the Office of Management and Budget (OMB) on December 28, 1992 (OMB Bulletin No. 93-05).

This Notice supplements the January 13 publication of AAFs by providing a listing (alphabetized by state and within states) of metropolitan areas (exclusive of the 73 CPI metropolitan areas) and of nonmetropolitan areas. To determine the appropriate AAF schedule, users

should first check to see if the unit is located in one of the 73 CPI areas listed in the January 13 publication. If that is not the case, they should refer to the appropriate state in the list included in this publication and check the metropolitan or nonmetropolitan area listing. The HUD Region Metropolitan or the Nonmetropolitan AAF schedule is to be used, depending on whether the unit is located within a PMSA or MSA or within a nonmetropolitan county.

The list of metropolitan areas in HUD Region I are defined in terms of towns within counties because metropolitan areas in the New England states are not coextensive with whole counties. Puerto Rico and the Virgin Islands use the HUD Region IV AAFs. All areas of Hawaii use the AAF schedule for Hawaii, which is based on the CPI survey for the Honolulu metropolitan area; the Pacific Islands use the HUD Region IX nonmetropolitan AAFs. The Anchorage metropolitan area has its own AAFs based on a local CPI survey; all other areas in Alaska use the HUD Region X nonmetropolitan area AAFs.

Because the AAFs are intended to be used from the November 8 anniversary date, and the survey data for the HUD Regions were collected prior to OMB's change in the metropolitan area definitions, the Department will continue using the definitions that were in effect prior to the December 31, 1992, effective date established by the OMB Bulletin. The new metropolitan area definitions are now being evaluated to determine how they will be used in next year's publication of AAFs.

Dated: February 19, 1993.

Grady J. Norris,

Assistant General Counsel for Regulations.

SCHEDULE C.—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS: AREA DEFINITIONS (EXCLUDING CPI AREAS)

Alabama	Counties
PMSA/MSA Metropolitan Areas:	
MSA: Anniston, AL	Calhoun.
MSA: Birmingham, AL	Blount, Jefferson, St Clair, Shelby, Walker.
MSA: Columbus, GA-AL	Russell.
MSA: Decatur, AL	Morgan, Lawrence.
MSA: Dothan, AL	Dale, Houston.
MSA: Florence, AL	Colbert, Lauderdale.
MSA: Gadsden, AL	Etowah.
MSA: Huntsville, AL	Madison.
MSA: Mobile, AL	Baldwin, Mobile.
MSA: Montgomery, AL	Autauga, Elmore, Montgomery.
MSA: Tuscaloosa, AL	Tuscaloosa.
Nonmetropolitan Areas	Barbour, Bibb, Bullock, Butler, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dallas, De Kalb, Escambia, Fayette, Franklin, Geneva, Greene, Hale, Henry, Jackson, Lamar, Lee, Limestone, Lowndes, Macon, Marengo, Marion, Marshall, Monroe, Perry, Pickens, Pike, Randolph, Sumter, Talladega, Tallapoosa, Washington, Wilcox, Winston.
Arizona	
PMSA/MSA Metropolitan Areas:	
MSA: Phoenix, AZ	Maricopa.
MSA: Tucson, AZ	Pima.

SCHEDULE C.—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS: AREA DEFINITIONS (EXCLUDING CPI AREAS)—Continued

MSA: Yuma, AZ	Yuma.
Nonmetropolitan Areas	Apache, Cochise, Coconino, Gila, Graham, Greenlee, Lapaz, Mohave, Navajo, Pinal, Santa Cruz, Yavapai.
Arkansas	
PMSA/MSA Metropolitan Areas:	
MSA: Fayetteville-Springdale, AR	Washington.
MSA: Fort Smith, AR-OK	Crawford, Sebastian.
MSA: Little Rock-North Little Rock, AR	Faulkner, Lonoke, Pulaski, Saline.
MSA: Memphis, TN-AR-MS	Crittenden.
MSA: Pine Bluff, AR	Jefferson.
MSA: Texarkana, TX-Texarkana, AR	Miller.
Nonmetropolitan Areas	Arkansas, Ashley, Baxter, Benton, Boone, Bradley, Calhoun, Carroll, Chicot, Clark, Clay, Cleburne, Cleveland, Columbia, Conway, Craighead, Cross, Dallas, Desha, Drew, Franklin, Fulton, Garland, Grant, Greene, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Madison, Marion, Mississippi, Monroe, Montgomery, Nevada, Newton, Ouachita, Perry, Phillips, Pike, Polk, Pope, Prairie, Randolph, St Francis, Scott, Searcy, Sevier, Sharp, Stone, Union, Van Buren, White, Woodruff, Yell.
California	
PMSA/MSA Metropolitan Areas:	
MSA: Bakersfield, CA	Kern.
MSA: Chico, CA	Butte.
MSA: Fresno, CA	Fresno.
MSA: Merced, CA	Merced.
MSA: Modesto, CA	Stanislaus.
MSA: Redding, CA	Shasta.
MSA: Sacramento, CA	El Dorado, Placer, Sacramento, Yolo.
MSA: Salinas-Seaside-Monterey, CA	Monterey.
MSA: Santa Barbara-Santa Maria-Lompoc, CA	Santa Barbara.
MSA: Stockton, CA	San Joaquin.
MSA: Visalia-Tulare-Porterville, CA	Tulare.
MSA: Yuba City, CA	Sutter, YUBA.
Nonmetropolitan Areas	Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Modoc, Mono, Nevada, Plumas, San Benito, San Luis Obispo, Sierra, Siskiyou, Tehama, Trinity, Tuolumne.
Colorado	
PMSA/MSA Metropolitan Areas:	
MSA: Colorado Springs, CO	El Paso.
MSA: Fort Collins-Loveland, CO	Larimer.
MSA: Greeley, CO	Weld.
MSA: Pueblo, CO	Pueblo.
Nonmetropolitan Areas	Alamosa, Archuleta, Baca, Bent, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Dolores, Eagle, Elbert, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Kiowa, Kit Carson, Lake, La Plata, Las Animas, Lincoln, Logan, Mesa, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington, Yuma.
Connecticut	
PMSA/MSA Metropolitan Areas:	
PMSA: Bristol, CT:	
County:	
Hartford	Bristol, Burlington.
Litchfield	Plymouth.
PMSA: Hartford, CT:	
County:	
Hartford	Avon, Bloomfield, Canton, East Granby, East Hartford, East Windsor, Enfield, Farmington, Glastonbury, Granby, Hartford, Manchester, Marlborough, Newington, Rocky Hill, Simsbury, South Windsor, Suffield, West Hartford, Wethersfield, Windsor, Windsor Lock.
Litchfield	Barkhamsted, New Hartford.
Middlesex	East Haddam.
New London	Colchester.
Tolland	Andover, Bolton, Columbia, Coventry, Ellington, Hebron, Somers, Stafford, Tolland, Vernon, Willington.
PMSA: Middletown, CT: County: Middlesex	Cromwell, Durham, East Hampton, Haddam, Middlefield, Middletown, Portland.
PMSA: New Britain, CT: County: Hartford	Berlin, New Britain, Plainville, Southington.
MSA: New Haven-Meriden, CT:	
County:	
Middlesex	Clinton, Killingworth.
New Haven	Bethany, Branford, Cheshire, East Haven, Guilford, Hamden, Madison, Meriden, New Haven, North Branford, North Haven, Orange, Wallingford, West Haven, Woodbridge.
MSA: New London-Norwich, CT-RI:	
County:	
New London	Bozrah, East Lyme, Franklin, Griswold, Groton, Ledyard, Lisbon, Montville, New London, North Stonington, Norwich, Old Lyme, Preston, Salem, Sprague, Stonington, Waterford.
Windham	Canterbury.

Towns

SCHEDULE C.—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS: AREA DEFINITIONS (EXCLUDING CPI AREAS)—Continued

MSA: Waterbury, CT: County: Litchfield New Haven Nonmetropolitan Areas: County: Hartford Litchfield Middlesex New London Tolland Windham	Bethlehem, Thomaston, Watertown, Woodbury. Middlebury, Naugatuck, Prospect, Southbury, Waterbury, Wolcott. Hartland Canaan, Colebrook, Cornwall, Goshen, Harwinton, Kent, Litchfield, Morris, Norfolk, North Canaan, Roxbury, Salisbury, Sharon, Torrington, Warren, Washington, Winchester. Chester, Deep River, Essex, Old Saybrook, Westbrook. Lebanon, Lyme, Voluntown. Mansfield, Union. Ashford, Brooklyn, Chaplin, Eastford, Hampton, Killingly, Plainfield, Pomfret, Putnam, Scotland, Sterling, Thompson, Windham, Woodstock.
Delaware PMSA/MSA Metropolitan Areas: Nonmetropolitan Areas	Counties Kent, Sussex.
Florida PMSA/MSA Metropolitan Areas: MSA: Bradenton, FL MSA: Daytona Beach, FL MSA: Fort Myers-Cape Coral, FL MSA: Fort Pierce, FL MSA: Fort Walton Beach, FL MSA: Gainesville, FL MSA: Jacksonville, FL MSA: Lakeland-Winter Haven, FL MSA: Melbourne-Titusville-Palm Bay, FL MSA: Naples, FL MSA: Ocala, FL MSA: Orlando, FL MSA: Panama City, FL MSA: Pensacola, FL MSA: Sarasota, FL MSA: Tallahassee, FL MSA: Tampa-St. Petersburg-Clearwater, FL MSA: West Palm Beach-Boca Raton-Delray Beach, FL Nonmetropolitan Areas	Manatee. Volusia. Lee. Martin, St. Lucie. Okaloosa. Alachua, Bradford. Clay, Duval, Nassau, St. Johns Polk. Brevard. Collier. Marion. Orange, Osceola, Seminole. Bay. Escambia, Santa Rosa. Sarasota. Gadsden, Leon. Hernando, Hillsborough, Pasco, Pinellas. Palm Beach. Baker, Calhoun, Charlotte, Citrus, Columbia, De Soto, Dixie, Flagler, Franklin, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Lake, Levy, Liberty, Madison, Monroe, Okeechobee, Putnam, Sumter, Suwannee, Taylor, Union, Wakulla, Walton, Washington.
Georgia PMSA/MSA Metropolitan Areas: MSA: Albany, GA MSA: Athens, GA MSA: Augusta, GA-SC MSA: Chattanooga, TN-GA MSA: Columbus, GA-AL MSA: Macon-Warner Robins, GA MSA: Savannah, GA Nonmetropolitan Areas	Dougherty, Lee. Clarke, Jackson, Madison, Oconee. Columbia, McDuffie, Richmond. Catoosa, Dade, Walker. Chattahoochee, Muscogee. Bibb, Houston, Jones, Peach. Chatham, Effingham. Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Barton, Ben Hill, Berrien, Bleckley, Brantley, Brooks, Bryan, Bulloch, Burke, Calhoun, Camden, Candler, Carroll, Charlton, Chattooga, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Dawson, Decatur, Dodge, Dooly, Early, Echols, Elbert, Emanuel, Evans, Fannin, Floyd, Franklin, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Habersham, Hall, Hancock, Haralson, Harris, Hart, Heard, Irwin, Jasper, Jeff Davis, Jef- ferson, Jenkins, Johnson, Lamar, Lanier, Laurens, Liberty, Lincoln, Long, Lowndes, Lumpkin, McIntosh, Macon, Marion, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Oglethorpe, Pickens, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Schley, Screven, Seminola, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Twigg, Union, Upson, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, Worth.
Idaho PMSA/MSA Metropolitan Areas: MSA: Boise City, ID Nonmetropolitan areas	Ada. Adams, Bannock, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Canyon, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Madison, Mindoka, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Twin Falls, Valley, Washington.
Illinois PMSA/MSA Metropolitan Areas: MSA: Bloomington-Normal, IL MSA: Champaign-Urbana-Rantoul, IL MSA: Davenport-Rock Island-Moline, IA-IL	McLean. Champaign. Henry, Rock Island.

SCHEDULE C.—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS: AREA DEFINITIONS (EXCLUDING CPI AREAS)—Continued

MSA: Decatur, IL	Macon.
MSA: Kankakee, IL	Kankakee.
MSA: Peoria, IL	Peoria, Tazewell, Woodford.
MSA: Rockford, IL	Boone, Winnebago.
MSA: Springfield, IL	Menard, Sangamon.
Nonmetropolitan Areas	Adams, Alexander, Bond, Brown, Bureau, Calhoun, Carroll, Cass, Christian, Clark, Clay, Coles, Cranford, Cumberland, De Kalb, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Henderson, Iroquois, Jackson, Jasper, Jefferson, Jo Daviess, Johnson, Knox, La Salle, Lawrence, Lee, Livingston, Logan, McDonough, Macoupin, Marion, Marshall, Mason, Massac, Mercer, Montgomery, Morgan, Moultrie, Ogle, Perry, Platt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Saline, Schuyler, Scott, Shelby, Stark, Stephenson, Union, Vermillion, Wabash, Warren, Washington, Wayne, White, Whiteside, Williamson.
Indiana	
PMSA/MSA Metropolitan Areas:	
MSA: Anderson, IN	Madison.
MSA: Bloomington, IN	Monroe.
MSA: Elkhart-Goshen, IN	Elkhart.
MSA: Evansville, IN-KY	Posey, Vanderburgh, Warrick.
MSA: Fort Wayne, IN	Allen, De Kalb, Whitley.
MSA: Indianapolis, IN	Boone, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan, Shelby.
MSA: Kokomo, IN	Howard, Tipton.
MSA: Lafayette-West Lafayette, IN	Tipton.
MSA: Louisville, KY-IN	Clark, Floyd, Harrison.
MSA: Muncie, IN	Delaware.
MSA: South Bend-Mishawaka, IN	St Joseph.
MSA: Terre Haute, IN	Clay, Vigo.
Nonmetropolitan Areas	Adams, Bartholomew, Benton, Blackford, Brown, Carroll, Cass, Clinton, Crawford, Daviess, Decatur, Dubois, Fayette, Fountain, Franklin, Fulton, Gibson, Grant, Greene, Henry, Huntington, Jackson, Jasper, Jay, Jefferson, Jennings, Knox, Kosciusko, Lagrange, La Porte, Lawrence, Marshall, Martin, Miami, Montgomery, Newton, Noble, Ohio, Orange, Owen, Parke, Perry, Pike, Pulaski, Putnam, Randolph, Ripley, Rush, Scott, Spencer, Starke, Steuben, Sullivan, Switzerland, Union, Vermillion, Wabash, Warren, Washington, Wayne, Wells, White.
Iowa	
PMSA/MSA Metropolitan Areas:	
MSA: Cedar Rapids, IA	Linn.
MSA: Davenport-Rock Island-Moline, IA-IL	Scott.
MSA: Des Moines, IA	Dallas, Polk, Warren.
MSA: Dubuque, IA	Dubuque.
MSA: Iowa City, IA	Johnson.
MSA: Omaha, NE-IA	Pottawattamie.
MSA: Sioux City, IA-NE	Woodbury.
MSA: Waterloo-Cedar Falls, IA	Black Hawk, Bremer.
Nonmetropolitan Areas	Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Boone, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Davis, Decatur, Delaware, Des Moines, Dickinson, Emmet, Fayette, Floyd, Franklin, Fremont, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Jones, Keokuk, Kossuth, Lee, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Washington, Wayne, Webster, Winnebago, Winneshiek, Worth, Wright.
Kansas	
PMSA/MSA Metropolitan Areas:	
MSA: Lawrence, KS	Douglas.
MSA: Topeka, KS	Shawnee.
MSA: Wichita, KS	Butler, Sedgwick, Harvey.
Nonmetropolitan Areas	Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Doniphan, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Franklin, Geary, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jackson, Jefferson, Jewell, Kearny, Kingman, Kiowa, Labette, Lane, Lincoln, Linn, Logan, Lyon, McPherson, Marion, Marshall, Meade, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osage, Osborn, Ottawa, Pawnee, Phillips, Pottawattamie, Pratt, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wabaunsee, Wallace, Washington, Wichita, Wilson, Woodson.
Kentucky	
PMSA/MSA Metropolitan Areas:	
MSA: Clarksville-Hopkinsville, TN-KY	Christian.
MSA: Evansville, IN-KY	Henderson.
MSA: Huntington-Ashland, WV-KY-OH	Boyd, Carter, Greenup.
MSA: Lexington-Fayette, KY	Bourbon, Clark, Fayette, Jessamine, Scott, Woodford.
MSA: Louisville, KY-IN	Bullitt, Jefferson, Oldham, Shelby.
MSA: Owensboro, KY	Daviess.

SCHEDULE C.—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS: AREA DEFINITIONS (EXCLUDING CPI AREAS)—Continued

<i>Nonmetropolitan Areas</i>	Adair, Allen, Anderson, Ballard, Barren, Bath, Bell, Boyle, Bracken, Breathitt, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Carroll, Casey, Clay, Clinton, Crittenden, Cumberland, Edmonson, Elliott, Estill, Fleming, Floyd, Franklin, Fulton, Gallatin, Garrard, Grant, Graves, Grayson, Green, Hancock, Hardin, Harlan, Harrison, Hart, Henry, Hickman, Hopkins, Jackson, Johnson, Knott, Knox, Larue, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Livingston, Logan, Lyon, McCracken, McCreary, McLean, Madison, Magoffin, Marion, Marshall, Martin, Mason, Meade, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Owen, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Simpson, Spencer, Taylor, Todd, Trigg, Trimble, Union, Warren, Washington, Wayne, Webster, Whitley, Wolfe.
Louisiana	
<i>PMSA/MSA Metropolitan Areas:</i>	<i>Parishes</i>
MSA: Alexandria, LA	Rapides.
MSA: Baton Rouge, LA	Ascension, East Baton Rouge, Livingston, West Baton Rouge.
MSA: Houma-Thibodaux, LA	Lafourche, Terrebonne.
MSA: Lafayette, LA	Lafayette, St Martin.
MSA: Lake Charles, LA	Calcasieu.
MSA: Monroe, LA	Ouachita.
MSA: New Orleans, LA	Jefferson, Orleans, St Bernard, St Charles, St John The, St Tammany.
MSA: Shreveport, LA	Bossier, Caddo.
<i>Nonmetropolitan Areas</i>	Acadia, Allen, Assumption, Avoyelles, Beauregard, Bienville, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Carroll, E Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson Davis, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Plaquemines, Pointe Coupee, Red River, Richland, Sabine, St Helena, St James, St Landry, St Mary, Tangipahoa, Tensas, Union, Vermillion, Vernon, Washington, Webster, West Carroll, W Feliciana, Winn.
Maine	
<i>PMSA/MSA Metropolitan Areas:</i>	<i>Towns</i>
MSA: Bangor, ME:	
County:	
Penobscot	Bangor, Brewer, Eddington, Glenburn, Hampden, Hermon, Holden, Kenduskeag, Old Town, Orono, Orrington, Penobscot In, Veazie.
Waldo	Winterport.
MSA: Lewiston-Auburn, ME:	
County:	
Androscoggin	Auburn, Green, Lewiston, Lisbon, Mechanic Fal, Poland, Sabattus.
MSA: Portland, ME:	
County:	
Cumberland	Cape Elizabeth, Cumberland, Falmouth, Freeport, Gorham, Gray, North Yarmou, Portland, Raymond, Scarborough, South Portland, Standish, Westbrook, Windham, Yarmouth.
York	Buxton, Hollis, Old Orchard.
MSA: Portsmouth-Dover-Rochester, NH-ME:	
County:	
York	Berwick, Eliot, Kittery, North Berwic, South Berwic, Wells, York.
<i>Nonmetropolitan Areas:</i>	
County:	
Androscoggin	Durham, Leeds, Livermore, Livermore Fa, Minot, Turner, Wales.
Aroostook	
Cumberland	Baldwin, Bridgton, Brunswick, Casco, Harpswell, Harrison, Naples, New Gloucester, Pownal, Sebago.
Franklin	
Hancock	
Kennebec	
Knox	
Lincoln	
Oxford	
Penobscot	Alton, Argyle, Bradford, Bradley, Burlington, Carmel, Carroll, Charleston, Chester, Clifton, Corinna, Corinth, Dexter, Dixmont, Drew, East Millino, Edinburg, Enfield, Etna, Exeter, Garland, Grand Falls, Greenbush, Greenfield, Howland, Hudson, Kingman, Lagrange, Lakeville, Lee, Levant, Lincoln, Lowell, Mattawamkeag, Maxfield, Medway, Milford, Millinocket, Mount Chase, Newburgh, Newport, North Penobs, Passadumkeag, Patten, Plymouth, Prentiss, Seboels, Springfield, Stacyville, Stetson, Summit, Twombly, Webster, Whitney, Winn, Woodville.
Piscataquis.	
Sagadahoc.	
Somerset.	
Waldo	Belfast, Belmont, Brooks, Burnham, Frankfort, Freedom, Islesboro, Jackson, Knox, Liberty, Lincolnville, Monroe, Montville, Morrill, Northport, Palermo, Prospect, Searsmont, Searsport, Stockton Spr, Swanville, Thorndike, Troy, Unity, Waldo.
Washington.	
York	Acton, Alfred, Arundel, Biddeford, Cornish, Dayton, Kennebunk, Kennebunkpor, Lebanon, Limerick, Limington, Lyman, Newfield, Parsonfield, Saco, Sanford, Shapleigh, Waterboro.
Maryland	
<i>PMSA/MSA Metropolitan Areas:</i>	<i>Counties</i>
MSA: Cumberland, MD-WV	Allegany.
MSA: Hagerstown, MD	Washington.
MSA: Columbia, MD	Howard.
<i>Nonmetropolitan Areas</i>	Caroline, Dorchester, Garrett, Kent, St Mary's, Somerset, Talbot, Wicomico, Worcester.

SCHEDULE C.—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS: AREA DEFINITIONS (EXCLUDING CPI AREAS)—Continued

Massachusetts	
PMSA/MSA Metropolitan Areas:	TOWNS
PMSA: Fall River, MA—RI: County: Bristol	Fall River, Somerset, Swansea, Westport.
MSA: Fitchburg-Leominster, MA:	
County:	
Middlesex	Ashby.
Worcester	Ashburnham, Fitchburg, Leominster, Lunenburg, Westminster.
MSA: New Bedford, MA:	
County:	
Bristol	Acushnet, Dartmouth, Fairhaven, Freetown, New Bedford.
Plymouth	Marion, Mattapoisett, Rochester.
PMSA: Pawtucket-Woonsocket-Attleboro, RI—MA:	
County:	
Bristol	Attleboro, North Attle, Rehoboth, Seekonk.
Norfolk	Plainville.
Worcester	Blackstone, Millville.
MSA: Pittsfield, MA: County: Berkshire	Cheshire, Dalton, Hinsdale, Lanesborough, Lee, Lenox, Pittsfield, Richmond, Stockbridge.
MSA: Springfield, MA:	
County:	
Hampden	Agawam, Chicopee, East Longmead, Hampden, Holyoke, Longmeadow, Ludlow, Monson, Montgomery, Palmer, Russell, Southwick, Springfield, Westfield, West Springfield, Wilbraham.
Hampshire	Belchertown, Easthampton, Gramby, Huntington, Northampton, Southampton, South Hadley.
MSA: Worcester, MA: County: Worcester	Auburn, Barre, Boylston, Brookfield, Charlton, Clinton, Douglas, Dudley, East Brookfield, Grafton, Holden, Leicester, Millbury, Northborough, Northbridge, North Brookfield, Oxford, Paxton, Princeton, Rutland, Shrewsbury, Spencer, Sterling, Sutton, Uxbridge, Webster, Westborough, West Boylston, Worcester.
Nonmetropolitan Areas:	
County:	
Barnstable.	Adams, Alford, Becket, Clarksburg, Egremont, Florida, Great Barrington, Hancock, Monterey, Mount Washington, New Ashford, New Marlboro, North Adams, Otis, Peru, Sandisfield, Savoy, Sheffield, Tyringham, Washington, West Stockbridge, Williamstown, Windsor.
Berkshire	Berkley, Dighton, Taunton.
Bristol	
Dukes.	
Franklin.	
Hampden	
Hampshire	Blandford, Brimfield, Chester, Granville, Holland, Tolland, Wales.
Nantucket.	Amherst, Chesterfield, Cummington, Goshen, Hadley, Hatfield, Middlefield, Pelham, Plainfield, Ware, Westhampton, Williamsburg, Worthington.
Plymouth	Wareham.
Worcester	Athol, Gardner, Hardwick, Hubbardston, New Braintree, Oakham, Petersham, Phillipston, Royalston, Southbridge, Sturbridge, Templeton, Warren, West Brookfield, Winchendon.
Michigan	
PMSA/MSA Metropolitan Areas:	Counties
MSA: Battle Creek, MI	Calhoun.
MSA: Benton Harbor, MI	Berrien.
MSA: Flint, MI	Genesee.
MSA: Grand Rapids, MI	Kent, Ottawa.
MSA: Jackson, MI	Jackson.
MSA: Kalamazoo, MI	Kalamazoo.
MSA: Lansing-East Lansing, MI	Clinton, Eaton, Ingham.
MSA: Muskegon, MI	Muskegon.
MSA: Saginaw-Bay City-Midland, MI	Bay, Midland, Saginaw.
Nonmetropolitan Areas	Alcona, Alger, Allegan, Alpena, Antrim, Arenac, Baraga, Barry, Benzie, Branch, Cass, Charlevoix, Cheboygan, Chippewa, Clare, Crawford, Delta, Dickinson, Emmet, Gladwin, Gogebic, Grand Traverse, Gratiot, Hillsdale, Houghton, Huron, Ionia, Iosco, Iron, Isabella, Kalamazoo, Keweenaw, Lake, Leelanau, Lenawee, Lapeer, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Missaukee, Montcalm, Montmorency, Newaygo, Oceana, Ogemaw, Ontonagon, Oshtemo, Oscoda, Otsego, Presque Isle, Roscommon, St. Joseph, Sanilac, Schoolcraft, Shiawassee, Tuscola, Van Buren, Washtenaw.
Minnesota	
PMSA/MSA Metropolitan Areas:	
MSA: Duluth, MN—WI	St. Louis.
MSA: Fargo-Moorhead, ND—MN	Clay.
MSA: Rochester, MN	Olmsted.
MSA: St. Cloud, MN	Benton, Sherburne, Stearns.
Nonmetropolitan Areas	Aitkin, Becker, Beltrami, Big Stone, Blue Earth, Brown, Carlton, Cass, Chippewa, Clearwater, Cook, Cottonwood, Crow Wing, Dodge, Douglas, Faribault, Fillmore, Freeborn, Goodhue, Grant, Houston, Hubbard, Itasca, Jackson, Kanabec, Kandiyohi, Kittson, Koochiching, Lac Qui Parle, Lake, Lake of the Woods, Le Sueur, Lincoln, Lyon, McLeod, Mahanomen, Marshall, Martin, Meeker, Mille Lacs, Morrison, Mower, Murray, Nicollet, Nobles, Norman, Otter Tail, Pennington, Pine, Pipestone, Polk, Pope, Red Lake, Redwood, Renville, Rice, Rock, Roseau, Sibley, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Waseca, Watonwan, Wilder, Winona, Yellow Medicine.
Mississippi	
PMSA/MSA Metropolitan Areas:	
MSA: Biloxi-Gulfport, MS	Hancock, Harrison.

SCHEDULE C.—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS: AREA DEFINITIONS (EXCLUDING CPI AREAS)—Continued

MSA: Jackson, MS	Hinds, Madison, Rankin.
MSA: Memphis, TN-AR-MS	De Soto.
MSA: Pascagoula, MS	Jackson.
Nonmetropolitan Areas	Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, Forrest, Franklin, George, Greene, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo.
Missouri	
PMSA/MSA Metropolitan Areas:	
MSA: Columbia, MO	Boone.
MSA: Joplin, MO	Jasper, Newton.
MSA: St. Joseph, MO	Buchanan.
MSA: Springfield, MO	Christian, Greene.
Nonmetropolitan Areas	Adair, Andrew, Atchison, Audrain, Barry, Barton, Bates, Benton, Bollinger, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cedar, Chariton, Clark, Clinton, Cole, Cooper, Crawford, Dade, Dallas, Daviess, De Kalb, Dent, Douglas, Dunklin, Gasconade, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard, Howell, Iron, Johnson, Knox, Laclede, Lawrence, Lewis, Lincoln, Linn, Livingston, McDonald, Macon, Madison, Maries, Marion, Mercer, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Nodaway, Oregon, Osage, Ozark, Pemiscot, Perry, Pettis, Phelps, Pike, Polk, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, St. Clair, STE. Genevieve, St. Francois, Saline, Schuyler, Scotland, Scott, Shannon, Shelby, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Warren, Washington, Wayne, Webster, Worth, Wright.
Montana	
PMSA/MSA Metropolitan Areas:	
MSA: Billings, MT	Yellowstone.
MSA: Great Falls, MT	Cascade.
Nonmetropolitan Areas	Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, McCone, Madison, Meagher, Mineral, Missoula, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Powell, Prairie, Ravalli, Richland, Roosevelt, Rosebud, Sanders, Sheridan, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux, YL-St-NT-PK.
Nebraska:	
PMSA/MSA Metropolitan Areas:	
MSA: Lincoln, NE	Lancaster.
MSA: Omaha, NE-IA	Douglas, Sarpy, Washington.
MSA: Sioux City, IA-NE	Dakota.
Nonmetropolitan Areas	Adams, Antelope, Arthur, Banner, Blaine, Boone, Box Butte, Boyd, Brown, Buffalo, Burt, Butler, Cass, Cedar, Chase, Cherry, Cheyenne, Clay, Colfax, Cuming, Custer, Dawes, Dawson, Deuel, Dixon, Dodge, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lincoln, Logan, Loup, McPherson, Madison, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Saunders, Scotts Bluff, Seward, Sherman, Sioux, Stanton, Thayer, Thomas, Thurston, Valley, Wayne, Webster, Wheeler, York.
Nevada	
PMSA/MSA Metropolitan Areas:	
MSA: Las Vegas, NV	Clark.
MSA: Reno, NV	Washoe.
Nonmetropolitan Areas	Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Nye, Pershing, Storey, White Pine, Carson City.
New Hampshire	
PMSA/MSA Metropolitan Areas:	
MSA: Manchester, NH:	
County:	
Hillsborough	Bedford, Goffstown, Manchester.
Merrimack	Alienstown, Hooksett.
Rockingham	Auburn, Candia.
MSA: Portsmouth-Dover-Rochester, NH-ME:	
County:	
Rockingham	Exeter, Greenland, Hampton, New Castle, Newfields, Newington, Newmarket, North Hampto, Portsmouth, Rye, Stratham.
Strafford	Barrington, Dover, Durham, Farmington, Lee, Madbury, Milton, Rochester, Rollinsford, Somersworth.
Nonmetropolitan Areas:	
County:	
Belknap	
Carroll	
Cheshire	

Towns

SCHEDULE C.—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS: AREA DEFINITIONS (EXCLUDING CPI AREAS)—Continued

Coos.	
Grafton.	
Hillsborough	Antrim, Bannington, Deering, Francestown, Greenfield, Greenville, Hancock, Hillsborough, Lyndeborough, Mason, New Boston, New Ipswich, Petersborough, Sharon, Temple, Weare, Windsor.
Merrimack	Andover, Boscawen, Bow, Bradford, Canterbury, Chichester, Concord, Danbury, Dunbarton, Epsom, Franklin, Henniker, Hill, Hopkinton, Loudon, Newbury, New London, Northfield, Pembroke, Pittsfield, Salisbury, Sutton, Warner, Webster, Wilmet.
Rockingham	Chester, Deerfield, Epping, Fremont, Hampton Fall, Kensington, Northwood, Nottingham, Raymond, South Hampto.
Strafford	Middleton, New Durham, Strafford.
Sullivan.	
New Jersey	
PMSA/MSA Metropolitan Areas:	Counties
MSA: Allentown-Bethlehem, PA-NJ	Warren
MSA: Atlantic City, NJ	Atlantic, Cape May
New Mexico	
PMSA/MSA Metropolitan Areas:	
MSA: Albuquerque, NM	Bernalillo
MSA: Las Cruces, NM	Dona Ana
MSA: Santa Fe, NM	Los Alamos, Santa Fe
Nonmetropolitan Areas	Catron, Chaves, Cibola, Colfax, Curry, De Baca, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Luna, McKinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, Sandoval, San Juan, San Miguel, Sierra, Socorro, Taos, Torrance, Union, Valencia.
New York	
PMSA/MSA Metropolitan Areas:	
MSA: Albany-Schenectady-Troy, NY	Albany, Greene, Montgomery, Rensselaer, Saratoga, Schenectady.
MSA: Binghamton, NY	Broome, Tioga.
MSA: Elmira, NY	Chemung.
MSA: Glens Falls, NY	Warren, Washington.
MSA: Jamestown-Dunkirk, NY	Chautauqua.
MSA: Poughkeepsie, NY	Dutchess.
MSA: Rochester, NY	Livingston, Monroe, Ontario, Orleans, Wayne.
MSA: Syracuse, NY	Madison, Onondaga, Oswego.
MSA: Utica-Rome, NY	Herkimer, Oneida.
Nonmetropolitan Areas	Allegany, Cattaraugus, Cayuga, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Hamilton, Jefferson, Lewis, Otsego, St Lawrence, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tompkins, Ulster, Wyoming, Yates.
North Carolina	
PMSA/MSA Metropolitan Areas:	
MSA: Asheville, NC	Buncombe.
MSA: Burlington, NC	Alamance.
MSA: Charlotte-Gastonia-Rock Hill, NC-SC	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union.
MSA: Fayetteville, NC	Cumberland.
MSA: Greensboro-Winston-Salem-High Point, NC	Davidson, Davie, Forsyth, Guilford, Randolph, Stokes, Yadkin.
MSA: Hickory, NC	Alexander, Burke, Catawba.
MSA: Jacksonville, NC	Onslow.
MSA: Raleigh-Durham, NC	Durham, Franklin, Orange, Wake.
MSA: Wilmington, NC	New Hanover.
Nonmetropolitan Areas	Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Brunswick, Caldwell, Camden, Carteret, Caswell, Chatham, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Currituck, Dare, Duplin, Edgecombe, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, McDowell, Macon, Madison, Martin, Mitchell, Montgomery, Moore, Nash, Northampton, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wayne, Wilkes, Wilson, Yancey.
North Dakota	
PMSA/MSA Metropolitan Areas:	
MSA: Bismarck, ND	Burleigh, Morton.
MSA: Fargo-Moorehead, ND-MN	Cass.
MSA: Grand Forks, ND	Grand Forks.
Nonmetropolitan Areas	Adams, Barnes, Benson, Billings, Bottineau, Bowman, Burke, Cavalier, Dickey, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Griggs, Hettinger, Kidder, La Moure, Logan, McHenry, McIntosh, McKenzie, McLean, Mercer, Mountrail, Nelson, Oliver, Pembina, Pierce, Ramsey, Ramson, Renville, Richland, Rolette, Sargent, Sheridan, Sioux, Slope, Stark, Steele, Stutsman, Towner, Traill, Walsh, Ward, Wells, Williams.
Ohio	
PMSA/MSA Metropolitan Areas:	
MSA: Canton, OH	Carroll, Stark.
MSA: Columbus, OH	Delaware, Fairfield, Franklin, Licking, Madison, Pickaway, Union.
MSA: Dayton-Springfield, OH	Clark, Greene, Miami, Montgomery.

SCHEDULE C.—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS: AREA DEFINITIONS (EXCLUDING CPI AREAS)—Continued

MSA: Huntington-Ashland, WV-KY-OH	Lawrence.
MSA: Lima, OH	Allen, Auglaize.
MSA: Mansfield, OH	Richland.
MSA: Parkersburg-Marietta, WV-OH	Washington.
MSA: Steubenville-Weirton, OH-WV	Jefferson.
MSA: Toledo, OH	Fulton, Lucas, Wood.
MSA: Wheeling, WV-OH	Belmont.
MSA: Youngstown-Warren, OH	Mahoning, Trumbull.
Nonmetropolitan Areas	Adams, Ashland, Ashtabula, Athens, Brown, Champaign, Clinton, Columbiana, Coshocton, Crawford, Darke, Defiance, Erie, Fayette, Gallia, Guernsey, Hancock, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jackson, Knox, Logan, Marion, Meigs, Mercer, Monroe, Morgan, Morrow, Muskingum, Noble, Ottawa, Paulding, Perry, Pike, Preble, Putnam, Ross, Sandusky, Scioto, Seneca, Shelby, Tuscarawas, Van Wert, Vinton, Wayne, Williams, Wyandot.
Oklahoma	
PMSA/MSA Metropolitan Areas:	
MSA: Enid, OK	Garfield.
MSA: Fort Smith, AR-OK	Sequoyah.
MSA: Lawton, OK	Comanche.
MSA: Oklahoma City, OK	Canadian, Cleveland, Logan, McClain, Oklahoma, Pottawatomie.
MSA: Tulsa, OK	Creek, Osage, Rogers, Tulsa, Wagoner.
Nonmetropolitan Areas	Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Carter, Cherokee, Choctaw, Cimarron, Coal, Cotton, Craig, Custer, Delaware, Dewey, Ellis, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, LeFlore, Lincoln, Love, McCurtain, McIntosh, Major, Marshall, Mayes, Murray, Muskogee, Noble, Nowata, Okfuskee, Okmulgee, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pushmataha, Roger Mills, Seminole, Stephens, Texas, Tillman, Washington, Washita, Woods, Woodward.
Oregon	
PMSA/MSA Metropolitan Areas:	
MSA: Eugene-Springfield, OR	Lane.
MSA: Medford, OR	Jackson.
MSA: Salem, OR	Marion, Polk.
Nonmetropolitan Areas	Baker, Benton, Clatsop, Columbia, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jefferson, Josephine, Klamath, Lake, Lincoln, Linn, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler.
Pennsylvania	
PMSA/MSA Metropolitan Areas:	
MSA: Allentown-Bethlehem, PA-NJ	Carbon, Lehigh, Northampton.
MSA: Altoona, PA	Blair.
MSA: Erie, PA	Erie.
MSA: Harrisburg-Lebanon-Carlisle, PA	Cumberland, Dauphin, Lebanon, Perry.
MSA: Johnstown, PA	Cambria, Somerset.
MSA: Lancaster, PA	Lancaster.
MSA: Reading, PA	Berks.
MSA: Scranton-Wilkes-Barre, PA	Columbia, Lackawanna, Luzerne, Monroe, Wyoming.
MSA: Sharon, PA	Mercer.
MSA: State College, PA	Centre.
MSA: Williamsport, PA	Lycoming.
MSA: York, PA	Adams, York.
Nonmetropolitan Areas	Armstrong, Bedford, Bradford, Butler, Cameron, Clarion, Clearfield, Clinton, Crawford, Elk, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, McKean, Mifflin, Montour, Northumberland, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Wayne.
Rhode Island	
PMSA/MSA Metropolitan Areas:	Towns
PMSA: Fall River, MA-RI: County: Newport	Little Compt, Tiverton.
PMSA: New London-Norwich, CT-RI: County: Washington ...	Hopkinton, Westerly.
PMSA: Pawtucket-Woonsocket-Attleboro, RI-MA: County: Providence.	Burrillville, Central Falls, Cumberland, Lincoln, North Smithf, Pawtucket, Smithfield, Woonsocket.
PMSA: Providence, RI:	
County:	
Bristol	Barrington, Bristol, Warren.
Kent	Coventry, East Greenw, Warwick, West Warwick.
Newport	Jamestown.
Providence	Cranston, East Provide, Foster, Glocester, Johnston, North Provid, Providence, Scituate.
Washington	Exeter, Narragansett, North Kingst, Richmond, South Kingst.
Nonmetropolitan Areas:	
Kent	West Greenw.
Newport	Middletown, Newport, Portsmouth.
Washington	Charlestown, New Shoreham.
South Carolina	
PMSA/MSA Metropolitan Areas:	Counties
MSA: Anderson, SC	Anderson.
MSA: Augusta, GA-SC	Alken.
MSA: Charleston, SC	Berkeley, Charleston, Dorchester.

SCHEDULE C.—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS: AREA DEFINITIONS (EXCLUDING CPI AREAS)—Continued

MSA: Charlotte-Castonia-Rock Hill, NC-SC	York.
MSA: Columbia, SC	Lexington, Richland.
MSA: Florence, SC	Florence.
MSA: Greenville-Spartanburg, SC	Greenville, Pickens, Spartanburg.
Nonmetropolitan Areas	Abbeville, Allendale, Bamberg, Bamwell, Beaufort, Calhoun, Cherokee, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Edgefield, Fairfield, Georgetown, Greenwood, Hampton, Horry, Jasper, Kershaw, Lancaster, Laurens, Lee, McCormick, Marion, Marlboro, Newberry, Oconee, Orangeburg, Saluda, Sumter, Union, Williamsburg.
South Dakota	
PMSA/MSA Metropolitan Areas:	
MSA: Rapid City, SD	Pennington.
MSA: Sioux Falls, SD	Minnehaha.
Nonmetropolitan Areas	Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lake, Lawrence, Lincoln, Lyman, McCook, McPherson, Marshall, Meade, Mellette, Miner, Moody, Perkins, Potter, Roberts, Sanborn, Shannon, Spink, Stanley, Sully, Todd, Tripp, Turner, Union, Walworth, Yankton, Ziebach.
Tennessee	
PMSA/MSA Metropolitan Areas:	
MSA: Chattanooga, TN-GA	Hamilton, Marion, Sequatchie.
MSA: Clarksville-Hopkinsville, TN-KY	Montgomery.
MSA: Jackson, TN	Madison.
MSA: Johnson City-Kingsport-Bristol, TN-VA	Carter, Hawkins, Sullivan, Unicom, Washington.
MSA: Knoxville, TN	Anderson, Blount, Grainger, Jefferson, Knox, Sevier, Union.
MSA: Memphis, TN-AR-MS	Shelby, Tipton.
MSA: Nashville, TN	Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Williamson, Wilson.
Nonmetropolitan Areas	Bedford, Benton, Bledsoe, Bradley, Campbell, Cannon, Carroll, Chester, Claiborne, Clay, Cocke, Coffee, Crockett, Cumberland, Decatur, De Kalb, Dyer, Fayette, Fentress, Franklin, Gibson, Giles, Greene, Grundy, Hamblen, Hancock, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Johnson, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Loudon, McMinn, McNairy, Macon, Marshall, Maury, Meigs, Monroe, Moore, Morgan, Obion, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Scott, Smith, Stewart, Trousdale, Van Buren, Warren, Wayne, Weakley, White.
Texas	
PMSA/MSA Metropolitan Areas:	
MSA: Abilene, TX	Taylor.
MSA: Amarillo, TX	Potter, Randall.
MSA: Austin, TX	Hays, Travis, Williamson.
MSA: Beaumont-Port Arthur, TX	Hardin, Jefferson, Orange.
MSA: Brownsville-Harlingen, TX	Cameron.
MSA: Bryan-College Station, TX	Brazos.
MSA: Corpus Christi, TX	Nueces, San Patricio.
MSA: El Paso, TX	El Paso.
MSA: Killeen-Temple, TX	Bell, Coryell.
MSA: Laredo, TX	Webb.
MSA: Longview-Marshall, TX	Gregg, Harrison.
MSA: Lubbock, TX	Lubbock.
MSA: McAllen-Edinburg-Mission, TX	Hidalgo.
MSA: Midland, TX	Midland.
MSA: Odessa, TX	Ector.
MSA: San Angelo, TX	Tom Green.
MSA: San Antonio, TX	Bexar, Comal, Guadalupe.
MSA: Sherman-Denison, TX	Grayson.
MSA: Texarkana, TX-Texas, AR	Bowling.
MSA: Tyler, TX	Smith.
MSA: Victoria, TX	Victoria.
MSA: Waco, TX	McLennan.
MSA: Wichita Falls, TX	Wichita.

SCHEDULE C.—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS: AREA DEFINITIONS (EXCLUDING CPI AREAS)—Continued

Nonmetropolitan Areas	Anderson, Andrews, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Blanco, Borden, Bosque, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Camp, Carson, Cass, Castro, Chambers, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Colorado, Comanche, Concho, Cooke, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Delta, De Witt, Dickens, Dimmitt, Donley, Duval, Eastland, Edwards, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Franklin, Freestone, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grimes, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Henderson, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jim Hogg, Jim Wells, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, Lamar, Lamb, Lampasas, La Salle, Lauaca, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lynn, McCulloch, McMullen, Madison, Marion, Martin, Mason, Matagorda, Maverick, Medina, Menard, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Pamer, Pecos, Polk, Presidio, Rains, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Terrell, Terry, Throckmorton, Titus, Trinity, Tyler, Upshur, Upton, Uvalde, Val Verde, Van Zandt, Walker, Ward, Washington, Wharton, Wheeler, Wilbarger, Willacy, Wilson, Winkler, Wise, Wood, Yoakum, Young, Zapata, Zavala.
Utah	Utah. Davis, Salt Lake, Weber. Beaver, Box Elder, Cache, Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Morgan, Piute, Rich, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Wasatch, Washington, Wayne.
Vermont	Towns
PMSA/MSA Metropolitan Areas:	Burlington, Charlotte, Colchester, Essex, Hinesburg, Jericho, Milton, Richmond, St George, Shelburne, South Burlington, Williston, Winooski.
MSA: Burlington, VT:	Georgia.
County:	Grande Isle, South Hero.
Chittenden	Bolton, Buels, Huntington, Underhill, Westford.
Franklin	Bakersfield, Berkshire, Enosburg, Fairfax, Fairfield, Fletcher, Franklin, Highgate, Montgomery, Richford, St Albans, St Albans, Sheldon, Swanton.
Grand Isle	Albany, Isle La Motte, North Hero.
Nonmetropolitan Areas:	Counties
County:	Albemarle, Fluvanna, Greene, Charlottesville.
Addison	Pittsylvania, Danville.
Bennington	Scott, Washington, Bristol.
Caledonia	Amherst, Campbell, Lynchburg.
Chittenden	Gloucester, James City, York, Chesapeake, Hampton, Newport News City, Norfolk, Poquoson,
Essex	Portsmouth, Suffolk, Virginia Beach, Williamsburg City.
Franklin	Charles City, Chesterfield, Dinwiddie, Goochland, Hanover, Henrico, New Kent, Powhatan, Prince
Grand Isle	George, Colonial Heights, Hopewell, Petersburg, Richmond.
Lamoille	Botetourt, Roanoke, Roanoke, Salem.
Orange	Accomack, Alleghany, Amelia, Appomattox, Augusta, Bath, Bedford, Bland, Brunswick, Buchanan,
Orleans	Buckingham, Caroline, Carroll, Charlotte, Clarke, Craig, Culpeper, Cumberland, Dickenson,
Rutland	Essex, Fauquier, Floyd, Franklin, Frederick, Giles, Grayson, Greensville, Halifax, Henry, High-
Washington	land, Isle of Wight, King and Queen, King George, King William, Lancaster, Lee, Louisa,
Windsor	Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Montgomery, Nelson, Northampton,
Virginia	Northumberland, Nottoway, Orange, Page, Patrick, Prince Edward, Pulaski, Rappahannock,
PMSA/MSA Metropolitan Areas:	Richmond, Rockbridge, Rockingham, Russell, Shenandoah, Smyth, Southampton, Spotsylvania,
MSA: Charlottesville, VA	Surrey, Sussex, Tazewell, Warren, Westmoreland, Wise, Wythe, Bedford, Buena Vista, Clifton
MSA: Danville, VA	Forge City, Covington, Emporia, Franklin, Fredericksburg, Galax, Harrisonburg City, Lexington,
MSA: Johnson City-Kingsport-Bristol, TN-VA	Martinsville City, Norton, Radford, South Boston City, Staunton, Waynesboro, Winchester.
MSA: Lynchburg, VA	Whatcom.
MSA: Norfolk-Virginia Beach-Newport News, VA	
MSA: Richmond-Petersburg, VA	
MSA: Roanoke, VA	
Nonmetropolitan Areas	
Washington	
PMSA/MSA Metropolitan Areas:	
MSA: Bellingham, WA	

SCHEDULE C.—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS: AREA DEFINITIONS (EXCLUDING CPI AREAS)—Continued

MSA: Bremerton, WA	Kitsap.
MSA: Olympia, WA	Thurston.
MSA: Richland-Kennewick-Pasco, WA	Benton, Franklin.
MSA: Spokane, WA	Spokane.
MSA: Yakima, WA	Yakima.
Nonmetropolitan Areas	Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Island, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla, Whitman.
West Virginia	
PMSA/MSA Metropolitan Areas:	
MSA: Charleston, WV	Kanawha, Putnam.
MSA: Cumberland, MD-WV	Mineral.
MSA: Huntington-Ashland, WV-KY-OH	Cabell, Wayne.
MSA: Parkersburg-Marietta, WV-OH	Wood.
MSA: Steubenville-Weirton, OH-WV	Brooke, Hancock.
MSA: Wheeling, WV-OH	Marshall, Ohio.
Nonmetropolitan Areas	Barbour, Berkeley, Boone, Braxton, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jackson, Jefferson, Lewis, Lincoln, Logan, McDowell, Marion, Mason, Mercer, Mingo, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Webster, Wetzell, Wirt, Wyoming.
Wisconsin	
PMSA/MSA Metropolitan Areas:	
MSA: Appleton-Oshkosh-Neenah, WI	Calumet, Outagamie, Winnebago.
MSA: Duluth, MN-WI	Douglas.
MSA: Eau Claire, WI	Chippewa, Eau Claire.
MSA: Green Bay, WI	Brown.
MSA: Janesville-Beloit, WI	Rock.
MSA: La Crosse, WI	La Crosse.
MSA: Madison, WI	Dane.
MSA: Sheboygan, WI	Sheboygan.
MSA: Wausau, WI	Marathon.
Nonmetropolitan Areas	Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Clark, Columbia, Crawford, Dodge, Door, Dunn, Florence, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Iron, Jackson, Jefferson, Juneau, Kewaunee, Lafayette, Langlade, Lincoln, Manitowish, Marinette, Marquette, Menominee, Monroe, Oconto, Oneida, Pepin, Pierce, Polk, Portage, Price, Richland, Rusk, Sauk, Sawyer, Shawano, Taylor, Trempealeau, Vernon, Vilas, Walworth, Washburn, Waupaca, Waushara, Wood.
Wyoming	
PMSA/MSA Metropolitan Areas:	
MSA: Casper, WY	Natrona.
MSA: Cheyenne, WY	Laramie.
Nonmetropolitan Areas	Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Lincoln, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie, Weston.

[PR Doc. 93-4467 Filed 2-25-93; 8:45 am]
BILLING CODE 4210-32-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8477]

RIN 1545-A001

Casualty and theft losses and loss reimbursements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the limitations on passive activity losses and credits under section 469. The final

regulations affect taxpayers subject to these limitations. They provide guidance by specifying certain casualty and theft losses and loss reimbursements to which the limitations do not apply.

EFFECTIVE DATE: The final regulations are effective for tax years ending after May 10, 1992.

FOR FURTHER INFORMATION CONTACT: Martin Schaffer, (202) 622-3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document finalizes § 1.469-2T(c)(7)(vi) and (d)(2)(xi). See T.D. 8290, 55 FR 6980 (February 28, 1990).

No written comments and no requests for a public hearing were received in response to the cross reference notice of proposed rulemaking, PS-065-89, 55 FR 7006 (February 28, 1990).

Explanation of Provisions

The preamble to the temporary regulations explains the final regulations. Notice 90-21, 1990-1 C.B. 332, provides further guidance.

This document amends the temporary regulations to provide cross references to the final regulations.

Special Analyses

These rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Further, section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these rules. Therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the temporary regulations and the cross-reference notice of proposed rulemaking were submitted to the Chief Counsel for

Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations is Martin Schaffer of the Office of Assistant Chief Counsel (Passthroughs & Special Industries), Internal Revenue Service. However, other persons from the Internal Revenue Service and the Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR 1.461-1 through 1.469-11

Accounting, Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

Authority: 26 U.S.C. 7805. * * *

Par. 2. In § 1.469-0, the entries for designated sections 1.469-2(c)(6)(iv) Example 3 through (d)(2)(xii) are revised to read as follows:

§ 1.469-0 Table of contents.

* * * * *

§ 1.469-2 Passive activity loss.

* * * * *

(c)(6)(iv) Example 3 through (c)(7)(iii) [Reserved].

(c)(7)(iv) through (vi) (no paragraph headings).

(d)(1) through (d)(2)(viii) [Reserved].

(d)(2)(ix) through (d)(2)(xii) (no paragraph headings).

* * * * *

Par. 3. Section 1.469-2 is amended as follows:

1. The paragraph designation "(c)(6)(iv) Example 3 through (c)(7)(vi) [Reserved]" is revised.
2. New paragraphs (c)(7) (iv) through (vi) are added.
3. Paragraph (d)(2)(ix) is revised.
4. New paragraphs (d)(2)(x) and (xi) are added.
5. The revised and added provisions read as follows:

§ 1.469-2 Passive activity loss.

* * * * *

(c) * * *

(c)(6)(iv) Example 3 through (c)(7)(iii) [Reserved]

(c)(7)(iv) Gross income of an individual from a covenant by such individual not to compete;

(v) Gross income that is treated as not from a passive activity under any provision of the regulations under section 469, including but not limited to § 1.469-1T(h)(6) (relating to income from intercompany transactions of members of an affiliated group of corporations filing a consolidated return) and § 1.469-2T(f) and paragraph (f) of this section (relating to recharacterized passive income);

(vi) Gross income attributable to the reimbursement of a loss from fire, storm, shipwreck, or other casualty, or from theft (as such terms are used in section 165(c)(3)) if—

(A) The reimbursement is included in gross income under § 1.165-1(d)(2)(iii) (relating to reimbursements of losses that the taxpayer deducted in a prior taxable year); and

(B) The deduction for the loss was not a passive activity deduction; and

* * * * *

(d) * * *

(2) * * *

(ix) An item of loss or deduction that is carried to the taxable year under section 172(a), section 613A(d), section 1212(a)(1) (in the case of corporations), or section 1212(b) (in the case of taxpayers other than corporations);

(x) An item of loss or deduction that would have been allowed for a taxable year beginning before January 1, 1987, but for section 704(d), 1366, or 465;

(xi) A deduction for a loss from fire, storm, shipwreck, or other casualty, or from theft (as such terms are used in section 167(c)(3)) if losses that are similar in cause and severity do not recur regularly in the conduct of the activity; and

* * * * *

Par. 4. Section 1.469-2T is amended as follows:

1. Paragraphs (c)(7) (iv) through (vi) are revised.
2. Paragraphs (d)(2) (x) and (xi) are revised.
3. New paragraph (d)(2)(xii) is added.
4. The revised and added provisions read as follows:

§ 1.469-2T Passive activity loss.

* * * * *

(c) * * *

(7) * * *

(iv) [Reserved] See § 1.469-2(c)(7)(iv) for rules relating to this paragraph (c)(7)(iv).

(v) [Reserved] See § 1.469-2(c)(7)(v) for rules relating to this paragraph (c)(7)(v).

(vi) [Reserved] See § 1.469-2(c)(7)(vi) for rules relating to this paragraph (c)(7)(vi).

* * * * *

(d) * * *

(2) * * *

(x) [Reserved] See § 1.469-2(d)(2)(x) for rules relating to this paragraph (d)(2)(x).

(xi) [Reserved] See § 1.469-2(d)(2)(xi) for rules relating to this paragraph (d)(2)(xi).

(xii) [Reserved] See § 1.469-2(d)(2)(xii) for rules relating to this paragraph (d)(2)(xii).

* * * * *

Michael P. Dolan,

Commissioner of Internal Revenue.

Approved: February 16, 1993.

James Fields,

(Acting) Assistant Secretary of the Treasury.

[FR Doc. 93-4423 Filed 2-22-93; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF EDUCATION

34 CFR Part 206

Special Educational Programs for Students Whose Families Are Engaged in Migrant and Other Seasonal Farmwork

AGENCY: Department of Education.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error made in the final regulations published in the *Federal Register* on December 18, 1992 (57 FR 60406) concerning the High School Equivalency Program (HEP) and the College Assistance Migrant Program (CAMP), by removing 34 CFR part 81 (General Education Provisions Act—Enforcement) as applicable regulations. Section 81.2 excludes all programs authorized by the Higher Education Act of 1965, as amended, including HEP and CAMP.

EFFECTIVE DATE: This correction is effective February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Lorraine Wise, Office of Migrant Education, Department of Education, 400 Maryland Avenue, SW., room 2149, Washington, DC 20202. Telephone: (202) 401-0744. Deaf and hearing impaired individuals may call (202) 401-1985 for TDD services.

Dated: February 17, 1993.

Mary Jean LeTendre,

Acting Assistant Secretary for Elementary and Secondary Education.

(Catalog of Federal Domestic Assistance Numbers: 84.141 Migrant Education-High