may be required to pay a portion of the sales proceeds to a governmental body or an eligible non profit organization, as long as the mortgagor is not prohibited from recovering:

(i) The sum of the mortgagor's original purchase price, the mortgagor's reasonable costs of sale, the reasonable costs of improvements made by the mortgagor, and any negative amortization on a graduated payment mortgage insured under § 234.75 of this part; and

(ii) A reasonable share, as determined by the Secretary, of the appreciation in value which shall be the sales price, reduced by the sum determined under paragraph (d)(1)(i) of this section.

(2) Legal restrictions on conveyance may extend beyond the term of the mortgage, subject to paragraph (c)(2) of this section and any limitations applicable in the jurisdiction.

(3) Except as otherwise required by the HOME and HOPE programs, pre-emptive rights to purchase or rights of first refusal shall only be held by a governmental body or eligible nonprofit organization, or another individual or entity approved by the Secretary, and shall be exercised by them (or an assignee who will purchase and occupy the property) only within a reasonable time after the event permitting exercise of the rights occurs, not to exceed a period of time determined by the Secretary. The Secretary may approve another individual or organization under the preceding sentence even if the restriction is not part of an eligible governmental or nonprofit program.

(4) In addition to the restrictions stated in paragraph (d)(3) of this section, the purchase price under an option may not be less than the sum of the mortgagor's original purchase price, the mortgagor's reasonable costs of sale, the reasonable costs of improvements made by seller, and a reasonable share, as determined by the Secretary, of the appreciation in value.

(5) The mortgagor may be required to continue to be an owner-occupant.

(6) The mortgagor may be limited in his or her ability to choose a purchaser for the property, but only the extent necessary to ensure that the property is preserved as low- or moderate-income housing.

(7) Property may be subject to a legal restriction on conveyance to the extent approved in writing by an authorized representative of the Secretary prior to September 10, 1993.

(e) *Exception for tax-exempt bond financing.* A mortgage may be funded through tax-exempt bond financing and may include a due-on-sale provision in a form approved by the Secretary which permits the mortgagee to accelerate a mortgage that no longer meets Federal requirements for tax-exempt bond financing or for other reasons acceptable to the Secretary. Except as provided in this paragraph (e), a mortgage funded through tax-exempt bond financing shall comply with all form requirements prescribed under § 234.25(a) of this part and shall contain no other provisions designed to enforce compliance with Federal and State requirements for tax-exempt bond financing. Other legal restrictions on conveyance are permitted as provided in other paragraphs of this section.

(f) *Exception for protective covenants excluding non-elderly.* Mortgaged property may be subject to protective covenants which prohibit or restrict occupancy by, or transfer to, persons who are not elderly if:

(1) The restrictions do not have an undue effect on marketability; and

(2) The restrictions do not constitute illegal discrimination and are consistent with the Fair Housing Act and all other applicable nondiscrimination laws.

(g) *Exceptions for specific jurisdictions.* Notwithstanding the provisions of paragraph (b) of this section, mortgages insured on property in the Northern Mariana Islands or American Samoa shall not be ineligible for insurance under this section solely because applicable law does not permit free alienability of title to all persons.

Dated: August 4, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93–19180 Filed 8–10–93; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF EDUCATION

34 CFR Parts 631, 632, 633, 634, and 635

RIN 1840–AB68

Cooperative Education Program—General; Administration Projects; Demonstration Projects; Research Projects; and Training Projects

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Cooperative Education Program. These amendments are needed to implement changes made in Title VIII of the Higher Education Act of 1965 by the Higher Education Amendments of 1992 (1992 HEA Amendments).

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: John E. Bonas. Telephone: (202) 708–9407. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These regulations amend the regulations governing the Cooperative Education Program (34 CFR parts 631–635). These amendments are necessary to implement Title VIII of the Higher Education Act of 1965 (HEA), as amended by the 1992 HEA Amendments (Pub. L. 102–325), enacted July 23, 1992.

The Cooperative Education Program provides grants to institutions of higher education to encourage institutions to offer their students work experiences that will aid these students in their future careers and support them financially while in school. The program is also designed to improve the quality of cooperative education through demonstration, research, and training projects.

The Cooperative Education Program addresses Goal 5 of the National Education Goals, that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The program furthers the objectives of Goal 5 by enabling institutions to provide students paid work opportunities related to their academic or occupational objectives, thereby strengthening the connection between education and work.

On May 19, 1993, the Secretary published a notice of proposed rulemaking for this program in the Federal Register (58 FR 29157). In this notice, the Secretary solicited public comment on the proposed regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 14 parties submitted comments on the proposed regulations. An analysis of the comments follows.

Major issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses.

Other substantive issues are discussed under the section of the regulations to which they pertain.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Underrepresented Populations—(§ 631.5(b))

Comments: One commenter suggested that South Asians and Pacific Islanders be included in the definition of "underrepresented populations."

Discussion: The Secretary does not agree that the suggested change is necessary. The definition of "underrepresented populations" neither includes nor excludes South Asians or Pacific Islanders. The Secretary believes that South Asians and Pacific Islanders could be identified as "underrepresented populations" if authoritative demographic or socioeconomic statistical data indicate their participation in the nation's skilled, technical, or professional work force is less than their proportionate representation in the general population.

Changes: No change.

Definition of Comprehensive Cooperative Education Program—(§§ 631.5(b) and 635.4(b)(5)(ii))

Comments: Several commenters suggested that a liaison role with secondary schools should not be a mandatory component of the definition of a "comprehensive cooperative education program." These commenters suggested that this function is not necessary for a cooperative education program to be considered comprehensive.

Discussion: The Secretary does not agree with the change suggested by these commenters. The Secretary believes outreach to new populations is an important purpose of this program. One of the most important ways to fulfill this purpose is to advise secondary school students of the availability and advantages of cooperative education.

Changes: No change.

Unallowable Activities—(§ 631.31(a)(3))

Comments: Several commenters suggested revising the unallowable cost provision prohibiting the use of grant funds for admissions activities. Commenters suggested allowing the use of grant funds for admissions activities related to the recruitment of students to an institution's cooperative education program.

Discussion: The Secretary does not believe the change suggested by these commenters is necessary. Section 631.31(a)(3) of the regulations reflects the Department's traditional prohibition on the use of grant funds for admissions recruitment purposes by college personnel, except where authorized by statute. The Secretary notes that grant funds may be used under § 631.30(h) of the regulations for expenses related to developing, printing, and disseminating materials related to the project, including materials designed to recruit nontraditional students, students from special and underrepresented populations, and secondary schools and undergraduate postsecondary schools. In addition, activities that are related to encouraging participation in cooperative education are allowable. Office of Management and Budget Circular A–21, which is made applicable to this program through 34 CFR 74.172, sets forth the criteria for determining whether a cost is allowable. One of these criteria is whether a particular activity is allocable (or related) to a program. Under this criterion, activities that encourage participation in cooperative education are allowable because they are allocable to cooperative education projects.

Changes: No change.

Funding the Project From Non-Federal Sources—(§ 632.10(d)(2))

Comments: Several commenters suggested revising the maintenance-of-effort requirement in § 632.10(d)(2) of the regulations to provide, after the project period, that the applicant will fund the project at a level that is not less than the total amount expended during the first year of Federal assistance. This change would make § 632.10(d)(2) consistent with § 632.21(b) of the regulations and section 803(b)(4) of the HEA. The change would also effectively delete the reference "from non-Federal sources," and thus, permit other Federal sources of funds to be used for cooperative education programs after the project period ends.

Discussion: The Secretary believes other Federal sources of funds can be used for cooperative education purposes after the end of the grant period, if allowed under the statutes and regulations of the other Federal programs which are the source of these funds.

Changes: The Secretary has revised § 632.10(d)(2) to provide that the applicant will fund the project, after the end of the project period, at a level that is not less than the total amount expended by the applicant during the first year of Federal assistance.

Hiring of Cooperative Education Students for Permanent Positions After Graduation—(§ 632.21(a)(3))

Comments: Several commenters objected to the language in one of the special consideration factors in § 632.21(a)(3) of the regulations that requires applicants to cite data on their graduates who are hired for permanent positions by employers following completion of the former students' cooperative education experiences. The commenters believe that this provision unfairly penalizes applicants who have not previously operated cooperative education programs, or who have programs that have not developed to the point that employers have hired more than a few, if any, graduates for permanent positions.

Discussion: The Secretary agrees that the provision imposes an undue burden on applicants that do not have established cooperative education programs with substantial employer support.

Changes: The Secretary has revised § 632.21(a)(3) to provide that IHEs need only report the number of employers who accept cooperative education students. The Secretary will delete the requirement that an IHE report the number of cooperative education students employers hire for permanent positions after graduation.

Limitations on the Amount of a Grant for a New Project—§ 632.22(b)

Comments: Several commenters requested that an institution that is currently receiving funds for a multi-year noncompeting continuation (NCC) award continue to be subject to the institutional matching requirements in its original grant, rather than be subject to the more stringent institutional matching requirements in section 803(c)(2) of the HEA. These commenters contend that it would be overly burdensome to subject NCCs to these new matching requirements and may force many institutions to forego continued participation in the program.

Discussion: The Secretary believes that NCCs are subject to the institutional matching requirements in section 803(c)(2) of the HEA. There is no provision in the HEA that exempts NCCs from the new institutional matching requirements enacted in the HEA.

Changes: No change.

Limitations on Amount of Grant for an Existing Project—(§ 632.23(b))

Comments: Several commenters suggested revising the formula for determining the grant amount an

institution will receive for performing an existing Administration project. The proposed regulations provide that the amount received by an institution from available funds in a fiscal year bears the same ratio as the number of unduplicated students placed in cooperative education jobs during the preceding year by that institution bears to the total number of unduplicated students placed in cooperative education jobs during the preceding year by all eligible existing institutions applying for grants. Commenters contend that some institutions applying for grants will not be approved for an award because of their failure to satisfy certain restrictions on eligibility. Therefore, commenters believe the denominator of the award ratio should be revised to include only the number of unduplicated students placed in cooperative education jobs during the preceding fiscal year by all eligible institutions with approved applications.

Discussion: The Secretary concurs with the change suggested by these commenters.

Changes: The Secretary has revised the denominator of the award ratio to be the total number of unduplicated students placed in cooperative education jobs during the preceding year by all eligible existing institutions with approved applications.

Awarding of Academic Credit for Work Experience—(§ 632.30(c))

Comments: Several commenters objected to § 632.30(c) of the regulations which states that academic credit may be awarded at the discretion of the institution. The commenters contend that the statement is misplaced, creates confusion for applicants and field reviewers, and should be relocated under the proposed section on evaluation of student work experience.

Discussion: The Secretary agrees that the statement on academic credit is misplaced and may create confusion for applicants.

Changes: The Secretary has deleted § 632.30(c) and added a new § 632.31(b) to the regulations.

Determination of Grant Status and Funding Eligibility When Institutions Merge—(§ 632.51)

Comments: Several commenters suggested changing the requirement that the eligibility of a merged institution be based on the remaining eligibility of the formerly separate institution with the least number of years of remaining eligibility. These commenters proposed that the Secretary base the funding eligibility of a merged institution on the remaining eligibility of the formerly separate institution with the largest enrollment. This change would permit a smaller institution to extend its eligibility by merging with a larger institution where the larger institution has a greater number of years of eligibility remaining under the program.

Discussion: The Secretary does not agree with the change suggested by these commenters. The Secretary believes that the five-year limitation for both new and existing projects under section 803(c)(1)(A) and (B) of the HEA and § 632.50 of the regulations applies in all circumstances, including those cases where institutions merge. In the case of a merged institution, the five-year limitation is fulfilled by maintaining the requirement proposed in the NPRM.

Changes: No change.

Eligibility for Participation in a Demonstration Project—(§ 633.3)

Comments: Several commenters recommended that the requirement that an individual be a "student" to participate in a Demonstration project be deleted from the regulations. These commenters contend that not only students should be eligible to participate in Demonstration projects, but also administrators and faculty.

Discussion: Section 801(b) of the HEA defines cooperative education as education providing paid work experiences to students. Section 804(a)(1) of the HEA defines Demonstration projects as projects designed to demonstrate or determine the feasibility or value of innovative methods of cooperative education. The Secretary believes that only students are eligible to participate in a Demonstration project since students—and not administrators or faculty—are the intended beneficiaries of cooperative education programs.

Changes: No change.

Eligibility for Training and Resource Center Grants—(§ 635.2)

Comment: One commenter proposed that combinations of public or private agencies or organizations be included among those eligible for Training and Resource Center project grants.

Discussion: The Secretary does not agree with the change suggested by this commenter. Section 804(b)(1)(B) of the HEA states that public or private nonprofit agencies or organizations are eligible for a grant. A combination of public or private nonprofit agencies or organizations is not listed as an eligible applicant. A public or private nonprofit agency or organization can work with another agency or organization on a project, but only one agency or organization is considered an eligible applicant.

Changes: No change.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Education Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR parts 631 Through 635

College and universities, Grant program-education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.055—Cooperative Education Program)

Dated: August 5, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising Parts 631 through 635 to read as follows:

PART 631—COOPERATIVE EDUCATION PROGRAM—GENERAL

Subpart A—General

Sec.

631.1 What is the Cooperative Education Program?
631.2 Who is eligible for a grant?

Sec.

631.3 What kinds of projects may the Secretary fund?
631.4 What regulations apply?
631.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

631.10 What limitations apply to the number of applications that may be submitted?

Subpart C—How Does the Secretary Make an Award?

631.20 How does the Secretary evaluate an application?

Subpart D—What Conditions Must Be Met After an Award?

631.30 What costs are allowable?
631.31 What costs are unallowable?

Authority: 20 U.S.C. 1133–1133c, unless otherwise noted.

Subpart A—General

§ 631.1 What is the Cooperative Education Program?

The Cooperative Education Program provides—

(a) Grants to encourage institutions to offer their students work experiences that will aid them in their future careers and support them financially while in school; and

(b) Grants and contracts to improve the quality of cooperative education through demonstration, research, and training.

(Authority: 20 U.S.C. 1133–1133c)

§ 631.2 Who is eligible for a grant?

Eligibility for each of the four kinds of projects authorized under this program is as follows:

(a) Eligibility for a Cooperative Education Administration project grant is described in 34 CFR 632.3.

(b) Eligibility for a Cooperative Education Demonstration project grant is described in 34 CFR 633.2.

(c) Eligibility for a Cooperative Education Research project grant is described in 34 CFR 634.2.

(d) Eligibility for a Cooperative Education Training and Resource Center project grant is described in 34 CFR 635.2.

(Authority: 20 U.S.C. 1133b, 1133c)

§ 631.3 What kind of projects may the Secretary fund?

Under the Cooperative Education Program, the Secretary awards—

(a) Cooperative Education Administration project grants, as described in 34 CFR 632.1;

(b) Cooperative Education Demonstration project grants, as described in 34 CFR 633.1;

(c) Cooperative Education Research project grants, as described in 34 CFR 634.1; and

(d) Cooperative Education Training and Resource Center project grants, as described in 34 CFR 635.1.

(Authority: 20 U.S.C. 1133b, 1133c)

§ 631.4 What regulations apply?

The following regulations apply to the Cooperative Education Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(15) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The Federal Acquisition Regulation (FAR) in 48 CFR Chapter 1 and the Department of Education Acquisition Regulation (EDAR) in 48 CFR chapter 34.

(c) The regulations in this part.

(d) The regulations in the following parts, as applicable:

(1) 34 CFR part 632 (Cooperative Education Program—Administration Projects).

(2) 34 CFR part 633 (Cooperative Education Program—Demonstration Projects).

(3) 34 CFR part 634 (Cooperative Education Program—Research Projects).

(4) 34 CFR part 635 (Cooperative Education Program—Training and Resource Center Projects).

(Authority: 20 U.S.C. 1133b, 1133c)

§ 631.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Contract
ED
EDGAR
Equipment
Grant
Grantee
Nonprofit
Private
Project
Project period
Public
Secretary
State

(b) *Other definitions.* The following definitions also apply to terms used in 34 CFR parts 631 through 635:

Alternating periods of study and employment means alternating academic terms of classroom study and periods of monitored and supervised paid public or private employment of a cooperative education student.

Approved application means an application from an institution for an Administration project grant for an existing project that—

(i) Satisfies the definition of an existing cooperative education program, as described in § 632.2(b); and

(ii) Achieves a minimum score based on the selection criteria in § 632.20.

(Authority: 20 U.S.C. 1133b)

Combination of institutions of higher education means two or more institutions of higher education that have joined together for the purpose of applying for a grant under the Cooperative Education Program.

Comprehensive cooperative education program means an established program of cooperative education in an institution of higher education that—

(i) Integrates cooperative education into all or nearly all of the academic disciplines or departments of the institution;

(ii) Enrolls in its cooperative education program all or nearly all of the institution's students who are eligible to participate and choose to participate in the cooperative education program;

(iii) Enables students to participate in work experiences with a variety of employers; and

(iv) Acts as a liaison between the institution and secondary schools to advise secondary school students of the availability and advantages of cooperative education.

Cooperative education means a method of education that includes—

(i) Alternating or parallel periods of study and employment;

(ii) Formal work experience agreements among the institution of higher education, the student, and the employer;

(iii) Work experiences that are of sufficient number and duration, as explained in § 632.30;

(iv) Work experiences that are related to the students' academic programs of study or career goals;

(v) Student work experiences that are monitored, supervised, and evaluated; and

(vi) Student employment that is compensated in conformity with Federal, State, and local laws.

Existing cooperative education program means a program of cooperative education in an institution of higher education that—

(i) Has operated a cooperative education program for three successive academic years immediately preceding the year for which the institution applies for Federal support under Parts 632–635; and

(ii) Has placed in paid public or private employment a minimum of 100 unduplicated students in the three years immediately preceding the year for which the institution applies for support.

HEA means the Higher Education Act of 1965, as amended.

Institution of higher education (or institution) means an educational institution as defined in section 1201(a) of the HEA, but excludes an institution that does not meet the provisions of section 1201(a)(3) of the HEA.

Institutional matching funds means the amount of funds contributed by an institution of higher education from non-Federal funds for the purposes of a project.

Minorities means Alaskan Natives, American Indians, Asian-Americans, Blacks (African-Americans), Hispanic Americans, Native Hawaiians, Pacific Islanders, or other ethnic groups underrepresented in cooperative education, as indicated in standard statistical references, or as documented on a case-by-case basis by national survey data submitted to and accepted by the Secretary.

Model cooperative education program means a comprehensive cooperative education program recognized regionally or nationally for its effective or exemplary practices as validated by demonstrated positive outcomes and for the fact that its practices may be replicated in other institutions in the nation.

National need means demonstrated national demand for people in certain occupations, as determined by the Secretary.

Nontraditional students means students other than traditional college-going persons of 18–24 years of age. Nontraditional students include, but are not limited to, older adults, displaced workers, and homemakers returning to the work force.

Parallel periods of study and employment means periods of both classroom study and public or private employment of a student in a cooperative education program in which the student carries at least a half-time academic course load and works at least 20 hours per week in a cooperative education job.

Special populations means women, individuals with disabilities, and African-American, Mexican-American, Puerto Rican, Cuban, other Hispanic, American Indian, Alaska Native, Aleut, Native Hawaiian, American Samoan, Micronesian, Guamanian (Chamorro), or Northern Marianian students.

Student means a person—

(i) Enrolled in an institution of higher education other than by correspondence;

(ii) Enrolled in—

(A) A graduate degree program;

(B) An undergraduate degree program of not less than two academic years; or

(C) An undergraduate certificate program of not less than one academic year if the program is provided by an institution of higher education that offers a two-year program that is acceptable for full credit toward a bachelor's degree; and

(iii) Carrying at least one half the academic workload normally required of persons who are full-time degree candidates.

Underrepresented populations means persons of ethnic or racial groups whose participation in the skilled, technical, or professional work force of the United States is less than their proportionate representation in the general population.

Unduplicated cooperative education student means a student who—

(i) Has been accepted into a cooperative education program;

(ii) Has been placed in a cooperative education job; and

(iii) Is counted only once for each year he or she is either enrolled in a cooperative education program or engaged in a cooperative education work experience.

(Authority: 20 U.S.C. 1133, 1133c)

Subpart B—How Does One Apply for an Award?

§ 631.10 What limitations apply to the number of applications that may be submitted?

For any single fiscal year, the Secretary accepts no more than one application from the same applicant under each of the four kinds of projects listed in § 631.3.

(Authority: 20 U.S.C. 1133b)

Subpart C—How Does the Secretary Make an Award?

§ 631.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application on the basis of the informational requirements for an Administration project application in § 632.10 and the selection criteria in §§ 632.20, 632.21, 633.20, 634.20, or 635.20, as applicable.

(b)(1) The Secretary awards up to 100 points for each set of program selection criteria.

(2) The maximum possible score for each criterion is indicated in parentheses.

(c) The Secretary may assign up to 20 additional points to applications under Administration Projects that address the special consideration factors in § 632.21.

(d) The Secretary funds an application from a public or private agency or organization under parts 633, 634, and 635 only if the application receives a score of 75 or more points.

(Approved by the Office of Management and Budget under control number 1840–0126)

(Authority: 20 U.S.C. 1133b, 1133c)

Subpart D—What Conditions Must Be Met After an Award?

§ 631.30 What costs are allowable?

Federal funds and institutional matching funds may be used for, but are not limited to, the following:

(a) Salaries for professional and clerical cooperative education project staff.

(b) Release or overload time for faculty involved in the project.

(c) Expenses associated with conducting cooperative education seminars or courses for students.

(d) Per diem and travel expenses of cooperative education project staff and faculty for project-related activities.

(e) Fees or honoraria, per diem, and travel expenses for project consultants.

(f) Supplies and telephone costs.

(g) In-service project staff, faculty, and employer training related to the project.

(h) Expenses for developing, printing, and disseminating materials related to the project, including materials designed to recruit nontraditional students, students from special and underrepresented populations, and secondary school and undergraduate postsecondary students.

(i) Registration fees for training sessions related to cooperative education.

(j) Student travel, but only if the cooperative education student is a member of an advisory board for the project.

(k) Computer hardware, project-specific software, and other equipment related to project activities.

(l) Cooperative education training expenses for secondary school professional personnel.

(Authority: 20 U.S.C. 1133b, 1133c)

§ 631.31 What costs are unallowable?

(a) A grantee shall not use Federal funds or institutional matching funds to pay for the following:

(1) Compensation of students for cooperative education work experiences.

(2) Teaching salaries for academic courses.

(3) Admissions activities to invite prospective students to enroll at the grantee institution.

(4) Individual membership fees in professional organizations directly related to cooperative education.

(5) Individual or institutional membership fees in organizations that devote a substantial part of their activities to influencing the passage or defeat of legislation.

(6) Planning the feasibility of establishing a cooperative education program.

(7) Indirect costs in excess of eight per cent of total direct costs.

(b) A grantee who is awarded a Demonstration, Research, or Training and Resource Center project grant shall use Federal funds only to supplement and, to the extent possible, increase the level of funds that otherwise would have been available from non-Federal sources to conduct the approved activities. The grantee may not use Federal funds to supplant funds from non-Federal sources.

(Authority: 20 U.S.C. 1133b, 1133c)

PART 632—COOPERATIVE EDUCATION PROGRAM—ADMINISTRATION PROJECTS

Subpart A—General

Sec.

632.1 What is an Administration project?
632.2 What distinguishes a new project from an existing project?
632.3 Who is eligible for a grant?
632.4 What students are eligible to participate?
632.5 What types of Administration projects are eligible for funding?
632.6 What regulations apply?

Subpart B—How Does One Apply for an Award?

632.10 What must be included in an application?

Subpart C—How Does the Secretary Make an Award?

632.20 What selection criteria does the Secretary use to evaluate an application?
632.21 What special consideration factors does the Secretary use?
632.22 What limitations apply to the amount of a grant for a new project?
632.23 What limitations apply to the amount of a grant for an existing project?

Subpart D—What Conditions Must Be Met After An Award?

632.30 What are the minimum requirements for the frequency and duration of work experiences?
632.31 How are student work experiences evaluated?
632.32 What are the fiscal requirements?

Subpart E—[Reserved]

Subpart F—What Limitations Apply to the Number of Years an Institution May Be Funded?

632.50 What is the duration of an Administration project grant?
632.51 How are grant status and funding eligibility determined if institutions merge?

Authority: 20 U.S.C. 1133–1133b, unless otherwise noted.

Subpart A—General

§ 632.1 What is an Administration project?

(a) An Administration project must be designed to provide students enrolled at institutions of higher education with opportunities to participate in cooperative education.

(b) Under this part, the Secretary awards two types of grants:

(1) Grants for new projects, as described in § 632.2(a).

(2) Grants for existing projects, as described in § 632.2(b).

(Authority: 20 U.S.C. 1133a, 1133b)

§ 632.2 What distinguishes a new project from an existing project?

(a) The Secretary awards a grant for a new project to an institution, or a combination of institutions, that has not received an Administration project grant in the 10-year period immediately preceding the date for which the institution or combination of institutions requests a grant under this part.

(b) The Secretary awards a grant for an existing project to an institution that is operating an existing cooperative education program.

(Authority: 20 U.S.C 1133a, 1133b)

§ 632.3 Who is eligible for a grant?

The following are eligible to apply for an Administration project grant:

(a) An institution of higher education, or a combination of institutions, is eligible to apply for a grant for a new project.

(b) An institution of higher education is eligible to apply for a grant for an existing project.

(Authority: 20 U.S.C. 1133a, 1133b)

§ 632.4 What students are eligible to participate?

An individual who meets the definition of "student" in § 631.5(b) is eligible to participate in a project under this part.

(Authority: 20 U.S.C. 1133)

§ 632.5 What types of Administration projects are eligible for funding?

(a) The Secretary awards a grant for a new project to fund the following activities:

(1) Planning cooperative education programs.

(2) Establishing cooperative education programs.

(3) Expanding cooperative education programs.

(4) Carrying out cooperative education programs.

(b) The Secretary awards a grant for an existing project to fund the following activities:

(1) Improving the quality of and expanding the participation in a cooperative education program.

(2) Providing outreach in new curricular areas.

(3) Providing outreach to potential participants, including nontraditional students and students from underrepresented populations.

(Authority: 20 U.S.C. 1133b)

§ 632.6 What regulations apply?

The following regulations apply to this part:

(a) The regulations cited in 34 CFR 631.4.

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133b)

Subpart B—How Does One Apply for an Award?

§ 632.10 What must be included in an application?

An application for a grant must—

(a) Describe the project for which a grant is requested.

(b) Identify and describe each portion of the project that will be performed by a nonprofit organization or institution other than the applicant and the compensation to be paid to each organization or institution.

(c) Contain assurances that the applicant will not spend less than the amount expended for cooperative education in any fiscal year than the applicant expended for cooperative education during the previous fiscal year.

(d) Describe the plans the applicant will use to ensure that—

(1) The project will continue beyond the 5-year period of Federal assistance described in § 632.50; and

(2) The applicant will fund the project, after the end of the project period, at a level that is not less than the total amount expended by the applicant during the first year of Federal assistance.

(e) Contain a formal statement of the commitment in paragraph (d) of this section.

(f) Provide that, in the case of an institution that provides a 2-year program which is acceptable for full credit toward a bachelor's degree, the program will be available to students who are certificate or associate degree candidates and who carry at least one-half the normal full-time workload.

(g) Provide that the applicant will—

(1) Develop reports to ensure that the applicant is complying with the requirements of this part, including reports for the second and each succeeding fiscal year for which the applicant receives a grant. These reports must include data describing the impact of the project in the preceding fiscal year, including the—

(i) Number of unduplicated student applicants in the project;

(ii) Number of unduplicated students placed in cooperative education jobs;

(iii) Number of employers who have hired cooperative education students;

(iv) Income of students derived from working in cooperative education jobs; and

(v) Increase or decrease in the number of unduplicated students placed in cooperative education jobs in each fiscal year compared to the previous fiscal year; and

(2) Maintain reports that are essential to ensure that the applicant is complying with the requirements of this part, including the notation of cooperative education employment on the student's transcript.

(h) Describe the extent to which the applicant's project has had a favorable reception by public and private-sector employers.

(i) Describe the extent to which the institution is committed to extending cooperative education on an institution-wide basis for all students who can benefit.

(j) Describe the plans the applicant will carry out to evaluate the applicant's project at the end of the project period.

(k) Provide fiscal control and fund accounting procedures that are necessary to assure the proper disbursement of, and accounting for, Federal funds received under this part.

(l) Demonstrate a commitment to serving special populations.

(Approved by the Office of Management and Budget under control number 1840–0126)

(Authority: 20 U.S.C. 1133b)

Subpart C—How Does the Secretary Make an Award?

§ 632.20 What selection criteria does the Secretary use to evaluate an application?

The Secretary uses the following criteria to evaluate an application for a grant under this part:

(a) *Institutional commitment.* (10 points). The Secretary considers the extent of commitment by reviewing—

(1) The applicant's support for the concept of cooperative education as reflected, for example, by the inclusion of cooperative education in the institution's mission statement, long-range planning documents, budget, and catalog; and

(2) The support of the chief executive officer, other key administrators, faculty, and governing board for the project, including their involvement in planning and developing the project.

(b) *Plan of operation.* (60 points). The Secretary considers the quality, effectiveness, and extent of the following:

(1) Organizational structure of the project and its relationship to the institution's organizational and academic structure (3 points).

(2) Measurable objectives of the project (6 points).

(3) Strategy for implementing the project (36 points), including, as applicable—

(i) The activities to be conducted by the applicant and employers and any training or project development activities conducted by a nonprofit organization or institution;

(ii) The schedule that will be used for conducting project activities and meeting the objectives for each year Federal funds are being requested;

(iii) Plans for modifying the institution's academic calendar and course schedules to meet the needs of the students in the project;

(iv) Involvement and extent of participation of academic departments, divisions, or colleges within the institution; and

(v) Adequacy of resources, including adequacy of space and equipment.

(4) Provision of work experiences (10 points) based on—

(i) The relevance of the work experiences to the students' academic programs of study or career objectives;

(ii) The work and study calendars for alternating or parallel periods of study and employment;

(iii) The number, frequency, and duration of the work experiences; and

(iv) The level of monitoring and supervision of cooperative education students while they are on work assignments.

(5) Proposed procedures for administering the project, including fiscal control and fund accounting procedures, and for responding to unexpected problems and evaluation results (5 points).

(c) *Quality of key personnel.* (10 points). The Secretary considers the following in determining the quality of key project personnel:

(1) The qualifications of the project director, coordinators, and other key personnel.

(2) How the qualifications of each professional person involved in the project relate to the project's stated purposes and objectives.

(d) *Evaluation plan.* (10 points). The Secretary considers—

(1) The quality of the proposed evaluation plan and the extent to which the plan includes evaluation methods that are objective and produce quantifiable data that demonstrate the impact of the project; and

(2) Beginning in the second year of the project, the quality of the procedures to collect and record data on the impact of the project, including the notation of cooperative education employment on students' transcripts, and the—

(i) Enrollment and placement of unduplicated cooperative education students, including data on the students' academic and occupational interests, the type of cooperative education employment, and the students' jobs on graduation;

(ii) Income earned by students engaged in cooperative education jobs;

(iii) Number of employers who have hired cooperative education students enrolled in the project; and

(iv) Increase or decrease from year to year in the number of unduplicated students engaged in cooperative education work experiences as a result of the project.

(e) *Adequacy and reasonableness of the budget.* (10 points). The Secretary considers the extent to which the budget—

(1) Is reasonable in relation to the objectives and scope of the project and the number of students engaged in cooperative education jobs; and

(2) Is reasonable with respect to any costs to be paid to a nonprofit organization or to another institution that assists in the development or expansion of the project.

(Approved by the Office of Management and Budget under control number 1840–0126)

(Authority: 20 U.S.C. 1133b)

§ 632.21 What special consideration factors does the Secretary use?

The Secretary may assign up to 20 additional points to applications from institutions whose projects show the greatest promise of success on the basis of the following factors:

(a) The extent to which public and private-sector employers support the project and accept students for jobs that are related to the students' respective academic programs and career interests (5 points), as demonstrated by—

(1) The types of positions for which employers hire cooperative education students;

(2) The match between students' interests and their actual job experiences; and

(3) The number of employers who accept cooperative education students.

(b) The applicant's specific plan for continuing cooperative education after the termination of Federal financial assistance, including a formal statement of institutional commitment that assures that the applicant will continue the cooperative education program beyond the period of Federal assistance at a level not less than the total amount expended for the project during the first year of Federal assistance, and that refers specifically to the sources of support, amount of funds, personnel, and other resources that will be committed to the project (5 points).

(c) The extent to which the applicant is committed to extending opportunities for participation in cooperative education for all eligible students who can benefit from this form of education (5 points).

(d) The institution's demonstrated commitment to serving special populations (5 points).

(Approved by the Office of Management and Budget under control number 1840–0126)

(Authority: 20 U.S.C. 1133b)

§ 632.22 What limitations apply to the amount of a grant for a new project?

(a) In any fiscal year, a grant for a new project may not exceed $500,000.

(b) The Federal share for a grant for a new project may not exceed—

(1) 85 percent of the cost of carrying out the project in the first year the grantee receives the grant;

(2) 70 percent of the cost of the project in the second year the grantee receives the grant;

(3) 55 percent of the cost of the project in the third year the grantee receives the grant;

(4) 40 percent of the cost of the project in the fourth year the grantee receives the grant; and

(5) 25 percent of the cost of the project in the fifth year the grantee receives the grant.

(Authority: 20 U.S.C. 1133b)

§ 632.23 What limitations apply to the amount of a grant for an existing project?

(a) The Secretary awards a grant for an existing project to an eligible institution that has an approved application.

(b) In any fiscal year, an institution that satisfies the requirements of paragraph (a) of this section receives an amount of available funds in a fiscal year bearing the same ratio as the number of unduplicated students placed in cooperative education jobs during the preceding year by that institution (excluding work experiences arranged under Demonstration Projects) bears to the total number of unduplicated students placed in cooperative education jobs during the preceding year by all eligible existing institutions with approved applications.

(c) No eligible institution of higher education may receive a grant for an existing project in any fiscal year that exceeds 25 percent of that institution's personnel and operating budget devoted to cooperative education for the preceding year.

(d) The minimum annual grant for an existing project is $1,000.

(e) The maximum annual grant for an existing project is $75,000.

(Authority: 20 U.S.C. 1133b)

Subpart D—What Conditions Must Be Met After An Award?

§ 632.30 What are the minimum requirements for the frequency and duration of work experiences?

(a) An Administration project must provide at least one work experience for participating graduate students and undergraduate certificate students and at least two work experiences for other participating undergraduate students.

(b) The work experiences provided under paragraph (a) of this section must—

(1) Be of a duration that is consistent with the grantee's academic calendar, but not less than the equivalent of a quarter term; and

(2) Provide sufficient opportunities for each student to gain in-depth experience in an area related to his or her academic program or occupational objectives.

(Authority: 20 U.S.C. 1133b, 1134, 1134a)

§ 632.31 How are student work experiences evaluated?

(a) During a student's work experiences, the grantee must assess the student's progress to ensure that the work experiences satisfy the student's and the Administration project's objectives.

(b) Academic credit for work experiences may be awarded at the discretion of the institution.

(Authority: 20 U.S.C. 1133b)

§ 632.32 What are the fiscal requirements?

(a) A grantee may not expend less for cooperative education in a fiscal year than the amount the grantee expended from non-Federal funds for cooperative education during the previous fiscal year.

(b) If the Secretary determines that a grantee has failed to maintain the fiscal effort described in paragraph (a) of this section, the Secretary may elect not to make further grant payments to the recipient.

(Authority: 20 U.S.C. 1133b)

Subpart E—[Reserved]

Subpart F—What Limitations Apply to the Number of Years an Institution May Be Funded?

§ 632.50 What is the duration of an Administration project grant?

(a) The duration of a grant for a new project or an existing project is a maximum of five annual budget periods.

(b) The five-year limitation in paragraph (a) of this section applies to grants awarded after September 30, 1992.

(Authority: 20 U.S.C. 1133b)

§ 632.51 How are grant status and funding eligibility determined if institutions merge?

If two or more institutions of higher education merge to assume a new identity, the Secretary may review and renegotiate grants received under this part by any of the formerly separate institutions. The Secretary determines funding eligibility on the basis of the formerly separate institution whose grant has the least amount of annual budget periods remaining within the five-year limit.

(Authority: 20 U.S.C. 1133b)

PART 633—COOPERATIVE EDUCATION PROGRAM—DEMONSTRATION PROJECTS

Subpart A—General

Sec.

633.1 What is a Demonstration project?
633.2 Who is eligible for a grant?
633.3 Who is eligible to participate in a Demonstration project?
633.4 What types of Demonstration projects does the Secretary fund?
633.5 What regulations apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

633.20 What selection criteria does the Secretary use to evaluate Demonstration project applications?
633.21 What priorities may the Secretary establish?

Authority: 20 U.S.C. 1133c, unless otherwise noted.

Subpart A—General

§ 633.1 What is a Demonstration project?

A Demonstration project must be designed to demonstrate or determine the feasibility or value of innovative cooperative education projects, as well as to disseminate information relating to innovative cooperative education projects.

(Authority: 20 U.S.C. 1133c)

§ 633.2 Who is eligible for a grant?

The following are eligible to apply for a Demonstration project grant:

(a) An institution of higher education.

(b) A combination of institutions of higher education.

(c) A public or private nonprofit agency or organization, if a grant to the agency or organization will make an especially significant contribution.

(Authority: 20 U.S.C. 1133c)

§ 633.3 Who is eligible to participate in a Demonstration project?

An individual who meets the definition of "student" in § 631.5(b) is eligible to participate in a project under this part.

(Authority: 20 U.S.C. 1133)

§ 633.4 What types of Demonstration projects does the Secretary fund?

The Secretary makes awards for projects that—

(a) Demonstrate or determine the value of existing, innovative methods of cooperative education that have not been fully evaluated;

(b) Demonstrate or determine the feasibility of a proposed innovative method of cooperative education; or

(c) Disseminate information on effective innovative projects.

(Authority: 20 U.S.C. 1133c)

§ 633.5 What regulations apply?

The following regulations apply to this part:

(a) The regulations cited in 34 CFR 631.4.

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133c)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 633.20 What selection criteria does the Secretary use to evaluate Demonstration project applications?

The Secretary uses the following selection criteria to evaluate applications under this part:

(a) *Purposes and objectives of the project.* (20 points). The Secretary reviews each application to evaluate the following:

(1) The purposes of the project.

(2) The extent to which the project is designed to—

(i) Demonstrate or determine the value of existing, innovative methods of cooperative education that have not yet been fully evaluated;

(ii) Demonstrate or determine the feasibility of proposed, innovative methods of cooperative education; or

(iii) Disseminate information on effective innovative projects.

(3) Measurable objectives that relate to the purposes of the project for each year for which Federal funds have been requested.

(4) The expected outcomes of the project and how the outcomes will benefit cooperative education.

(b) *Project design and plan of operation.* (50 points). The Secretary considers the quality of—

(1) The project's design and the activities to be conducted, including the relationship between the activities and the project objectives; (10 points)

(2) The organizational structure of the project; (5 points)

(3) The schedule for implementing the project's activities and meeting its objectives that shows the use of resources in meeting each objective; (10 points)

(4) The plan for effectively and efficiently administering the project; (10 points)

(5) The staffing plan and the time each project person will devote to the project; (10 points) and

(6) Other resources, such as space and equipment, that will be available to the project. (5 points)

(c) *Quality of key personnel.* (10 points). The Secretary considers—

(1) The qualifications of the project director, other professional staff, faculty, and consultants, if used; and

(2) How the qualifications of each professional person involved in the project relate to the project's stated purposes and objectives.

(d) *Evaluation plan.* (10 points). The Secretary considers the quality of the proposed evaluation plan for the project, including the extent to which the methods of evaluation—

(1) Are appropriate to the project; and

(2) Are objective and produce quantifiable data that demonstrate the impact of the project.

(e) *Adequacy and reasonableness of the budget.* (10 points). The Secretary considers the extent to which—

(1) Costs for the project are adequate and reasonable, considering the project's objectives, design, staffing plan, and plan of operation; and

(2) Funds will be contributed by the applicant and consortium members of the project, if any.

(Approved by the Office of Management and Budget under control number 1840–0126)

(Authority: 20 U.S.C. 1133c)

§ 633.21 What priorities may the Secretary establish?

(a) Each year the Secretary may establish as a priority one or more of the following activities:

(1) Model cooperative education projects in the fields of science and mathematics for women and minorities who are underrepresented in those fields.

(2) Model cooperative education projects specializing in developing technical and professional work force skills for nontraditional students and students from special or underrepresented populations.

(3) Model cooperative education projects that focus on developing and establishing articulation and other cooperative arrangements between or among secondary and postsecondary educational institutions.

(b) The Secretary announces these priorities in a notice published in the Federal Register.

(Authority: 20 U.S.C. 1133c)

PART 634—COOPERATIVE EDUCATION PROGRAM—RESEARCH PROJECTS

Subpart A—General

Sec.
634.1 What is a Research project?
634.2 Who is eligible for a grant?
634.3 What types of Research projects does the Secretary fund?
634.4 What regulations apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

634.20 What selection criteria does the Secretary use to evaluate Research project applications?
634.21 What priorities may the Secretary use?

Authority: 20 U.S.C. 1133c, unless otherwise noted.

Subpart A—General

§ 634.1 What is a Research project?

A Research project must conduct studies to improve, develop, or evaluate methods of cooperative education for the benefit of the cooperative education community.

(Authority: 20 U.S.C. 1133c)

§ 634.2 Who is eligible for a grant?

The following are eligible to apply for a grant under this part:

(a) An institution of higher education.

(b) A combination of institutions of higher education.

(c) A public or private nonprofit agency or organization if a grant to the agency or organization will make an especially significant contribution.

(Authority: 20 U.S.C. 1133c)

§ 634.3 What types of Research projects does the Secretary fund?

(a) The Secretary makes awards under this part for Research projects that include, but are not limited to, the following:

(1) Improving the effectiveness of cooperative education projects.

(2) Providing data on the usefulness of cooperative education as an alternative educational approach in assisting students to prepare for careers and to finance their educational pursuits.

(3) Developing better cooperation among secondary schools, institutions of higher education, business, and industry to enhance the opportunity for students to participate in work experiences related to their academic or career objectives.

(b) The Secretary does not fund a project designed to benefit only a single institution.

(Authority: 20 U.S.C. 1133c)

§ 634.4 What regulations apply?

The following regulations apply to this part:

(a) The regulations cited in 34 CFR 631.4.

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133c)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 634.20 What selection criteria does the Secretary use to evaluate Research project applications?

The Secretary uses the following selection criteria in evaluating applications under the Cooperative Education Research program:

(a) *Relevancy of research.* (20 points). The Secretary considers the extent to which—

(1) The proposed research is responsive to a major problem or need in cooperative education; and

(2) The findings would be of value to institutions, faculty, students, or employers involved or interested in cooperative education.

(b) *Design of research.* (20 points). The Secretary considers the research design by assessing the objectivity and quality of the—

(1) Definition of the problem or objectives to which the research is directed;

(2) Research methods;

(3) Sampling method to be used, if applicable;

(4) Data collection method to be used, if applicable; and

(5) Plan for analyzing data.

(c) *Plan of operation.* (15 points). The Secretary considers the quality and the effectiveness of—

(1) The management plan, including the extent to which the plan ensures proper and efficient administration of the project;

(2) The schedule for implementing the project; and

(3) The way the applicant plans to use its resources and personnel to conduct the project.

(d) *Adequacy of resources.* (10 points). The Secretary considers the extent to which—

(1) The personnel resources the applicant plans to use are adequate;

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

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

(e) *Quality of key personnel.* (20 points). The Secretary considers the quality of the key personnel the applicant plans to use on the project by reviewing—

(1) The qualifications of the project director or principal investigator;

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

(3) How the qualifications of each professional person involved in the project relate to the project's stated purposes and objectives.

(f) *Dissemination of results.* (5 points). The Secretary considers the extent to which the results of the research will be disseminated by reviewing—

(1) Publication plans;

(2) Methods of dissemination; and

(3) The dissemination schedule.

(g) *Budget.* (10 points). The Secretary reviews the budget to assure that it is reasonable considering the design of the project, the plan of operation, and plans for disseminating the results of the research.

(Approved by the Office of Management and Budget under control number 1840–0126)

(Authority: 20 U.S.C. 1133c)

§ 634.21 What priorities may the Secretary use?

(a) Each year the Secretary may establish as a priority one or more of the following activities:

(1) Longitudinal studies on former cooperative education students and non-cooperative education students to determine the relationship between the students' cooperative education work experiences and one or more of the following:

(i) Initial job placement.

(ii) Job advancement.

(iii) Long-term earnings.

(2) Assessing the impact of cooperative education on college retention rates and academic achievement of students participating in cooperative education, compared to non-participants.

(3) Assessing the impact of comprehensive cooperative education projects on—

(i) The institution;

(ii) Students at the institution;

(iii) Faculty;

(iv) Employment opportunities; and

(v) Factors influencing the successes and failures of comprehensive cooperative education projects.

(4) Identifying and assessing incentives and factors that influence an institution of higher education to continue its cooperative education project successfully after Federal financial assistance has ended.

(b) The Secretary announces these priorities in a notice published in the Federal Register.

(Authority: 20 U.S.C. 1133c)

PART 635—COOPERATIVE EDUCATION PROGRAM—TRAINING AND RESOURCE CENTER PROJECTS

Subpart A—General

Sec.

635.1 What is a Training and Resource Center project?
635.2 Who is eligible for a grant?
635.3 Who is eligible to participate?
635.4 What activities may the Secretary fund?
635.5 What regulations apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

635.20 What selection criteria does the Secretary use to evaluate applications?
635.21 What priorities may the Secretary establish?

Authority: 20 U.S.C. 1133c, unless otherwise noted.

Subpart A—General

§ 635.1 What is a Training and Resource Center project?

A Training and Resource Center project must be designed to train and assist individuals who participate in, or are planning to participate in, planning, establishing, and administering cooperative education projects.

(Authority: 20 U.S.C. 1133c)

§ 635.2 Who is eligible for a grant?

The following are eligible to apply for a grant under this part:

(a) An institution of higher education.

(b) A combination of institutions of higher education.

(c) A public or private nonprofit agency or organization, whenever a grant to the agency or organization will make an especially significant contribution.

(Authority: 20 U.S.C. 1133c)

§ 635.3 Who is eligible to participate?

Individuals with a need for training, project-related materials, and technical assistance in planning, establishing, or administering a cooperative education project are eligible to participate in training projects assisted under this part. These individuals may include—

(a) Presidents and administrators of institutions of higher education, whether or not their institutions currently administer a federally-funded cooperative education project;

(b) Faculty and staff of institutions of higher education, whether or not their institutions currently administer a federally-funded cooperative education project;

(c) Secondary school personnel responsible for career and academic guidance; and

(d) Employers or prospective employers of students who are involved in a cooperative education project.

(Authority: 20 U.S.C. 1133c)

§ 635.4 What activities may the Secretary fund?

(a) The Secretary makes awards for projects designed to provide information and develop skills necessary to administer cooperative education projects.

(b) A grantee must conduct one or more of the following activities:

(1) Training for project directors, coordinators, faculty members, employers, and other persons in § 635.3 who are or will be involved in cooperative education.

(2) Improving materials used in cooperative education programs in conjunction with other activities described in this section.

(3) Providing technical assistance to institutions of higher education to increase their potential to continue cooperative education programs without Federal funds.

(4) Encouraging model cooperative education projects that furnish education and training in occupations for which there is a national need.

(5) Supporting partnerships in which an existing comprehensive cooperative education program assists one or more institutions to—

(i) Improve their existing cooperative education program; or

(ii) Establish, expand, or improve a comprehensive cooperative education program.

(6) Encouraging model cooperative education programs in the fields of science or mathematics for women or minorities who are underrepresented in these fields.

(Authority: 20 U.S.C. 1133c)

§ 635.5 What regulations apply?

The following regulations apply to this part:

(a) The regulations cited in 34 CFR 631.4.

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133c)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 635.20 What selection criteria does the Secretary use to evaluate applications?

The Secretary uses the following selection criteria to evaluate an application under this part:

(a) *Needs assessment.* (21 points). The Secretary considers the extent to which the applicant provides evidence, as applicable, of current need for its project, including, but not limited to, need for—

(1) Training, technical assistance, and materials in its geographical area or in the nation;

(2) Training partnerships to assist in developing cooperative education programs; or

(3) Developing model cooperative education programs.

(b) *Purpose and scope of training and functions of the resource center.* (15 points). The Secretary considers the extent to which the purpose of the project and the scope of the project activities to be provided will address the needs of the constituency selected to receive training and information. The Secretary makes this determination based on needs analysis data.

(c) *Plan of operation.* (36 points). The Secretary considers—

(1) The extent to which the applicant provides evidence of thorough planning for the proposed project, including the procedures to be used in conducting the project and the commitment of personnel to be involved in conducting the project;

(2) The extent to which the objectives and proposed outcomes of the project relate to the project's purpose and the results of the needs assessment;

(3) The quality of the actual design of the project, including plans for dealing with unexpected problems and evaluation results;

(4) The quality of the activities to be conducted and their relationship to the criteria in paragraph (c)(2) of this section;

(5) The quality of the methods and procedures to be used in conducting the project's training plan;

(6) The proposed schedule for conducting project activities and training sessions;

(7) The extent to which the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition;

(8) The quality of the plan for managing the project; and

(9) The extent to which the proposed project has promise of fulfilling the proposed objectives and current need for the project.

(d) *Quality of key personnel.* (9 points). The Secretary considers—

(1) The qualification and training skills of the project director;

(2) The qualifications of other professional personnel, including consultants, to be used in the project; and

(3) How the qualifications of each professional person involved in the project relate to the project's stated purposes and objectives.

(e) *Adequacy of resources.* (6 points). The Secretary considers the extent to which—

(1) Personnel resources are available and adequate for conducting the project's activities;

(2) Physical facilities are available and adequate for conducting the project's activities; and

(3) Necessary equipment and other required resources are available and adequate for conducting the project's activities.

(f) *Evaluation plan.* (10 points). The Secretary considers the quality of the proposed evaluation plan for the project, including the extent to which the methods of evaluation—

(1) Are appropriate to the project; and

(2) Are objective and produce quantifiable data that demonstrate the impact of the project.

(g) *Budget.* (3 points). The Secretary considers the extent to which the budget is reasonable considering the scope of training and the plan of operation.

(Approved by the Office of Management and Budget under control number 1840–0126)

(Authority: 20 U.S.C. 1133c)

§ 635.21 What priorities may the Secretary establish?

(a) Each year the Secretary may select as a priority one or more of the activities listed in § 635.4.

(b) The Secretary announces these priorities in a notice published in the **Federal Register.**

(Authority: 20 U.S.C. 1133c)

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34 CFR Part 636

RIN 1840–AB60

Urban Community Service Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary promulgates regulations for the Urban Community Service Program. The Urban Community Service Program provides grants to urban academic institutions to work with private and civic organizations to devise and implement solutions to pressing and severe problems in their urban communities.

These regulations are needed to implement the provisions of the recently enacted Higher Education Amendments of 1992 (1992 Amendments). The regulations incorporate statutory requirements and provide rules for applying for and spending Federal funds under this program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Patricia W. Gore. Telephone: (202) 708–7389. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These final regulations implement the Urban Community Service Program, which is authorized by title XI, part A of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1992 (Pub. L. 102–325), enacted July 23, 1992.

The Urban Community Service Program plays an important role in helping to achieve National Education Goal 5, that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The program furthers the objectives of Goal 5 by affording students in urban academic institutions an opportunity to learn more about the problems in their communities and to participate in developing solutions to these problems.

On May 20, 1993, the Secretary published a notice of proposed rulemaking for this program in the **Federal Register** (58 FR 29373). In this notice, the Secretary solicited public comment on the proposed regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, four parties submitted comments on the proposed regulations. An analysis of the comments follows.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comments: Section 1108(2)(B)(ii) of the HEA and § 636.2(b)(2) of the regulations require that an institution of higher education or consortium of institutions draw a "substantial portion of its undergraduate students" from the urban area in which the institution is located, or from contiguous areas, to be eligible for a grant. The Secretary defined "substantial portion of its undergraduate students" in § 636.7(b) of the proposed regulations to mean 50 percent or more of the enrolled undergraduate student population. All four commenters believe that this proposed definition set too high a threshold for eligibility. Commenters contended that 50 percent is an inappropriate threshold since the statute did not require a "majority."

Discussion: The Secretary agrees that the definition should be changed. The Secretary has changed the definition of "substantial portion of its undergraduate students" to mean 40 percent or more of the enrolled undergraduate student population.

Changes: The definition in § 636.7(b) of "substantial portion of its undergraduate students" is changed to mean 40 percent or more of the enrolled undergraduate student population.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Paperwork Reduction Act of 1980

Sections 636.10, 636.11, and 636 21 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Institutions of higher education are eligible to apply for grants under these regulations. The Department needs and uses the information to make grants. Annual public reporting burden for this collection of information is estimated to average 80 hours per response for 200 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC. 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Education Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from

any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 636

College and universities, Grant program-education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.252—Urban Community Service Program)

Dated: August 5, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by adding a new part 636 to read as follows:

PART 636—URBAN COMMUNITY SERVICE PROGRAM

Subpart A—General

Sec.

636.1 What is the Urban Community Service Program?
636.2 Who is eligible for a grant?
636.3 What activities may the Secretary support?
636.4 What is the duration of an Urban Community Service Program grant?
636.5 What are the matching contribution and planning consortium requirements?
636.6 What regulations apply?
636.7 What definitions apply?

Subpart B—How Does One Apply for an Award?

636.10 What must an application include?
636.11 How does an applicant request a waiver of the planning consortium requirement?

Subpart C—How Does the Secretary Make an Award?

636.20 How does the Secretary evaluate an application?
636.21 What selection criteria does the Secretary use to evaluate an application?
636.22 What additional factors does the Secretary consider?
636.23 What priorities does the Secretary establish?

Subpart D—How Does the Secretary Designate Urban Grant Institutions and Establish an Urban Grant Institutions Network?

636.30 How does the Secretary designate urban grant institutions?
636.31 How does the Secretary establish a network of urban grant institutions?

Authority: 20 U.S.C. 1136–1136h, unless otherwise noted.

Subpart A—General

§ 636.1 What is the Urban Community Service Program?

The Urban Community Service Program provides grants to urban academic institutions to work with private and civic organizations to devise and implement solutions to pressing and severe problems in their urban communities.

(Authority: 20 U.S.C. 1136, 1136a)

§ 636.2 Who is eligible for a grant?

The following institutions are eligible for grants under the Urban Community Service Program:

(a) A nonprofit municipal university, established by the governing body of the city in which it is located and operating as of July 23, 1992.

(b) An institution of higher education or a consortium of institutions with at least one member that satisfies all of the following requirements:

(1) Is located in an urban area.

(2) Draws a substantial portion of its undergraduate students from the urban area in which it is located or from contiguous areas.

(3) Carries out programs to make postsecondary educational opportunities more accessible to residents of the urban area or contiguous areas.

(4) Has the present capacity to provide resources responsive to the needs and priorities of the urban area and contiguous areas.

(5) Offers a range of professional, technical, or graduate programs sufficient to sustain the capacity of the institution to provide these resources.

(6) Has demonstrated and sustained a sense of responsibility to the urban area and contiguous areas and the people in those areas.

(Authority: 20 U.S.C. 1136g)

§ 636.3 What activities may the Secretary support?

(a) The Secretary awards grants under this program for the following activities:

(1) Planning.

(2) Applied research.

(3) Training.

(4) Resource exchanges or technology transfers.

(5) Delivery of services.

(6) Other activities to design and implement programs to assist urban communities to meet and address their pressing and severe problems.

(b) Examples of pressing and severe urban problems that applications may address include concerns such as the following:

(1) Work force preparation.

(2) Urban poverty and the alleviation of poverty.

(3) Health care, including delivery and access.

(4) Underperforming school systems and students.

(5) Problems faced by the elderly and individuals with disabilities in urban settings.

(6) Problems faced by families and children.

(7) Campus and community crime prevention, including enhanced security and safety awareness measures as well as coordinated programs addressing the root causes of crime.

(8) Urban housing.

(9) Urban infrastructure.

(10) Economic development.

(11) Urban environmental concerns.

(12) Other problem areas that participants of the planning consortium agree are of high priority in the urban area in which their institutions are located.

(13) Problems faced by individuals with disabilities regarding accessibility to institutions of higher education and other public and private community facilities.

(14) Lessening of existing attitudinal barriers that prevent full inclusion of individuals with disabilities within their community.

(Authority: 20 U.S.C. 1136c)

§ 636.4 What is the duration of an Urban Community Service Program grant?

The duration of an Urban Community Service Program grant is a maximum of five annual budget periods.

(Authority: 20 U.S.C. 1136d)

§ 636.5 What are the matching contribution and planning consortium requirements?

(a) The applicant and the local governments associated with its application shall contribute to the conduct of the project supported by the grant an amount, in cash or in-kind, from non-Federal funds equal to at least one-fourth of the amount of the grant.

(b) The applicant shall develop and include in its application a plan agreed to by the members of a planning consortium.

(Authority: 20 U.S.C. 1136b, 1136e)

§ 636.6 What regulations apply?

The following regulations apply to the Urban Community Service Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).
(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).
(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).
(6) 34 CFR part 82 (New Restrictions on Lobbying).
(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).
(8) 34 CFR part 86 (Drug-Free Schools and Campuses).
(b) The regulations in this part 636.

(Authority: 20 U.S.C. 1136, 1136a)

§ 636.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Department
EDGAR
Grant
Project
Project period
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

Contiguous areas means counties or independent cities sharing a part of a border with the metropolitan area within which an urban academic institution is located.

Consortium of institutions of higher education means two or more institutions of higher education that have entered into a cooperative arrangement for the purpose of carrying out common objectives.

Consortium of institutions of higher education means two or more institutions of higher education that have entered into a cooperative arrangement for the purpose of carrying out common objectives.

HEA means the Higher Education Act of 1965, as amended.

Individuals with disabilities means individuals who—
(i) Have physical or mental impairments that substantially limits one or more of the major life activities;
(ii) Have a record of physical or mental impairments; or
(iii) Are regarded as having physical or mental impairments.

Institution of higher education means an institution of higher education as defined in section 1201(a) of the HEA.

Local government means a city, town, township, county, or other unit of general government organized under State laws and given delegated taxing or expenditure authority for providing governmental services to local communities.

Metropolitan area means a metropolitan area or a consolidated metropolitan area, as designated by the United States Office of Management and Budget.

Nonprofit municipal university means an institution of higher education that—
(i) Is chartered or otherwise established as a not-for-profit institution by the governing body of the city in which it is located; and
(ii) Is accredited by an agency or association recognized by the Secretary.

Planning consortium means the applicant institution and one or more of the following:
(i) A community college.
(ii) An urban school system.
(iii) A local government.
(iv) A business or other employer.
(v) A nonprofit institution.

Substantial portion of its undergraduate students means 40 percent or more of the enrolled undergraduate student population.

Urban area means—
(i) A metropolitan area having a population of not less than 350,000;
(ii) Two contiguous metropolitan areas having a combined total population of not less than 350,000;
(iii) In any State that does not have a metropolitan area having a population of not less than 350,000, the one urban area designated by the entity of the State having an agreement under the HEA to make a designation; or
(iv) If a State entity does not have an agreement under the HEA to make a designation, the one urban area designated by the Secretary.

Urban infrastructure means the underlying mechanical or technological networks for providing goods and services, such as transportation systems (including mass transit), water and sewage systems, and communication systems (including telecommunications).

(Authority: 20 U.S.C. 1136a-1136g)

Subpart B—How Does One Apply for an Award?

§ 636.10 What must an application include?

An application must include the following:
(a) A description of the activities for which the grant is sought.
(b) The plan agreed to by each of the members of the planning consortium.
(c) An assurance that the applicant and the local governments associated with the application will contribute to the conduct of the project supported by the grant an amount, in cash or in-kind, from non-Federal funds equal to at least one-fourth of the amount of the grant.

(Authority: 20 U.S.C. 1136b)

§ 636.11 How does an applicant request a waiver of the planning consortium requirement?

(a) An applicant may request that the Secretary waive the requirement for a planning consortium by submitting as part of the application a request that includes the following:
(1) The reasons why the applicant seeks the waiver.
(2) Detailed information evidencing the applicant's integrated and coordinated plan to work with private and civic organizations to meet the pressing and severe problems of the urban community.
(b) The Secretary may grant the request for a waiver if the Secretary finds that—
(1) The applicant has shown an integrated and coordinated plan to meet the purposes of the Urban Community Service Program; and
(2) A planning consortium would not substantially improve the applicant's proposed project.

(Authority: 20 U.S.C. 1136b)

Subpart C—How Does the Secretary Make an Award?

§ 636.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the selection criteria in § 636.21.
(b) The Secretary awards up to 100 points for these selection criteria.
(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1136b)

§ 636.21 What selection criteria does the Secretary use to evaluate an application?

The Secretary uses the following criteria to evaluate an application under this part:

(a) *Determination of need for the project.* (10 points). The Secretary reviews each application to assess the effectiveness of the procedures used by the applicant in determining need for the project, including consideration of—
(1) The process used to ensure that the pressing and severe problems that are identified are in fact high priority problems for the urban area;
(2) The priority relationship of the problems addressed by the project to other pressing and severe problems identified for the urban area;

(3) The extent to which the problems addressed by the project represent pressing and severe problems in urban areas nationally;

(4) The process by which project participants review and comment on proposed project goals, objectives, and strategies; and

(5) The specific benefits to be gained by meeting the identified problems.

(b) *Quality of the applicant's organization for operation.* (20 points). The Secretary reviews each application to determine the quality of the organization for operation, including consideration of how the application describes the following:

(1) The cooperative arrangement between the applicant and any of the following that are appropriate for the conduct of the proposed project:

(i) Agencies of local government.

(ii) Public and private elementary and secondary schools.

(iii) Business organizations.

(iv) Labor organizations.

(v) Community service and advocacy organizations.

(vi) Community colleges.

(2)(i) Any previous working relationships between the applicant and the entities listed in paragraph (b)(1) of this section; and

(ii) The outcomes of those relationships.

(3) The agreement among project participants to commit their own resources in carrying out proposed project goals, objectives, and strategies.

(c) *Quality of project objectives.* (10 points). The Secretary reviews each application to determine the extent to which the objectives for each project component activity meet the purposes of the program, are realistic, and are defined in terms of measurable results.

(d) *Quality of implementation strategy.* (20 points). The Secretary reviews each application to determine the extent to which—

(1) The implementation strategy for each key project component activity is—

(i) Comprehensive;

(ii) Based on a sound rationale; and

(iii) Is a cost-effective approach for accomplishing project goals and objectives; and

(2) The described timetable for each project component and for the overall project is realistic.

(e) *Quality of evaluation plan.* (15 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Relate to the objectives of the project;

(2) Describe both process and product evaluation measures for each project component activity and outcome;

(3) Describe data collection procedures, instruments, and schedules for effective data collection;

(4) Describe how the data will be analyzed and reported so that adjustments and improvements can be made on a regular basis while the project is in operation;

(5) Describe a time-line chart that relates key evaluation processes and benchmarks to other project component processes and benchmarks; and

(6) Establish the potential for effectively disseminating project information that can be generalized, replicated, and applied throughout the Nation.

(f) *Quality of key personnel.* (10 points). The Secretary reviews each application to determine the qualifications of key personnel, including information that—

(1) The past work experience and training of key professional personnel are directly related to the stated activity purposes and objectives; and

(2) The time commitment of key personnel is realistic.

(g) *Budget.* (5 points). The Secretary reviews each application to determine whether the project has an adequate budget and is cost effective, including information that shows that—

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

(2) The costs are necessary and reasonable in relation to the project objectives and scope.

(h) *Institutional commitment.* (10 points). The Secretary reviews each application to determine the extent to which the application demonstrates a financial commitment on the part of the applicant and the local governments associated with its application, including the nature and amount of the matching contribution, and other institutional commitments from the applicant and other entities associated with the project, that are likely to assure the continuation of project activities for a significant time beyond the grant project period.

(Authority: 20 U.S.C. 1136b, 1136e)

§ 636.22 What additional factors does the Secretary consider?

(a) The Secretary awards grants in a manner that achieves an equitable geographic distribution of grants.

(b) No institution, individually or as a participant in a consortium of institutions, may receive an Urban Community Service Program grant for more than five years.

(Authority: 20 U.S.C. 1136e)

§ 636.23 What priorities does the Secretary establish?

In awarding grants, the Secretary gives an absolute preference to applicants that propose to conduct joint projects supported by other local, State, and Federal programs.

(Authority: 20 U.S.C. 1136b)

Subpart D—How Does the Secretary Designate Urban Grant Institutions and Establish an Urban Grant Institutions Network?

§ 636.30 How does the Secretary designate urban grant institutions?

(a) The Secretary identifies and designates the eligible institutions described in § 636.2 as urban grant institutions.

(b) The Secretary publishes a list of urban grant institutions in a notice published in the **Federal Register**

(Authority: 20 U.S.C. 1136f)

§ 636.31 How does the Secretary establish a network of urban grant institutions?

(a) The Secretary establishes a network of urban grant institutions consisting of the urban grant institutions designated in § 636.30.

(b) The Secretary invites institutions in the network of urban grant institutions to disseminate results and other information on individual projects that can be generalized, replicated, and applied throughout the Nation.

(Authority: 20 U.S.C. 1136f)

[FR Doc. 93–19267 Filed 8–10–93; 8:45 am]

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34 CFR Part 654

RIN 1840–AB77

Robert C. Byrd Honors Scholarship Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Robert C. Byrd Honors Scholarship Program. These amendments are needed to implement the Higher Education Amendments of 1992 and to clarify the existing regulations governing the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the

effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Patricia Gore. Telephone: (202) 708–8849. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Robert C. Byrd Honors Scholarship Program (program) is authorized by sections 419A–419K of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1992 (Pub. L. 102–325), enacted July 23, 1992. Through this program, the Secretary provides grants to States to provide scholarships for study at institutions of higher education to outstanding high school graduates who show promise of continued excellence, in an effort to recognize and promote student excellence and achievement. By promoting student excellence and achievement, the program supports National Education Goal 4, that U.S. students be first in the world in math and science, and Goal 5, that every adult American be literate and possess the knowledge and skills necessary to compete in a global economy.

On May 14, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the Federal Register (58 FR 28538). The major issues addressed by the regulations are discussed in the preamble to the NPRM. There are no major differences between the NPRM and the final regulations.

Analysis of Comments and Changes

Six commenters responded to the Secretary's invitation to comment on the NPRM. The following is an analysis of comments and changes in the regulations since publication of the NPRM. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes to the language published in the NPRM—and requests for changes the Secretary is not legally authorized to make under applicable statutory authority—may not be addressed.

Administrative Costs (§ 654.3)

Comment: All of the commenters objected to the elimination of the administrative cost allowance. In particular, commenters were concerned about the failure to provide an administrative cost allowance in light of the increase in State administrative burdens under this program. Some commenters specifically requested that they be permitted to use unexpended funds to cover administrative expenses.

Discussion: In the 1992 Amendments to the HEA, Congress amended the statute governing this program to remove sections 419E(5) and 419D(a)(2) to eliminate the provision for administrative expenses. At the same time, Congress expanded the scholarship period under the program from one to four years. A four-year scholarship period is inherently more burdensome on States because States must monitor the continuing eligibility of scholars for three more years. Accordingly, although the Secretary acknowledges increased State administrative burdens, the Secretary does not have authority under the statute to permit States to use Federal funds under this program, including carry over and other unexpended funds, to cover State administrative expenses.

Changes: None.

Applicable Regulations (§ 654.4)

Comment: One commenter recommended that this section be revised to include 34 CFR part 668 on the list of regulations that apply to this program.

Discussion: 34 CFR Part 668 contains the Student Assistance General Provisions that establish general rules that apply to an institution that participates in a student financial assistance program authorized by Title IV of the HEA. The Secretary previously determined in § 668.1(c) those Title IV programs to which the provisions of part 668 apply. This program is not among the programs listed in § 668.1(c). Those specific sections of part 668 that do apply to this program are cross-referenced in the regulations for this program.

Changes: None.

Award Year (§ 654.5(b))

Comment: Several commenters requested clarification of the definition of "award year." In particular, some commenters wondered whether the period of an award year, July 1 of one year through June 30 of the following year, would preclude the use of funds for students attending summer school, and if not, which award year the funds should come from.

Discussion: The definition of "award year" is taken from section 481(d) of the HEA. The term "award year" refers to the period for which the Secretary awards the funds to the States. Thus, a State must obligate funds received for a particular award year by June 30 of that award year.

The Secretary does not believe it is necessary to clarify the definition of "award year." Rather, the Secretary believes the comments reflect confusion about the term "year of study," which is the period of time for which a State awards scholarship funds to a scholar. "Year of study" is defined in terms of an institution's definition of the period of time necessary to complete one year of coursework. Scholarships must be pro-rated based on that period of time. For example, if an institution defines the period of time necessary to complete one year of coursework as two semesters, and a summer session at that institution is considered the equivalent of one semester, a student who attends for the spring semester and the summer session would be entitled to the full scholarship for that year of study. All of the funds could come from one award year, as long as the funds were obligated by the institution by June 30.

Changes: None.

Administrative Responsibilities (§ 654.11(a))

Comment: One commenter asked whether administrative responsibilities for this program could be handled by the financial aid offices of the institutions that the scholars attend.

Discussion: Section 419E of the HEA requires the Secretary to enter into an agreement with each State that assures that the SEA will administer the program. The Secretary believes that an SEA could, consistent with the agreement, subcontract for assistance in the day-to-day implementation and operation of the program, as long as overall responsibility for the program remains with the SEA.

Changes: None.

Selection of Scholars (§§ 654.40(a) and 654.41(b)(4)(i))

Comment: One commenter asked for clarification of the regulations containing requirements related to the selection process. In particular the commenter wondered whether students who are legal residents of one State but attend secondary school in another State are permitted to nominate themselves for consideration for a scholarship under this program.

Discussion: The Secretary declines to require States to adopt specific selection procedures, such as self-nomination, for out-of-State students. However, the Secretary believes that any procedure that precluded a legal resident who was attending secondary school out-of-State from applying would be inconsistent with § 654.41(b)(4)(i) of the regulations, which requires SEAs to establish selection criteria and procedures to

ensure that they select scholars without regard to whether the secondary school the scholar attends is within or outside the State.

Changes: None.

Equitable Geographic Distribution (§ 654.41(b)(3))

Comment: Several commenters asked for clarification of the requirement that States select scholars in a manner that ensures an "equitable geographic distribution." Some commenters recommended that Federal congressional districts be used as a basis for ensuring equitable geographic distribution. Other commenters suggested that the regulations be modified to permit States to define their own criteria, subject to the approval of the Secretary.

Discussion: The equitable geographic distribution requirement in the regulations is taken from section 419G(b) of the statute, which was revised to replace the specific requirements relating to distribution among congressional districts. The Secretary believes that distribution by congressional districts may be one way to ensure that the scholarships are equitably distributed, but leaves States the flexibility to develop their own criteria to meet the standard, subject to the Secretary's approval. No change in the regulations is necessary.

Changes: None.

Four-year Scholarship Period (§ 654.50(a))

Comment: Several commenters objected to the requirement in the regulations that SEAs disburse scholarship funds each year for a maximum of four years to each scholar that continues to meet the eligibility requirements. Commenters expressed the view that the statute does not state that scholarships shall be for four years only, and they requested the flexibility to provide awards on a one year basis or to provide five years of funding to scholars in five year programs. One commenter asked whether scholars who complete their undergraduate study in three years could be funded for their first year of graduate study.

Discussion: Section 419C(b) of the HEA provides that the scholarships shall be awarded for a period of "not more than" four years for the first four years of study. The language of the statute does not leave any room for an interpretation that five years of funding may be provided to a scholar in a five-year program. Moreover, since the 1992 Amendments removed the one-academic-year limit on the scholarship period that was previously provided under this program, the Secretary does not believe it would be consistent with legislative intent to permit States to limit scholarships to one year. The Secretary interprets "not more than" to mean that a scholar may receive less then four years of funding only if the scholar does not meet the continuing eligibility requirements.

Scholars who complete their course of study and receive an undergraduate degree in three years are eligible to receive scholarship funds under this program only for those three years of undergraduate study. Congress provided separate scholarship programs for graduate study under Title IX of the HEA, and this program is limited to undergraduates. The Secretary does not believe that Congress intended to provide graduate assistance under this program when it expanded the scholarship period from one to four years. Rather, the Secretary believes that Congress expanded the scholarship period to four years because that is the normal time period required to obtain an undergraduate degree.

Changes: None.

Total Financial Assistance (§ 654.50(b))

Comment: Two commenters requested clarification regarding both the requirement that the SEA ensure that the total amount of financial aid awarded to a scholar for a year of study does not exceed the cost of attendance and the requirement that loans be reduced prior to a scholarship under this program. In particular, the commenters wondered whether a Federal Pell grant can be reduced if a scholar receives a Federal Pell grant, a private donation, and a scholarship under this program. One commenter requested a definition of the term "cost of attendance."

Discussion: The requirement that the total amount of financial aid awarded to a scholar not exceed the total cost of attendance is taken from section 419H(a) of the HEA. The term "cost of attendance" is defined in section 472 of the HEA. The Secretary interprets the total amount of financial aid, for the purposes of section 419H, to mean the total amount of Federal financial assistance. Accordingly, a private donation should not be considered in determining the total amount of financial aid and should not be the basis for a reduction of a scholarship under this program.

On the other hand, a Federal Pell grant would be considered part of the total amount of financial aid. Since under 419J of the HEA a Federal Pell grant cannot be reduced on the basis of the receipt of a scholarship under this program, if the total amount of Federal financial assistance exceeds the cost of attendance, a scholarship under this program should be reduced prior to a Federal Pell grant.

The Secretary has determined that if a scholar under this program is due to receive a loan, however, the loan should be reduced prior to the scholarship under this program. This policy is not prohibited by the HEA and is consistent with the purpose of this program to provide scholarship assistance to students who demonstrate outstanding academic achievement. Moreover, the Secretary does not believe that students should be required to incur greater loan debt when they are eligible to receive grant funds that do not have to be repaid.

Changes: Paragraph (b) of § 654.5 has been revised to add a definition for "cost of attendance" that cross references the definition of that term in section 472 of the HEA.

Disbursement of Scholarship Funds (§ 654.50(c))

Comment: Several commenters asked for clarification regarding the requirement that scholars be selected and awards made prior to the end of each secondary school academic year. In particular, commenters wondered whether funds must actually be disbursed to scholars prior to the end of the secondary school academic year. A few commenters noted that the SEA may not receive the official award letter from the Department by that time.

Discussion: The requirement that scholars be selected and awards made prior to the end of the secondary school academic year is taken from section 419G(d) of the statute. The Secretary interprets this requirement to mean that scholars must be selected and notified in writing of their scholarship award prior to the end of the secondary school year. The Secretary does not believe that SEAs are required to actually disburse the scholarship funds to the scholars by that time.

Changes: None.

Continuing Eligibility Requirements (§§ 654.51 and 654.52)

Comment: A number of commenters objected to the eligibility requirements for scholars to continue to receive scholarship funds under this program. Several commenters objected to the requirement that scholars be enrolled full time, stating that it would put a strain on scholars who need to work or who are participating in co-op programs. A few commenters recommended removing references to pro-rating awards for part-time students.

Several commenters recommended that the continuing eligibility criteria be limited to the following three requirements: attendance at an eligible institution, the absence of a default on a Federal student loan, and the maintenance of satisfactory academic progress. One commenter suggested that States have flexibility to award scholarship funds to continuing scholars prior to receipt of certifications from institutions that the scholars meet the continuing eligibility requirements. Several commenters expressed the view that this program is not a loan program and therefore should not include any requirements for the repayment of funds when they are awarded to scholars who fail to meet the continuing eligibility criteria.

Discussion: Continuing eligibility criteria are necessary for this program for the first time because the 1992 Amendments expanded the scholarship period from one to four years. The Secretary believes the continuing eligibility requirements in § 654.51 of the proposed regulations are appropriate, and does not believe there is any basis for limiting the continuing eligibility criteria to the three criteria proposed by some commenters. For example, the Secretary believes the requirements related to citizenship, national, or legal resident status are equally applicable to new and continuing scholars and should be included in the requirements for continuing eligibility.

Moreover, the Secretary believes the regulations strike a fair compromise on the full-time attendance requirement, leaving it up to the SEA to permit part-time attendance after the first year in "unusual circumstances," as defined by the SEA. The Secretary believes that full-time attendance requirement is consistent with the intent of Congress because it will enable most scholars to graduate by the end of the four-year scholarship period.

Requiring the repayment of funds improperly awarded and the pro-ration of funds awarded for less than full-time attendance is simply responsible fiscal management of Federal funds. These provisions do not make this program a loan program. There are no requirements in the regulations for repayment of funds that are properly awarded.

States are responsible for setting up their own procedures to ensure that funds are properly awarded. To the extent that States establish systems that provide scholarship funds prior to receiving certification to document that the scholar meets the continuing eligibility requirements, the States risk awarding funds improperly. States are responsible for repaying funds that are improperly awarded even if they fail to recover them from the students.

Changes: None.

Study Abroad (§ 654.51(a)(2))

Comment: One commenter asked for clarification of the circumstances under which a student could receive scholarship funds under this program for a period during which they were studying abroad.

Discussion: Section 419H(b) of the HEA provides that the SEA must assure that a scholar under this program pursues a course of study at an "institution of higher education." An "institution of higher education" is defined under section 481 of the statute in terms of an educational institution in a "State." Accordingly, a scholar may not continue to receive funds under this program to pursue a course of study at an institution in a foreign country, with one exception. A scholar who is studying abroad through an institution of higher education that meets the definition in section 481 is considered to be eligible to receive funds under this program as long as the scholar is enrolled at and receiving credit from that institution of higher education.

Changes: None.

Carryover of Unexpended Funds (§ 654.60(b))

Comment: Several commenters requested clarification concerning how unexpended scholarship funds, including returned or collected funds, could be used. One commenter asked what happens to scholarship funds if a scholar who is notified of his or her award turns it down.

Discussion: The Education Department General Administrative Regulations (EDGAR), at 34 CFR 76.705, provide that States may carry over to the following fiscal year any funds that are not obligated by the end of the fiscal year for which Congress appropriated the funds. In addition, § 654.60(b) of the regulations expressly permits States to retain for the following award year any funds that are awarded but are subsequently returned or collected. Those funds may be used only to award scholarships.

In order to address the potential problem of unexpended funds because a student notified of his or her selection turned down the scholarship award, at which time it would likely be too late to select a new scholar for that year, the Secretary suggests that States consider setting up a procedure to select alternate scholars. Alternate scholars should be notified of their selection, along with other scholars, by the end of the secondary school year. Alternate scholars would be eligible for funds that became available prior to the beginning of their first year of postsecondary study.

Changes: None.

Priority for Continuing Scholars

Comment: Several commenters asked whether continuing scholars should be funded each year prior to new scholars.

Discussion: Funds for continuing scholars who meet the continuing eligibility requirements should be committed first, with the remaining funds used to award new scholarships. The Secretary believes that this is consistent with the intent of Congress to provide scholarships to students who show promise of continued academic achievement.

Changes: None.

Paperwork Burden (§§ 654.10, 654.11, 654.41, and 654.60)

Comment: One commenter expressed the view that the paperwork burden on States will exceed the estimated average of two hours since all States will be required to submit new applications this year. The commenter recommended increasing the estimate to six hours.

Discussion: The Secretary agrees with the commenter that the average paperwork burden this year is likely to exceed two hours because all States are required to submit new participation agreements.

Changes: The estimated average paperwork burden has been increased from two to six hours.

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 654

Education, Grant programs—education, State-administered education, Student aid.

(Catalog of Federal Domestic Assistance Number 84.185—Robert C. Byrd Honors Scholarship Program.)

Dated: August 5, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising part 654 to read as follows:

PART 654—ROBERT C. BYRD HONORS SCHOLARSHIP PROGRAM

Subpart A—General

Sec.

654.1 What is the Robert C. Byrd Honors Scholarship Program?
654.2 Who is eligible for an award?
654.3 What kind of activity may be assisted?
654.4 What regulations apply?
654.5 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

654.10 What must a State do to apply for a grant?
654.11 What is the content of a participation agreement?

Subpart C—How Does the Secretary Make a Grant to a State?

654.20 How does the Secretary approve a participation agreement?
654.21 How does the Secretary determine the amount of the grant to each participating State?

Subpart D—How Does a Student Apply to an SEA for a Scholarship?

654.30 How does a student apply to an SEA for a scholarship?

Subpart E—How Does an SEA Select an Eligible Student to Be Scholar?

654.40 Who is an eligible student?
654.41 What are the selection criteria and procedures?

Subpart F—How Does a Scholar Receive Scholarship Payments?

654.50 How does an SEA disburse scholarship funds?
654.51 What are the continuing eligibility criteria?
654.52 What are the consequences of a scholar's failure to meet the eligibility criteria?

Subpart G—What Post-Award Conditions Must an SEA Meet?

654.60 What requirements must an SEA meet in the administration of this program?

Authority: 20 U.S.C. 1070d–31 to 1070d–41, unless otherwise noted.

Subpart A—General

§ 654.1 What is the Robert C. Byrd Honors Scholarship Program?

Under the Robert C. Byrd Honors Scholarship Program, the Secretary makes grants to the States to provide scholarships for study at institutions of higher education to outstanding high school graduates who show promise of continued excellence, in an effort to recognize and promote student excellence and achievement.

(Authority: 20 U.S.C. 1070d–31, 1070d–33)

§ 654.2 Who is eligible for an award?

(a) States are eligible for grants under this program.

(b) Students who meet the eligibility criteria in §§ 654.40 and 654.51 are eligible for scholarships under this program.

(Authority: 20 U.S.C. 1070d–33, 1070d–36)

§ 654.3 What kind of activity may be assisted?

A State may use its funds under this program, including funds collected from scholars under § 654.60(a)(3), only to make scholarship payments to scholars.

(Authority: 20 U.S.C. 1070d–35, 1070d–38)

§ 654.4 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR 75.60–75.62 (regarding the ineligibility of certain individuals to receive assistance under part 75 (Direct Grant Programs)).

(2) 34 CFR part 76 (State-Administered Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 654.

(Authority: 20 U.S.C. 1070d–31 *et seq.*)

§ 654.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

EDGAR
Fiscal year
Private
Public
Secretary
State
State educational agency

(b) *Other definitions.* The following definitions also apply to this part:

Award year means the period of time from July 1 of one year through June 30 of the following year.

Cost of attendance has the meaning given that term in section 472 of the HEA.

Full-time student means a student enrolled at an institution of higher education who is carrying a full-time academic workload, as determined by that institution under standards applicable to all students enrolled in that student's program.

HEA means the Higher Education Act of 1965, as amended.

High school graduate means an individual who has—

(i) A high school diploma;

(ii) A General Education Development (GED) Certificate; or

(iii) Any other evidence recognized by the State as the equivalent of a high school diploma.

Institution of higher education means any public or private nonprofit institution of higher education, proprietary institution of higher education, or postsecondary vocational institution, as defined in section 481 of the HEA.

Participating State means a State that has submitted a participation agreement that has been approved by the Secretary.

Scholar means an individual who is selected as a Byrd Scholar.

Scholarship means an award made to a scholar under this part.

Secondary school year means the period of time during which a secondary school is in session, as determined by State law.

Year of study means the period of time during which a full-time student at

an institution of higher education is expected to complete the equivalent of one year of course work, as defined by the institution.

(Authority: 20 U.S.C. 1070d–31 *et seq.*, 20 U.S.C. 1088)

Subpart B—How Does a State Apply for a Grant?

§ 654.10 What must a State do to apply for a grant?

(a) To apply for a grant under this program, a State must submit a participation agreement to the Secretary for review and approval by the deadline announced annually by the Secretary in the **Federal Register**.

(b) On the Secretary's approval of its initial participation agreement for fiscal year 1993 or thereafter, a State need not submit a new participation agreement to be considered for funding under this program in subsequent years, except that any changes in the State's criteria and procedures must be incorporated in a revised participation agreement which must be submitted to the Secretary for review and approval.

(Approved by the Office of Management and Budget under control number 1840–0612)

(Authority: 20 U.S.C. 1070d–35)

§ 654.11 What is the content of a participation agreement?

A State's participation agreement must include the following:

(a) A description of the criteria and procedures that the State, through its State educational agency (SEA), plans to use to administer this program in accordance with the requirements of this part, including the criteria and procedures it plans to use to—

(1) Publicize the availability of Byrd scholarships to students in the State, with particular emphasis on procedures designed to ensure that students from low- and moderate-income families know about their opportunity for participation in the program;

(2) Select eligible students;

(3) Notify scholars of their selections and scholarship awards;

(4) Monitor the continuing eligibility of scholars;

(5) Disburse scholarship funds in accordance with the requirements of § 654.50; and

(6) Collect scholarship funds improperly disbursed.

(b) Assurances that the SEA will—

(1) Comply with the criteria and procedures in its approved participation agreement;

(2) Submit for the prior written approval of the Secretary any changes in the criteria and procedures in the approved participation agreement; and

(3) Expend the payments it receives under this program only as provided in § 654.3.

(Approved by the Office of Management and Budget under control number 1840–0612)

(Authority: 20 U.S.C. 1070d–35 to 1070d–38)

Subpart C—How Does the Secretary Make a Grant to a State?

§ 654.20 How does the Secretary approve a participation agreement?

The Secretary approves a participation agreement if it contains all of the information and assurances required in § 654.11 and is in compliance with the requirements of this part.

(Authority: 20 U.S.C. 1070d–31 *et seq.*)

§ 654.21 How does the Secretary determine the amount of the grant to each participating State?

(a) From the funds appropriated for this program, the Secretary allots to each participating State a grant equal to $1,500 multiplied by the number of scholarships the Secretary determines to be available to that State on the basis of the formula described in paragraph (b) of this section.

(b) The number of scholarships that the Secretary allots to each participating State for any fiscal year bears the same ratio to the number of scholarships allotted to all participating States as each State's population ages 5 through 17 which is derived from the most recently available data from the U.S. Bureau of the Census bears to the population ages 5 through 17 in all participating States, except that—

(1) Not fewer than 10 scholarships are allotted to any participating State; and

(2) The District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, the Commonwealth of Northern Mariana Islands, Guam, and the Trust Territory of the Pacific Islands (Palau) each are allotted 10 scholarships.

(Authority: 20 U.S.C. 1070d–34, 1070d–37)

Subpart D—How Does a Student Apply to an SEA for a Scholarship?

§ 654.30 How does a student apply to an SEA for a scholarship?

To apply for a scholarship under this program, a student must follow the application procedures established by the SEA in the student's State of legal residence.

(Authority: 20 U.S.C. 1070d–37)

Subpart E—How Does an SEA Select an Eligible Student To Be a Scholar?

§ 654.40 Who is an eligible student?

A student is eligible to be selected as a scholar if he or she—

(a) Is a legal resident of the State to which he or she is applying for a scholarship;

(b)(1) Is a U.S. citizen or national;

(2) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(3) Is a permanent resident of the Trust Territory of the Pacific Islands (Palau);

(c) Becomes a high school graduate in the same secondary school year in which he or she submits the scholarship application;

(d) Has applied or been accepted for enrollment as a full-time student at an institution of higher education;

(e) Is not ineligible to receive assistance as a result of default on a Federal student loan or other obligation, as provided under 34 CFR 75.60; and

(f) Files a Statement of Selective Service Registration Status, in accordance with the provisions of 34 CFR 668.33 of the Student Assistance General Provisions regulations, with the institution he or she plans to attend or is attending.

(Authority: 20 U.S.C. 1070d–36, 50 U.S.C. App. 462, 20 U.S.C. 1091)

§ 654.41 What are the selection criteria and procedures?

(a) The SEA shall establish criteria and procedures for the selection of scholars, in accordance with the requirements of this part, after consultation with school administrators, school boards, teachers, counselors, and parents.

(b) The SEA shall establish the selection criteria and procedures to ensure that it selects scholars—

(1) Who are eligible students under the criteria provided in § 654.40;

(2) Who have demonstrated outstanding academic achievement and show promise of continued achievement;

(3) In a manner that ensures an equitable geographic distribution of awards within the State; and

(4) Without regard to—

(i) Whether the secondary school each scholar attends is within or outside the scholar's State of legal residence;

(ii) Whether the institution of higher education each scholar plans to attend

is public or private or is within or outside the scholar's State of legal residence;

(iii) Race, color, national origin, sex, religion, disability, or economic background; and

(iv) The scholar's educational expenses or financial need.

(Approved by the Office of Management and Budget under control number 1840–0612)

(Authority: 20 U.S.C. 1070d–33, 1070d–35 to 1070d–37)

Subpart F—How Does a Scholar Receive Scholarship Payments?

§ 654.50 How does an SEA disburse scholarship funds?

(a) Except as provided in paragraph (b) of this section, the SEA shall disburse $1,500 for each year of study for a maximum of four years of study to each scholar who—

(1) Is selected in accordance with the criteria established under § 654.41; and

(2) Meets the requirements for continuing eligibility under § 654.51.

(b)(1) The SEA shall ensure that the total amount of financial aid awarded to a scholar for a year of study does not exceed the total cost of attendance.

(2) The SEA shall ensure that loans are reduced prior to reducing a scholarship awarded under this program.

(c) The SEA shall ensure that the selection process is completed, and the awards made, prior to the end of each secondary school academic year.

(Authority: 20 U.S.C. 1070d–38)

§ 654.51 What are the continuing eligibility criteria?

(a) A scholar continues to be eligible for scholarship funds as long as the scholar continues to—

(1) Meet the eligibility requirements in § 654.40(b), (e), and (f);

(2) Be enrolled as a full-time student at an institution of higher education except as provided in paragraph (b) of this section; and

(3) Maintain satisfactory progress as determined by the institution of higher education the scholar is attending, in accordance with the criteria established in 34 CFR 668.14(e) of the Student Assistance General Provisions regulations.

(b) In order to be eligible for scholarship funds, a scholar must be enrolled full-time for the first year of study. If after the first year of study, the SEA determines that unusual circumstances justify waiver of the full-time attendance requirement, the scholar may enroll part time and continue to receive a scholarship payment. The SEA shall prorate the payment according to the scholar's enrollment status for the academic period during which he or she continues to be enrolled on a part-time basis but remains otherwise eligible for the award. For example, if a scholar for whom the full-time enrollment requirement is waived by the SEA is enrolled as a half-time student for one semester, he or she is eligible to receive one-quarter of his or her scholarship during that semester.

(Authority: 20 U.S.C. 1070d–33, 1070d–36)

§ 654.52 What are the consequences of a scholar's failure to meet the eligibility criteria?

(a)(1) An SEA may permit a scholar to postpone or interrupt his or her enrollment at an institution of higher education without forfeiting his or her scholarship for up to 12 months, beginning on the date the scholar otherwise would have enrolled in the institution after the SEA awarded his or her scholarship or the date the scholar interrupts enrollment.

(2) A scholar who postpones or interrupts his or her enrollment at an institution of higher education in accordance with standards established by the SEA is not eligible to receive scholarship funds during the period of postponement or interruption, but is eligible to receive scholarship payments on enrollment or re-enrollment at an institution of higher education.

(3) A scholar's periods of postponement or interruption, taken in accordance with standards established by the SEA and not in excess of 12 months, are not considered periods of suspension for the purposes of calculating the 12 months provided for suspension prior to termination under paragraph (b)(2) of this section.

(b)(1) Except as provided in paragraph (a) of this section, if an SEA finds that a scholar fails to meet the requirements of § 654.51 within an award year, it shall suspend the scholar's eligibility to receive scholarship funds until the scholar is able to demonstrate to the satisfaction of the SEA that he or she meets these requirements.

(2) Except as provided in paragraph (b)(3) of this section, a scholar's eligibility for a scholarship is terminated when the total of his or her suspension periods exceeds 12 months.

(3) In exceptional circumstances, the SEA may extend the 12-month suspension period without terminating a scholar's eligibility under paragraph (b)(2) of this section, in accordance with standards established by the SEA.

(c) A scholar who receives an award for a period for which the SEA subsequently determines the scholar was ineligible under the requirements in § 654.40 or 654.51 shall repay to the SEA the total amount of the scholarship funds received for the period during which he or she was ineligible.

(Authority: 20 U.S.C. 1070d–35, 1070d–36 to 1070d–38)

Subpart G—What Post-Award Conditions Must an SEA Meet?

§ 654.60 What requirements must an SEA meet in the administration of this program?

(a) To receive and continue to receive payments under this part, an SEA shall—

(1) Comply with the criteria, procedures, and assurances in its approved participation agreement;

(2) Disburse the scholarship funds in accordance with § 654.50 to the scholar, the institution of higher education in which the scholar enrolls, or copayable to the scholar and the institution of higher education in which the scholar enrolls;

(3) Collect any scholarship funds improperly disbursed under § 654.50;

(4) Make reports to the Secretary that the Secretary deems necessary to carry out the Secretary's functions under this part; and

(5) Except as provided in paragraph (b) of this section, expend all funds received from the Secretary for scholarships during the award period specified by the Secretary for those funds.

(b) After awarding all scholarship funds during an award year, as required by paragraph (a)(5) of this section, an SEA may retain any funds that are subsequently returned or collected for scholarship awards in the following award period.

(Approved by the Office of Management and Budget under control number 1840–0612)

(Authority: 20 U.S.C. 1070d–33, 1070d–35)

[FR Doc. 93–19265 Filed 8–10–93; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–4691–7]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of State Implementation Plan (SIP) inadequacy and call for SIP revision for Lawrence County, Ohio.

SUMMARY: USEPA hereby gives notice that it has: Formally notified the

Governor of the State of Ohio, by letter dated May 24, 1993 (SIP Call Letter), that the Ohio State Implementation Plan is substantially inadequate under the Clean Air Act (CAA) to attain and maintain the National Ambient Air Quality Standards (NAAQS) for ozone in Lawrence County, Ohio; and called upon the State to submit to USEPA a SIP revision to correct the deficiency.

DATES: USEPA has requested that the State of Ohio submit, by July 27, 1993 (60 days from receipt of SIP Call letter), an action plan with a schedule setting forth dates and increments of progress for correcting the Lawrence County SIP deficiencies. The State must correct the plan deficiency elements and submit its fully approved Lawrence County ozone plan to the USEPA by November 28, 1993 (18 months from receipt of SIP Call letter).

ADDRESSES: Copies of the documents associated with this information notice are available for inspection during normal business hours at the following address: (It is recommended that you telephone Richard Schleyer at (312) 353–5089, before visiting the Region 5 Office): U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

A copy of today's information notice is available for inspection at: U.S. Environmental Protection Agency, Jerry Kurtzweg (ANR–443), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard Schleyer, Air Enforcement Branch, Regulation Development Section (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604–3590, (312) 353–5089.

SUPPLEMENTARY INFORMATION:

I. Background

Section 110 of the CAA, 42 U.S.C. 7410, requires each State to adopt plans which provide for the attainment and maintenance of the NAAQS. In response to these requirements, Ohio submitted a SIP for ozone. This SIP was approved by USEPA on October 31, 1980 (45 FR 72120). Section 110 also requires that States revise the plan under certain conditions. More specifically, section 110(k)(5) provides that whenever USEPA finds that a SIP for an area is "substantially inadequate to attain or maintain" the relevant NAAQS, USEPA shall require the State to revise the plan as necessary to correct such inadequacies.

Information available to USEPA indicates that the NAAQS for ozone was violated in Lawrence County, Ohio. An ozone monitor, located in Ironton, Ohio (Lawrence County), has collected quality-assured monitoring data that indicate one exceedance of the ozone NAAQS occurred during 1990, and three exceedances occurred during 1991. This is a violation of the ozone NAAQS.

A letter dated May 24, 1993, was sent to George V. Voinovich, Governor of Ohio, from Valdas V. Adamkus, USEPA, Region 5, Regional Administrator, notifying the State that USEPA finds the Ohio SIP substantially inadequate to attain or maintain the NAAQS for ozone in Lawrence County, which is currently designated as an ozone attainment area (56 FR 56694). USEPA made this finding pursuant to sections 110(a)(2)(H)(ii) and 110(k)(5) of the CAA, based on a violation of the ozone NAAQS in Lawrence County. USEPA calls for the State of Ohio to revise the SIP for Lawrence County, as necessary, to assure attainment and maintenance of the NAAQS for ozone.

USEPA has requested that, within 60 days following receipt of the May 24, 1993, SIP Call letter, Ohio submit an action plan to USEPA with a schedule for identifying and adopting control strategies as part of the Ohio SIP to reduce ozone emissions in Lawrence County to attain and maintain the ozone NAAQS. The control strategies that will be adopted and implemented as part of the Ohio SIP must be submitted to USEPA within 18 months from receipt of the SIP Call letter, and must provide for attainment and maintenance of the ozone NAAQS within 5 years of receipt of the SIP Call letter. See e.g., Section 110(n)(2) of the CAA.

The finding of inadequacy and call for a SIP revision as set out in the May 24, 1993, letter represent a preliminary step in an ongoing administrative process. A final USEPA judgment regarding the appropriateness of the State's response to USEPA's action will be reached when USEPA makes a binding determination regarding the State's response. See e.g., CAA sections 110(k) and 307(b)(1); See also CAA sections 110(m) and 179.

USEPA encourages Ohio to work with the States of Kentucky and West Virginia, which are presently performing photochemical grid modeling, in order to support an interstate ozone attainment demonstration in the Huntington (West Virginia)—Ashland (Kentucky) area. This attainment demonstration and associated ozone SIP revisions for the Huntington-Ashland area are required to be submitted to the USEPA by November 15, 1994.

This information notice has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 15, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–19251 Filed 8–10–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[PP 9F3706/R2007; FRL–4636–1]

RIN 2070–AB78

Pesticide Tolerances for 1-[[2-(2,4-Dichlorophenyl)-4-Propyl-1,3-Dioxolan-2-yl]Methyl]-1H-1,2,4-Triazole and its Metabolites Determined as 2,4-Dichlorobenzoic Acid and Expressed as Parent Compound

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends existing tolerances (with an expiration date of January 31, 1994) for the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole and its metabolites, determined as 2,4-dichlorobenzoic acid and expressed as parent compound (also known as propiconazole), in or on the raw agricultural commodities grass forage, hay (straw), and seed screenings and kidney and liver of cattle, goats, hogs, horses, and sheep by extending the expiration date and raising several of the tolerance levels. This rule to establish the maximum permissible levels for residues of propiconazole in or on the commodities listed above was requested in petitions submitted by Ciba-Geigy Corp.

EFFECTIVE DATE: This regulation becomes effective July 30, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 9F3706/R2007], may be submitted to: Hearing Clerk (A-110),

Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Clarence O. Lewis, III, Acting Product Manager (PM) 21, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6900.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 11, 1993 (58 FR 32620), EPA issued a proposed rule that gave notice that the Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted a pesticide petition (PP 9F3706) to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(d)), propose to amend 40 CFR 180.434 by establishing tolerances for the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole and its metabolites, determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in or on the kidney and liver of cattle, goats, hogs, horses, and sheep at 2.0 parts per million (ppm) and grass forage at 0.5 ppm, grass hay (straw) at 40 ppm, and grass seed screenings at 60 ppm with an expiration date of 01/31/94 for all of these commodities.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 30, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.434 is amended in the table therein by revising the entries for cattle kidney and liver; goat kidney and liver; grass forage, hay, and seed screenings; hog kidney and liver; horse kidney and liver; and sheep kidney and liver, to read as follows:

§ 180.434 1-[[2-(2,4-Dichlorophyenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole; tolerances for residues.

* * * * *

Commodity	Parts per million	Expiration date
• • •	•	•
Cattle, kidney	2.0	01/31/94
Cattle, liver	2.0	01/31/94
• • •	•	•
Goats, kidney	2.0	01/31/94
Goats, liver	2.0	01/31/94
• • •	•	•
Grass, forage	0.5	01/31/94
Grass, hay (straw)	40.0	01/31/94
Grass, seed screenings	60.0	01/31/94
• • •	•	•
Hogs, kidney	2.0	01/31/94
Hogs, liver	2.0	01/31/94
• • •	•	•
Horses, kidney ..	2.0	01/31/94
Horses, liver	2.0	01/31/94
• • •	•	•
Sheep, kidney ...	2.0	01/31/94
Sheep, liver	2.0	01/31/94
• • •	•	•

* * * * *

[FR Doc. 93–18966 Filed 8–10–93; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 180 and 186

[PP 7F3516 and 6F3417/R2005; FRL–4630–4]

RIN 2070–AB78

Pesticide Tolerances for Thiodicarb; Extension of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends tolerances for the residues of the insecticide thiodicarb in or on certain raw agricultural commodities. This regulation to extend the effective date for tolerances for maximum permissible levels of residues of thiodicarb in or on these commodities was requested by Rhone Poulenc Ag Co.

EFFECTIVE DATE: Effective August 11, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 7F3516 and 6F3417/R2005], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington,

DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386.

SUPPLEMENTARY INFORMATION: Pursuant to petitions from Rhone Poulenc Ag Co., EPA issued final rules establishing tolerances for residues of the insecticide thiodcarb in or on (1) leafy vegetables at 35 ppm; and (2) broccoli, cabbage, and cauliflower at 7 ppm (see the Federal Register of January 15, 1992 (57 FR 1648) and February 14, 1992 (57 FR 5389), respectively).

To be consistent with conditional registrations for thiodicarb on leafy vegetables and broccoli/cabbage/cauliflower, which are due to expire July 15, 1993 and August 12, 1993, respectively, the Agency established these tolerances with expiration date of July 15, 1994, and August 15, 1994, to cover residues expected to be present from use during the period of conditional registration.

The conditional registrations required the following information to be submitted:

1. A metabolism study (with the parent chemical) in an appropriate species (primate), and information on whether there is a species-specific metabolic conversion of thiodicarb to acetamide.

2. Substantiation of the isomeric form of the registered product.

3. Studies designed to identify and measure (as the glucuronide or other conjugate) the *N*-hydroxy acetamide metabolite.

These studies were required because the data base for acetamide is incomplete to fully address its carcinogenic potential and to determine whether there may be a species-related difference in conversion of syn-methomyl to anti-methomyl and resultant excretion as acetonitrile to metabolic hydroysis to acetamide. Acetamide was identified as a potential metabolite of thiodicarb in an animal metabolism study. The toxicology data base for thiodicarb includes two valid oncogenicity studies that were negative for oncogenic effects.

On February 17, 1993, and December 21, 1992, Rhone Poulenc provided the Agency with the required studies. These studies are currently undergoing review. However, final review is not expected to be completed for some time. On the basis of the Registrant's compliance with the requirements of the conditional registrations, the Agency is extending the conditional registrations for the use of thiodicarb on leafy vegetables and broccoli/cabbage/cauliflower. The extension for these uses will expire on August 15, 1994. On June 18, 1993, EPA published a petition in the Federal Register from Rhone Poulenc requesting an extension of the tolerances for thiodicarb on leafy vegetables and broccoli/cabbage/cauliflower until August 15, 1994 (58 FR 33631). No comments were received in response to this notice of filing.

Based on a 2-year rat feeding study with a NOEL of 3.0 mg/kg/day and using an uncertainty factor of 100, the reference dose (RfD) for humans is 0.03 mg/kg/body weight/day. The theoretical maximum residue contribution (TMRC) for this chemical utilizes 1.833 percent of the RfD. The tolerances represent a theoretical maximum residue contribution of 0.013094 mg/kg/body weight/day and represent 43.6% of the ADI. This results in a total contribution of 0.013644 mg/kg/body weight/day, and a total utilization of 45.5% of the ADI.

The data submitted in support of these tolerances and other relevant material have been reviewed. The toxicological data considered in support of these tolerances are discussed in detail in related documents, published in the Federal Register of January 15, 1992 (57 FR 1648), and February 14, 1992 (57 FR 5389).

There are no regulatory actions pending against the registration of thiodicarb. The metabolism of thiodicarb in plants and animals is adequately understood. Adequate analytical methods involving gas chromatography with a flame photometric detector selective for sulfur-containing compounds and gas chromatography/mass spectrometry are available for enforcement purposes. The methodology has been published in the Food and Drug Administration's Pesticide Analytical Manual (PAM), Vol. II.

On the basis of the available studies on acetamide and the chronic carcinogenicity studies for thiodicarb, the Agency has concluded that the human risk posed by the use of thiodicarb on leafy vegetables and broccoli/cabbage/cauliflower does not raise significant concerns. The Agency has determined that extending the tolerances will protect the human health. Therefore, as set forth below, the tolerances are extended to August 15, 1995, to cover residues existing from the continued conditional registration of thiodicarb. The tolerances could be made permanent if full registration is subsequently granted. Notice of further action on these tolerances will be published for comment in the Federal Register.

Residues remaining in or on the above raw agricultural commodities after expiration of these tolerances will not be considered actionable if the pesticide is legally applied during the term, and in accordance with, provisions of the conditional registrations.

Any person adversely affected by these regulations may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulations deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: July 26, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.407 *Thiodicarb; tolerances for residues* by amending paragraph (b) introductory text by changing "July 15, 1994" to read "August 15, 1995" and by amending paragraph (c) introductory text by changing "August 15, 1994" to read "August 15, 1995."

[FR Doc. 93–19125 Filed 8–10–93; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 716

[OPPTS–84014D; FRL–4179–6]

Health and Safety Data Reporting Period Terminations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is terminating the reporting periods for 92 chemical substances by amending the sunset dates on the list of substances, mixtures, and categories in the Toxic Substances Control Act (TSCA) section 8(d) model Health and Safety Data Reporting rule. Pursuant to 40 CFR 716.65, EPA has reviewed all of the substances listed in § 716.120 and determined that at this time the Agency no longer needs continuing health and safety data reporting on these 92 chemical substances. For these chemicals, reporting under the section 8(d) model rule is no longer required except for those studies which were initiated before the end of the sunset period or were ongoing at the end of the sunset period. Persons who believe that EPA should not terminate the reporting requirements for these substances on the section 8(d) model rule may notify EPA and provide their reasons.

DATES: This rule becomes effective on November 9, 1993. Written comments should be received by EPA by September 10, 1993.

ADDRESSES: All comments should include the docket control number OPPTS–84014D and should be sent in triplicate to: TSCA Document Receipt Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., Rm. E–G99, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 8(d) of the Toxic Substances Control Act (TSCA), EPA promulgated a model Health and Safety Data Reporting Rule (40 CFR part 716). The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemical substances and mixtures (henceforth referred to as substances) to submit to EPA copies and lists of unpublished health and safety studies on the listed substances that they manufacture, import, or process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking.

By adding a substance to part 716, EPA triggers the section 8(d) model rule's reporting requirements. Past, current, and prospective manufacturers, importers, and processors of the listed substance are required to submit certain information at the time the substance is listed. Further submissions are required of those who later initiate a study of the listed substance or who later propose to manufacture, import, or process the listed substance up to 10 years from the effective date of the rule. The only reporting requirement unaffected by the sunset provision found at § 716.65(a) applies to those manufacturers, importers, and processors who initiate a study on a listed substance before the reporting period terminates. These studies must be submitted upon their completion regardless of the completion date (§ 716.65(c)). It should be noted that on October 4, 1992, 304 chemicals listed in § 716.120 reached their sunset date, on January 3, 1993, 5 chemicals listed in § 716.120 reached their sunset date, and on April 29, 1993, 39 chemicals listed in § 716.120 reached their sunset date. For these chemicals, reporting under the section 8(d) model rule is no longer required except for those studies which were initiated before the end of the sunset period or were ongoing at the end of the sunset period.

In addition to the 10–year sunset provision to prevent unnecessary reporting burdens, EPA has instituted a biennial review process to identify and terminate the reporting periods for those substances for which the Agency does not currently need continued health and safety data reporting (40 CFR 716.65(b)). Pursuant to this process, the EPA Office of Pollution Prevention and Toxics requested from other EPA offices and certain other Federal agencies all reasonable justifications for retaining each substance or mixture from the list at § 716.120. As a result, EPA has determined that the Agency's health and safety data needs no longer justify continued health and safety data reporting for 92 chemical substances presently listed in the section 8(d) model rule. Amending the reporting sunset date for a substance listed in § 716.120(a) and (d) to reflect the effective date of this rule terminates the reporting period for the substance. This action eliminates the potential reporting burdens for prospective manufacturers, importers, and processors of the substance, and removes the requirement that current manufacturers, importers, and processors of the substance must notify EPA whenever they initiate a study of the substance. However, any manufacturer, importer, or processor who initiates a study on the substance before its removal from the 8(d) list must notify EPA of the study's initiation and submit the study upon its completion regardless of the completion date (§ 716.65(c)). For the foregoing reason, EPA is amending the reporting sunset dates for the substances rather than removing all reference to the substances.

Authority for this action is stated in § 716.65 of the section 8(d) model rule. This section directs the EPA Office of Pollution Prevention and Toxics to conduct a biennial review of all the chemical substances and mixtures listed in § 716.120, and to request from other EPA offices and certain Federal agencies all reasonable justifications for retaining each substance or mixture on, or removing each substance or mixture from, the § 716.120 list. EPA is issuing this action without prior proposal in accordance with 40 CFR 716.65(b). This final rule terminates the reporting periods for 92 substances on the § 716.120 list 90 days following publication of this rule in the Federal Register. Persons are invited to comment on the determinations presented in this document. If a reasonable justification is received for requiring continued health and safety data reporting for any of these 92 substances on the section 8(d) model rule, EPA will, by notice published in the Federal Register, withdraw the sunset date amendment for the substance from the final rule prior to the final rule's effective date.

II. Amendments to 40 CFR 716.120

In order to affect the termination of health and safety data reporting on the chemical substances and categories for

which there exists no justification for continuing reporting, § 716.120 will be amended. Sunset dates for 92 chemical substances will be amended to reflect the effective date of this rule. As previously stated, once a sunset date is reached, the reporting period for the chemical substance is terminated except as provided in § 716.65(c). Fifty-four of the substances subject to sunset date amendment are listed in § 716.120(a). These include the following chemical substances:

CAS No.	Substance
75-88-7	Ethane, 2-chloro- 1,1,1-trifluoro
84-65-1	Anthraquinone--9,10-Anthracenedione
90-42-6	[1,1'-Bicyclohexyl]-2-one
96-37-7	Methylcyclopentane--Cyclopentane, methyl-
98-83-9	Benzene, (1-methylethenyl)-
100-40-3	4-Vinylcyclohexene
100-70-9	2-Pyridinecarbonitrile
104-49-4	Benzene, 1,4-diisocyanato-
115-96-8	Ethanol, 2-chloro-, phosphate (3:1)
123-61-5	Benzene, 1,3-diisocyanato-
128-39-2	Phenol, 2,6-bis(1,1-dimethylethyl)-
128-86-9	2,6-Anthracenedisulfonic acid, 4,8-diamino-9, 10-dihydro-1,5-dihydroxy-9,10-dioxo-
139-25-3	Benzene, 1,1 1-methylenebis[4-isocyanato-3-methyl-
306-83-2	Ethane, 2,2-dichloro-1,1,1-trifluoro
328-84-7	3,4-Dichlorobenzotrifluoride--Benzene, 1,2-dichloro- 4-(trifluoromethyl)-
354-33-6	Ethane, pentafluoro
526-73-8	1,2,3-Trimethylbenzene--Benzene, 1,2,3-trimethyl-
580-51-8	[1,1'-Biphenyl]-3-ol
685-91-6	Acetamide, *N,N*-diethyl-
811-97-2	Ethane, 1,1,2-tetrafluoro-
939-97-9	*p-tert*-Butylbenzaldehyde--Benzaldehyde, 4-(1,1-dimethylethyl)-
1208-52-2	Benzenamine, 2-[(4-aminophenyl)methyl]-
1321-38-6	Benzene, diisocyanatomethyl-(unspecified isomer)
1331-47-1	[1,1'-Biphenyl]-4,4'-diamino, dichloro
1717-00-6	Ethane, 1,1-dichloro-1-fluoro-
2536-05-2	Benzene, 1,1'-methylenebis[2-isocyanato-
2556-36-7	Cyclohexane, 1,4-diisocyanato
2778-42-9	Benzene, 1,3-bis(1-isocyanato-1-methylethyl-
2873-89-0	Ethane, 2-chloro-1,1,1,2-tetrafluoro-
3618-72-2	Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl]amino]-2- [(2-bromo-4,6-dinitrophenyl)azo]-4- methoxyphenyl]-
3618-73-3	Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl]amino]- 2-[(2-chloro-4,6-dinitrophenyl)azo]-4-methoxyphenyl]-
3956-55-6	Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl]-amino]-2- [(2-bromo-4,6-dinitrophenyl)azo]-4-ethoxyphenyl
5873-54-1	Benzene, 1-isocyanato-2-[4-isocyanatophenyl)methyl]-
6145-73-9	1-Propanol, 2-chloro-, phosphate (3:1)
6247-34-3	2-Anthracenesulfonic acid, 4-[[4-(acetylamino) phenyl]amino]-1-amino-9,10-dihydro-9,10-dioxo-
12217-79-7	9,10-Anthracenedione, 1,5-diamino-chloro-4,8-dihydroxy-
13414-54-5	Methallyl 2-nitrophenyl ether--Benzene, 1-[(2-methyl-2-propenyl)oxy]-2-nitro-
13674-84-5	2-Propanol, 1-chloro-, phosphate (3:1)
15646-96-5	Hexane, 1,6-diisocyanato-2,4,4-trimethyl-
16938-22-0	Hexane, 1,6-diisocyanato-2,2,4-trimethyl-
21429-43-6	Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl] amino]-2-[(2-chloro- 4,6-dinitrophenyl)azo]-4-methoxyphenyl]-
25168-06-3	Isopropyl phenol--Phenol, (1-methylethyl)-
25640-78-2	Isopropyl biphenyl--1,1'-Biphenyl, (1-methylethyl)-
32052-51-0	Isocyanic acid, trimethylcyclohexyl ester
33125-86-9	Phosphoric acid, 1,2-ethanediyl tetrakis (2-chloroethyl) ester
38661-72-2	Cyclohexane, 1,3-bis(isocyanatomethyl)-
68153-35-5	Ethanaminium, 2-amino-*N*-(2-aminoethyl-*N*-(2-hydroxyethyl)-*N*-methyl-, *N,N*-ditallow acyl derivatives, methyl sulfates (salts)
68389-88-8	Poly(oxy-1,2-ethanediyl), α-[2-[bis(2-aminoethyl)methylammonio]ethyl]-ω-hydroxy-, *N,N*-dicoco acyl derivatives, methyl sulfates (salts)
68389-89-9	Poly(oxy-1,2-ethanediyl), α-[2-[bis(2-aminoethyl) methylammonio]ethyl]-ω-hydroxy-,*N,N*-bis(hydrogenated tallow acyl) derivatives, methyl sulfates (salts)
68413-04-7	Poly[oxy(methyl-1,2-ethanediyl)], α-[2-[bis (2-aminoethyl)methylammonio] methylethyl]-ω-hydroxy-, *N,N*-ditallow acyl derivatives, methyl sulfates (salts)
68554-06-3	Poly(oxy-1,2-ethanediyl), α-[3-[bis(2-aminoethyl) methylammonio]-2-hydroxy-propyl]-ω-hydroxy-, *N*-coco acyl derivatives, methyl sulfates (salts)
68611-64-3	Urea, reaction products with formaldehyde
75790-84-0	Benzene, 2-isocyanato-4-[(4-isocyanato-phenyl)methyl]-1-methyl-
75790-87-3	Benzene, 1-isocyanato-2-[(4-isocyanato-phenyl)thio]-

Thirty-eight substances subject to sunset date amendment are listed in § 716.120(d). These substances are identified as, "listed members of categories" and are listed as follows:

Alkyl phosphates:	
126-71-6	Phosphoric acid, tris(2-methylpropyl) ester
812-00-0	Phosphoric acid, monomethyl ester
1070-03-7	Phosphoric acid, mono(2-ethylhexyl)ester
1498-51-7	Phosphorodichloridic acid, ethyl ester
1623-15-0	Phosphoric acid, monobutyl ester
1623-24-1	Phosphoric acid, mono(1-methylethyl)ester
2958-09-0	Phosphoric acid, monooctadecyl ester
3900-04-7	Phosphoric acid, monohexyl ester
3991-73-9	Phosphoric acid, monooctyl ester
7057-92-3	Phosphoric acid, didodecyl ester
7332-46-9	Ethanol, 2-(2-butoxyethoxy)-, phosphate (3:1)
12645-31-7	Phosphoric acid, 2-ethylhexyl ester
12751-23-4	Phosphoric acid, dodecyl ester
27215-10-7	Phosphoric acid, diisoocyti ester
Brominated flame retardants:	
25327-89-3	Benzene, 1,1'-(1-methylethylidene)bis (3,5-dibromo-4-(2-propenyloxy)-
88497-56-7	Benzene, ethenyl-, homopolymer, brominated
Isocyanates:	
100-28-7	Benzene, 1-isocyanato-4-nitro-
110-78-1	Propane, 1-isocyanato-
112-96-9	Octadecane, 1-isocyanato-
614-68-6	Benzene, 1-isocyanato-2-methyl-
622-58-2	Benzene, 1-isocyanato-4-methyl-
1476-23-9	1-Propene, 3-isocyanato-
2422-91-5	Benzene, 1,1',1"-methylidynetris(4-isocyanato-
2493-02-9	Benzene, 1-bromo-4-isocyanato-
2909-38-8	Benzene, 1-chloro-3-isocyanato-
2949-22-6	Acetic acid, isocyanato-, ethyl ester
3173-53-3	Cyclohexane, isocyanato-
4035-89-6	Imidodicarbonic diamine, N,N'-2-tris(6-isocyanato- hexyl)-
4151-51-3	Phenyl, 4-isocyanato-, phosphorothioate (3:1) (ester)
10031-75-1	Benzene, 1,1'-(diisocyanatomethylene)bis-
25854-16-4	Benzene, bis(isocyanatomethyl)-
26603-40-7	1,3,5,-Triazine-2,4,6(1H.3H.5H.trione, 1,3,5-tris(3- isocyanatomethylphenyl)-
26747-90-0	1,3-Diazetidine-2,4-dione, 1,3-bis(3-isocyanato methylphenyl)-
28178-42-9	Benzene, 2-isocyanato- 1,3-bis(1-methylethyl)-
28556-81-2	Benzene, 2-isocyanato- 1,3-dimethyl-, ester
34893-92-0	Benzene, 1,3-dichloro-5-isocyanato-
68239-06-5	Cyclohexane, 2-heptyl-3,4-bis (9-isocyanatononyl)-1- pentyl-
73597-26-9	2-Propenoic acid, 2-methyl-2-(((((5-isocyanato-1,3,3- trimethylcyclohexyl) methyl)amino)carbonyl)oxy)ethyl ester

III. Rulemaking Record

EPA has established a public record for this rulemaking (docket control number OPPTS–84030). This record includes basic information considered by the Agency in developing this rule. EPA will supplement the rulemaking record with additional information as it is received. The record now includes the following:

1. Section 8(d) model Health and Safety Rule Data Reporting Rule (51 FR 32720).

2. EPA memoranda to program offices requesting comments on substances listed in 40 CFR 716.120.

3. Comments from program offices.

This rulemaking record is available to the public in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. NCIC is located in Rm. E-G102, 401 M St., SW., Washington, DC.

IV. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not major because it will not have an effect of $100 million or more on the economy. It is not anticipated to have a significant effect on competition, costs, or prices.

This rule was submitted to the Office of Management and Budget (OMB) as required under Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule will not have a significant economic impact on a substantial number of small businesses. This determination is based upon this rule's elimination of some prospective reporting burdens.

C. Paperwork Reduction Act

This rule contains no information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and Controlling Paperwork Burdens on the Public, 5 CFR part 1320. This rule terminates some existing reporting requirements previously approved by OMB under OMB control number 2070-0004.

List of Subjects in 40 CFR Part 716

Chemicals, Environmental protection, Hazardous substances, Health and safety, Reporting and recordkeeping requirements.

Dated: July 30, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 716 is amended to read as follows:

PART 716—[AMENDED]

1. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

2. Section 716.120 is amended by revising 54 entries in paragraph (a) and revising entries under the alkyl phosphates, brominated flame retardants, and isocyanates categories in paragraph (d) to read as folllows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

* * * * *

(a) * * *

CAS No.	Substance	Special exemptions	Effective date	Sunset date
*	* * * * *			
75-68-7	Ethane, 2-chloro- 1,1,1-trifluoro		10/15/90	11/9/93
*	* * * * *			
84-65-1	Anthraquinone--9,10-Anthracenedione		12/28/84	11/9/93
*	* * * * *			
90-42-6	[1,1'-Bicyclohexyl]-2-one		6/1/87	11/9/93
*	* * * * *			
96-37-7	Methylcyclopentane--Cyclopentane, methyl-		6/20/85	11/9/93
*	* * * * *			
98-83-9	Benzene, (1-methylethenyl)-		6/1/87	11/9/93
*	* * * * *			
100-40-3	4-Vinylcyclohexene		1/11/90	11/9/93
*	* * * * *			
100-70-9	2-Pyridinecarbonitrile		6/1/87	11/9/93
*	* * * * *			
104-49-4	Benzene, 1,4-diisocyanato-		6/1/87	11/9/93
*	* * * * *			
115-96-8	Ethanol, 2-chloro-, phosphate (3:1)		12/16/88	11/9/93
*	* * * * *			
123-61-5	Benzene, 1,3-diisocyanato-		6/1/87	11/9/93
*	* * * * *			
128-39-2	Phenol, 2,6-bis(1,1-dimethylethyl)-		12/19/85	11/9/93
*	* * * * *			
128-86-9	2,6-Anthracenedisulfonic acid, 4,8-diamino-9, 10-dihydro-1,5-dihydroxy-9,10-dioxo-		12/21/87	11/9/93
*	* * * * *			
139-25-3	Benzene, 1,1 1-methylenebis[4-isocyanato-3-methyl-		6/1/87	11/9/93
306-83-2	Ethane, 2,2-dichloro-1,1,1-trifluoro		10/15/90	11/9/93
*	* * * * *			
328-84-7	3,4-Dichlorobenzotrifluoride--Benzene, 1,2-dichloro- 4-(trifluoromethyl)-		5/8/85	11/9/93
*	* * * * *			
354-33-6	Ethane, pentafluoro		10/15/90	11/9/93
*	* * * * *			
526-73-8	1,2,3-Trimethylbenzene--Benzene, 1,2,3-trimethyl-		2/13/84	11/9/93
*	* * * * *			
580-51-8	[1,1'-Biphenyl]-3-ol		6/1/87	11/9/93
*	* * * * *			
685-91-6	Acetamide, N,N-diethyl-		6/1/87	11/9/93
*	* * * * *			
811-97-2	Ethane, 1,1,2-tetrafluoro-		10/15/90	11/9/93
*	* * * * *			
939-97-9	*p-tert*-Butylbenzaldehyde--Benzaldehyde, 4-(1,1-dimethylethyl)-		6/25/86	11/9/93

CAS No.	Substance	Special exemptions	Effective date	Sunset date
*	* * * * *		*	*
1208-52-2	Benzenamine, 2-[(4-aminophenyl)methyl]-		6/1/87	11/9/93
*	* * * * *		*	*
1321-38-6	Benzene, diisocyanatomethyl-(unspecified isomer)		6/1/87	11/9/93
*	* * * * *		*	*
1331-47-1	[1,1'-Biphenyl]-4,4'-diamino, dichloro		6/1/87	11/9/93
*	* * * * *		*	*
1717-00-6	Ethane, 1,1-dichloro-1-fluoro-		10/15/90	11/9/93
*	* * * * *		*	*
2536-05-2	Benzene, 1,1'-methylenebis[2-isocyanato-		6/1/87	11/9/93
*	* * * * *		*	*
2556-36-7	Cyclohexane, 1,4-diisocyanato		6/1/87	11/9/93
*	* * * * *		*	*
2778-42-9	Benzene, 1,3-bis(1-isocyanato-1-methylethyl-		6/1/87	11/9/93
*	* * * * *		*	*
2873-89-0	Ethane, 2-chloro-1,1,1,2-tetrafluoro-		10/15/90	11/9/93
*	* * * * *		*	*
3618-72-2	Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-bromo-4,6-dinitrophenyl)azo]-4- methoxyphenyl]-		6/19/87	11/9/93
3618-73-3	Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-chloro-4,6-dinitrophenyl)azo]-4-methoxyphenyl]-		6/19/87	11/9/93
*	* * * * *		*	*
3956-55-6	Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl]-amino]-2-[(2-bromo-4,6-dinitrophenyl)azo]-4-ethoxyphenyl		12/15/86	11/9/93
*	* * * * *		*	*
5873-54-1	Benzene, 1-isocyanato-2-[4-isocyanatophenyl)methyl]-		6/1/87	11/9/93
*	* * * * *		*	*
6145-73-9	1-Propanol, 2-chloro-, phosphate (3:1)		12/16/88	11/9/93
*	* * * * *		*	*
6247-34-3	2-Anthracenesulfonic acid, 4-[[4-(acetylamino) phenyl]amino]-1-amino-9,10-dihydro-9,10-dioxo-		12/21/87	11/9/93
*	* * * * *		*	*
12217-79-7	9,10-Anthracenedione, 1,5-diamino-chloro-4,8-dihydroxy-		12/21/87	11/9/93
*	* * * * *		*	*
13414-54-5	Methallyl 2-nitrophenyl ether--Benzene, 1-[(2-methyl-2-propenyl)oxy]-2-nitro-		2/13/84	11/9/93
*	* * * * *		*	*
13674-84-5	2-Propanol, 1-chloro-, phosphate (3:1)		12/16/88	11/9/93
*	* * * * *		*	*
15646-96-5	Hexane, 1,6-diisocyanato-2,4,4-trimethyl-		6/1/87	11/9/93
*	* * * * *		*	*
16938-22-0	Hexane, 1,6-diisocyanato-2,2,4-trimethyl-		6/1/87	11/9/93
*	* * * * *		*	*
21429-43-6	Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl] amino]-2-[(2-chloro-4,6-dinitrophenyl)azo]-4-methoxyphenyl]-		6/19/87	11/9/93
*	* * * * *		*	*
25168-06-3	Isopropyl phenol--Phenol, (1-methylethyl)-		4/13/89	11/9/93
*	* * * * *		*	*
25640-78-2	Isopropyl biphenyl--1,1'-Biphenyl, (1-methylethyl)-		6/28/84	11/9/93
*	* * * * *		*	*
32052-51-0	Isocyanic acid, trimethylcyclohexyl ester		6/1/87	11/9/93

CAS No.	Substance	Special exemptions	Effective date	Sunset date
*	* * * * *	*		*
33125-86-9	Phosphoric acid, 1,2-ethanediyl tetrakis (2-chloroethyl) ester		12/16/88	11/9/93
*	* * * * *	*		*
38661-72-2	Cyclohexane, 1,3-bis(isocyanatomethyl)-		6/1/87	11/9/93
*	* * * * *	*		*
68153-35-5	Ethanaminium, 2-amino-*N*-(2-aminoethyl-*N*-(2-hydroxyethyl)- *N*-methyl-, *N,N*-ditallow acyl derivatives, methyl sulfates (salts)		6/20/88	11/9/93
*	* * * * *	*		*
68389-88-8	Poly(oxy-1,2-ethanediyl), α-[2-[bis(2-aminoethyl) methylammonio]ethyl]-ω-hydroxy-, *N,N*-dicoco acyl derivatives, methyl sulfates (salts)		6/20/88	11/9/93
68389-89-9	Poly(oxy-1,2-ethanediyl), α-[2-[bis(2-aminoethyl) methylammonio]ethyl]-ω-hydroxy-,*N,N*-bis(hydrogenated tallow acyl) derivatives, methyl sulfates (salts)		6/20/88	11/9/93
*	* * * * *	*		*
68413-04-7	Poly[oxy(methyl-1,2-ethanediyl)], α-[2-[bis (2-aminoethyl)methylammonio] methylethyl]-ω-hydroxy-, *N,N*-ditallow acyl derivatives, methyl sulfates (salts)		6/20/88	11/9/93
*	* * * * *	*		*
68554-06-3	Poly(oxy-1,2-ethanediyl), α-[3-[bis(2-aminoethyl) methylammonio]-2-hydroxypropyl]-ω-hydroxy-, *N*-coco acyl derivatives, methyl sulfates (salts)		6/20/88	11/9/93
*	* * * * *	*		*
68611-64-3	Urea, reaction products with formaldehyde		6/3/85	11/9/93
*	* * * * *	*		*
75790-84-0	Benzene, 2-isocyanato-4-[(4-isocyanato-phenyl)methyl]-1-methyl-		6/1/87	11/9/93
75790-87-3	Benzene, 1-isocyanato-2-[(4-isocyanato-phenyl)thio]-		6/1/87	11/9/93

* * * * *

(d) * * *

Category	CAS No.	Special exemptions	Effective date	Sunset date
* * * *	*	*		*
Alkyl Phosphates:				
* * * *	*	*		*
Ethanol, 2-(2-butoxyethoxy)-, phosphate (3:1)	7332-46-9		10/29/90	11/9/93
* * * *	*	*		*
Phosphoric acid, didodecyl ester	7057-92-3		10/29/90	11/9/93
Phosphoric acid, diisoocytl ester	27215-10-7		10/29/90	11/9/93
Phosphoric acid, dodecyl ester	12751-23-4		10/29/90	11/9/93
Phosphoric acid, 2-ethylhexyl ester	12645-31-7		10/29/90	11/9/93
Phosphoric acid, monobutyl ester	1623-15-0		10/29/90	11/9/93
Phosphoric acid, mono(2-ethylhexyl)ester	1070-03-7		10/29/90	11/9/93
Phosphoric acid, monohexyl ester	3900-04-7		10/29/90	11/9/93
Phosphoric acid, monomethyl ester	812-00-0		10/29/90	11/9/93
Phosphoric acid, mono(1-methylethyl)ester	1623-24-1		10/29/90	11/9/93
Phosphoric acid, monooctyl ester	3991-73-9		10/29/90	11/9/93
Phosphoric acid, monooctadecyl ester	2958-09-0		10/29/90	11/9/93
* * * *	*	*		*
Phosphoric acid, tris(2-methylpropyl) ester	126-71-6		10/29/90	11/9/93
Phosphorodichloridic acid, ethyl ester	1498-51-7		10/29/90	11/9/93
Brominated flame retardants:				

Category	CAS No.	Special exemptions	Effective date	Sunset date
* * * *	*	*		*
Benzene, ethenyl-, homopolymer, brominated	88497-56-7		10/29/90	11/9/93
Benzene, 1,1'-(1-methylethylidene)bis (3,5-dibromo- 4-(2-propenyloxy)-	25327-89-3		10/29/90	11/9/93
* * * *	*	*		*
Isocyanates:			10/29/90	11/9/93
Acetic acid, isocyanato-, ethyl ester	2949-22-6		10/29/90	11/9/93
Benzene, bis(isocyanatomethyl)-	25854-16-4		10/29/90	11/9/93
Benzene, 1-bromo-4-isocyanato-	2493-02-9		10/29/90	11/9/93
Benzene, 1-chloro-3-isocyanato-	2909-38-8		10/29/90	11/9/93
* * * *	*	*		*
Benzene, 1,3-dichloro-5-isocyanato-	34893-92-0		10/29/90	11/9/93
Benzene, 1,1'-(diisocyanatomethylene)bis-	10031-75-1		10/29/90	11/9/93
* * * *	*	*		*
Benzene, 2-isocyanato- 1,3-bis(1-methylethyl)-	28178-42-9		10/29/90	11/9/93
Benzene, 2-isocyanato- 1,3-dimethyl-, ester	28556-81-2		10/29/90	11/9/93
Benzene, 1-isocyanato-2-methyl-	614-68-6		10/29/90	11/9/93
Benzene, 1-isocyanato-4-methyl-	622-58-2		10/29/90	11/9/93
Benzene, 1-isocyanato-4-nitro-	100-28-7		10/29/90	11/9/93
Benzene, 1,1',1"-methylidynetris(4-isocyanato-	2422-91-5		10/29/90	11/9/93
* * * *	*	*		*
Cyclohexane, 2-heptyl-3,4-bis (9-isocyanatononyl)-1-pentyl-	68239-06-5		10/29/90	11/9/93
Cyclohexane, isocyanato-	3173-53-3		10/29/90	11/9/93
1,3-Diazetidine-2,4-dione, 1,3-bis(3-isocyanato methylphenyl)-	26747-90-0		10/29/90	11/9/93
* * * *	*	*		*
Imidodicarbonic diamide, N,N'-2-tris(6-isocyanato-hexyl)-	4035-89-6		10/29/90	11/9/93
* * * *	*	*		*
Octadecane, 1-isocyanato-	112-96-9		10/29/90	11/9/93
Phenyl, 4-isocyanato-, phosphorothioate (3:1) (ester)	4151-51-3		10/29/90	11/9/93
Propane, 1-isocyanato-	110-78-1		10/29/90	11/9/93
1-Propene, 3-isocyanato-	1476-23-9		10/29/90	11/9/93
* * * *	*	*		*
2-Propenoic acid, 2-methyl-2-(((((5-isocyanato-1,3,3-trimethylcyclohexyl) methyl)amino)carbonyl)oxy)ethyl ester.	73597-26-9		10/29/90	11/9/93
1,3,5,-Triazine-2,4,6(1H.3H.5H.trione, 1,3,5-tris(3-ioscyanatomethyl phenyl)-.	26603-40-7		10/29/90	11/9/93
* * * *	*	*		*

[FR Doc. 93–19253 Filed 8–10–93; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 99

[GEN Docket No. 90–314 and ET Docket No. 92–100; FCC 93–329]

Narrowband Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This First Report and Order (R&O) allocates spectrum and adopts rules authorizing new, narrowband personal communications services (PCS) that include advanced voice paging, two-way acknowledgement paging, data messaging, electronic mail, and facsimile transmissions. The Commission finds that authorizing these services would permit provision to consumers of new mobile and portable communications services, which are expected to increase the productivity of businesses, enhance the public's communications, and assist American industry to maintain its leadership position in the global telecommunications marketplace. Issues regarding licensee selection procedures and the regulatory status of the service are the subject of legislation actively being considered by the Congress and will be addressed by the Commission in a further action. The Commission also grants a pioneer's preference to Mobile Telecommunication Technologies Corporation (Mtel) and denies 18 other pioneer's preference requests.

EFFECTIVE DATE: September 10, 1993.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 653–8114.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's R&O in GEN Docket No. 90–314 and ET Docket No. 92–100, adopted June 24, 1993, and released July 23, 1993.

The complete text of this R&O is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of R&O

1. By this action, the Commission allocates the 901–902, 930–931, and 940–941 MHz bands to narrowband PCS, adopts a regulatory structure that includes technical and operational rules, makes a final decision on 19 related pioneer's preference requests, and defers action on the method of selecting licensees and the regulatory status of licensees. A summary of the Notice of Proposed Rule Making initiating this proceeding may be found at 57 FR 40672 (September 4, 1992).

2. *Service definition.* PCS is broadly defined as radio services that encompass a wide array of mobile and ancillary fixed communications services that could provide services to individuals and businesses, and be integrated with a variety of competing networks. The spectrum allocated to PCS will not be used for broadcasting, and the only fixed services permitted are ancillary ones used in support of mobile PCS. Narrowband PCS is defined as PCS operating in the 901–902, 930–931, and 940–941 MHz bands.

3. We decline to limit narrowband PCS to advanced paging and messaging in order not to foreclose other potential narrowband services. Further, we decline to allocate spectrum specifically for an advanced cordless telephone service, inasmuch as we already have permitted cordless telephones to operate in a number of frequency bands, including 902–928 MHz, and have under consideration a petition for additional frequencies in a different band (RM–8094, filed by Telecommunications Industry Association on August 20, 1992). Additionally, no set-aside for non-commercial use by traditional private land mobile radio eligibles is made because spectrum currently allocated for such services is adequate and the applications suggested by potential providers appear to be within the definition of narrowband PCS and permissible in this spectrum under the adopted rules. As there is no petition for rule making before us requesting that spectrum sharing in the 930–960 MHz band be permitted, we decline to adopt the proposal that spectrum be reserved for control channels in the narrowband PCS spectrum.

4. *Spectrum allocation/ channelization plan.* We are allocating the 901–902, 930–931, and 940–941 MHz bands to narrowband PCS. The 901–902 MHz band is limited to low power transmissions. At this time we will channelize and license only two of the three megahertz of spectrum. The channelization plan provides nine 50 kHz channels paired with nine 50 kHz channels, twelve 50 kHz channels paired with twelve 12.5 kHz channels, five 50 kHz unpaired channels, and eight 12.5 kHz unpaired channels.

5. The channelization plan for narrowband PCS provides a flexible framework that will foster our goals of universality, speed of deployment, diversity of services and competitive delivery. Potential PCS providers propose a diverse range of services with varying channel bandwidth requirements. A mix of paired and unpaired 12.5 and 50 kHz bandwidths will meet most of their stated needs. Most commenters propose low-power return path response capability, and the 901–902 MHz band is particularly desirable for use by low-power operations because the 930–931 and 940–941 MHz bands are adjacent to high power operations that would make low power operation difficult. Asymmetrical channel bandwidth pairings will promote spectrum efficiency because the communications requirements of response operations are substantially less than those of base-to-mobile operations. Also, providing response channels for use by existing licensees will permit existing paging operations to be upgraded to provide some acknowledgement and messaging capability.

6. *Service areas.* Narrowband PCS will be licensed on a nationwide, regional, and local basis. Regional service areas are based on 47 major trading areas (MTAs). Local service areas are based on 487 basic trading areas (BTAs). MTAs and BTAs are defined in the Rand McNally 1992 Commercial Atlas & Marketing Guide.

7. Large regional and nationwide licensed service areas provide economies of scale, alleviate some of the problems licensees have experienced when they tried to aggregate smaller licensed service areas, provide for flexibility in the design and implementation of narrowband PCS, and further our goals of fostering the swift implementation and deployment of narrowband PCS systems. Accordingly, we are setting aside the majority of spectrum and channels for nationwide and large regional licensed service area use. MTAs provide reasonable and homogeneous markets for the provision of PCS. If larger areas are required for certain applications, aggregation of MTA licensed service areas is permitted and nationwide PCS channels also are available.

8. While the majority of channels will be designated for nationwide and MTA use, there are a variety of narrowband services that could be offered at the local level. By providing channels at this level, we will foster broader participation in narrowband PCS, allow entry by smaller firms and businesses, increase competition, and promote diversity in the provision of narrowband PCS services. Therefore, we designate two channels for narrowband PCS use in the BTAs. In addition, we are using BTAs as the basis for licensing eight unpaired acknowledgement channels being provided for use by existing licensees. This approach is appropriate, given the limited number of channels and the fact that most existing paging is now licensed on a local basis.

9. *Eligibility.* Cellular systems and local exchange carriers (LECs) are permitted to be licensed without restriction. The channeling and licensed service area plans ensure substantial competition among providers of narrowband PCS services. In addition, narrowband PCS will be sufficiently different from the services provided by cellular systems and LECs so any ability that cellular systems and LECs might have to exert undue market power or restrain trade will be negligible.

10. *Limits on holding multiple licenses.* A single licensee is permitted to hold licenses for up to three 50 kHz channels, paired or unpaired (*i.e.*, no more than 150 kHz paired with 150 kHz). This limit is appropriate to ensure that narrowband PCS is offered on a competitive basis, while providing opportunities for licensees to aggregate or combine channels to provide multiple offerings or wider bandwidth services.

11. *License term.* A ten-year license term for narrowband PCS is specified. Renewal issues will be addressed later when the method of selecting licensees is addressed.

12. *Construction requirements.* Licensees of nationwide service areas must construct at least 250 base stations within five years and 500 base stations within ten years. MTA licensees must provide coverage to approximately 25% of the geographic area of their MTA within five years and 50% of the area within ten years; or, alternatively, must construct at least 25 base stations within five years and 50 base stations within ten years. Licensees of BTA service areas must construct at least one base station and begin providing service in their area within one year of being licensed. These minimum requirements for operation and service will ensure that spectrum is being effectively utilized. Failure by any licensee to meet the requirements will result in forfeiture of the license and the licensee will be ineligible to regain it.

13. *Small business.* Our actions will result in significant opportunities for small business participation through licensing at a local level and potential market opportunities with national and regional licensees. We expect to address small business concerns further when we take up the details of the licensee selection process.

14. *Technical standards.* The power for narrowband PCS base stations is limited to 3.5 kilowatts effective radiated power per authorized bandwidth and all base stations will be unlimited in antenna height except for those MTA and BTA base stations located close to an MTA or BTA border. These rules will allow all carriers to more quickly and economically cover their licensed service areas and generally will provide service comparable to existing paging operations.

15. The antenna height and transmitter power of regional and local base stations that are located between 200 and 80 kilometers from their service area borders are limited in accordance with the table in § 99.407(d). Regional and local base stations located less than 80 kilometers from their service area borders must limit their effective radiated power in accordance with the formula in § 99.407(e). The formula extends the table in order to allow operators to provide service in areas close to their licensed service area borders.

16. Waivers to the power and antenna height limit rules will be considered on a case-by-case basis for licensees claiming special circumstances. Further, in order to provide the flexibility needed to address particular operating circumstances, all PCS licensees are permitted to negotiate alternative operating limits and agreements with co-channel licensees in adjoining service areas.

17. Mobile and portable stations are limited to seven watts effective radiated power and are not required to use automatic power control because it would be extremely costly to implement and would have limited ability to decrease interference.

18. The maximum authorized bandwidth will be 10 kHz for 12.5 kHz channels and 45 kHz for 50 kHz channels. In addition, if a licensee aggregates adjacent channels, a maximum authorized bandwidth of 5 kHz less than the total aggregated channel width will be permitted. On any frequency outside the authorized bandwidth, the signal level must be attenuated in accordance with the provisions of § 99.411. By adopting this out-of-band protection scheme, the same adjacent channel interference protection will be provided to all narrowband PCS operations, independent of bandwidth.

19. Interoperability and inter-system roaming capability are not required. Nationwide and regional licensing will permit wide area services.

20. *RF radiation limits.* PCS equipment manufacturers and licensees are required to comply with the IEEE C95.1–1991 guidelines pending completion of ET Docket No. 93–62. For the purpose of type acceptance of narrowband PCS equipment, all handheld PCS devices must comply with the IEEE specifications for "uncontrolled" environments. This action is taken in consideration of possible health issues raised by narrowband PCS, the fact that no general manufacture of equipment has begun, and to provide for the expeditious initiation of service.

21. *Pioneer's preferences.* We are awarding Mtel a pioneer's preference for a nationwide license of a 50 kHz unpaired channel. Mtel developed and tested "multicarrier modulation" technology capable of transmitting a 24 kilobit per second simulcast signal in a single 50 kHz channel and designed a system capable of providing a variety of new two-way services in a single 50 kHz channel. We are denying 18 other pioneer's preference requests that addressed services in the 900 MHz range because the requesters failed to demonstrate that they had met our criteria for receiving a perference, see 47 CFR 1.402.

Final Regulatory Flexibility Analysis

22. Pursuant to 5 U.S.C. section 603, an initial Regulatory Flexibility Analysis was incorporated in the Notice of Proposed Rule Making and Tentative Decision in combined ET Docket No. 92–100 and GEN Docket No. 90–314. Written comments on the proposals in the Notice, including the Regulatory Flexibility Analysis, were requested.

A. *Need for and objective of rules:* Our objective is to provide spectrum in the 900 MHz range suitable for PCS services that utilize relatively narrow channels for advanced paging and related data PCS services. The flexibility of the Rules adopted enable a diversity of services, including enhanced paging and messaging services.

B. *Issues raised by the public in response to the initial analysis:* No party suggested modifications specifically in response to the initial regulatory flexibility analysis.

C. *Any significant alternative minimizing impact on small entities and consistent with stated objectives:* We have reduced burdens wherever possible. The regulatory burdens we have retained are necessary to ensure that the public receives the benefits of innovative new services in a prompt and efficient manner. We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant impact on small entities. The Secretary will send a copy of this *Report and Order* to the Chief Counsel for Advocacy of the Small Business Administration.

23. Accordingly, it is ordered, that part 2 of the Commission's rules is amended and that a new part 99 is added to the Commission's rules as specified below, effective September 10, 1993. This action is taken pursuant to sections 4(i), 7(a), 302, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 157(a), 302, 303(c), 303(f), 303(g), and 303(r).

24. It is further ordered that the request for pioneer's preference filed by Mobile Telecommunication Technologies Corporation is granted. It is further ordered that the requests for pioneer's preference filed by Advanced Cordless Technologies, Inc.; Advanced Wireless Communications, Inc.; Dial Page, L.P. (PP–11 and PP–35); Echo Group L.P.; Ericsson Business Communications, Inc.; Freeman Engineering Associates, Inc.; Global Enhanced Messaging Venture; Metriplex, Inc.; Mobile Communications Corporation of America; Montauk Telecommunications Company; NAC, Inc.; PacTel Paging (PP–38 and PP–39); PageMart, Inc.; Paging Network, Inc.; Skycell Corporation; and Radio Telecom and Technology, Inc. are denied.

List of Subjects

47 CFR Part 2

Radio.

47 CFR Part 99

Personal communications service, Radio.

William F. Caton,

Acting Secretary.

Amendatory Text

Parts 2 and 99 of chapter I of title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation in Part 2 continues to read:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended,

47 U.S.C. sections 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations is amended as follows:

Column (1) in the 790–942 MHz bands; column (2) in the 806–942 MHz bands; column (3) in the 890–942 MHz band; column (4) in the 806–902 and 935–941 MHz bands; and columns (5) and (6) in the 901–902, 929–932, and 940–941 MHz bands are revised to read as follows:

§ 2.106 Table of frequency allocations.

* * * * *

International table			United States table		FCC use designators	
Region 1-allocation	Region 2-allocation	Region 3-allocation	Government	Non-Government	Rule part(s)	Special-use frequencies
MHz (1)	MHz (2)	MHz (3)	Allocation MHz (4)	Allocation MHz (5)	(6)	(7)
*	*	*	*	*	*	*
790–862 FIXED. BROADCASTING.						
	806–890 FIXED. MOBILE. BROADCASTING.		806–902			
694 695 695A 696 697 700B 702						
862–890 FIXED. MOBILE except aeronautical mobile. BROADCASTING 703.						
700B 704	692A 700 700A					
890–942 FIXED. MOBILE except aeronautical mobile. BROADCASTING 703. Radiolocation.	890–902 FIXED. MOBILE except aeronautical mobile. Radiolocation.	890–942 FIXED. MOBILE. BROADCASTING. Radiolocation.				
				901–902 FIXED. MOBILE.	PERSONAL COMMUNICATIONS SERVICES (99).	
	700A 704A 705		US116 US268 G2	US116 US268 US330		
	902–928 FIXED. Amateur. Mobile except aeronautical mobile. Radiolocation. 705 707 707A		*	*	*	
	928–942 FIXED. MOBILE except aeronautical mobile. Radiolocation.		928–932			
				929–930 LAND MOBILE.	DOMESTIC PUBLIC LAND MOBILE (22). PRIVATE LAND MOBILE (90).	
				US116 US215 US268		
				930–931 FIXED. MOBILE. US116 US215 US268 US330	PERSONAL COMMUNICATIONS SERVICES (99).	

International table			United States table		FCC use designators	
Region 1-allocation	Region 2-allocation	Region 3-allocation	Government	Non-Government	Rule part(s)	Special-use frequencies
MHz (1)	MHz (2)	MHz (3)	*COM001 *Allocation MHz (4)	Allocation MHz (5)	(6)	(7)
				931–932 LAND MOBILE.	DOMESTIC PUBLIC LAND MOBILE (22). PRIVATE LAND MOBILE (90).	
			US116 US215 US268 G2	US116 US215 US268		
			*	*	*	
			935–941			
				940–941 FIXED. MOBILE.	PERSONAL COMMUNICATIONS SERVICES (99).	
			US116 US215 US268 G2	US116 US268 US330		
704	705	706				
*	*	*	*	*	*	*

Add new 700A and 700B to the international footnotes and new US330 to the United States footnotes to read as follows:

* * * * *

International Footnotes

* * * * *

700A *Additional allocation:* in Canada, the United States and Mexico, the bands 849–851 MHz and 894–896 MHz are also allocated to the aeronautical mobile service on a primary basis, for public correspondence with aircraft. The use of the band 849–851 MHz is limited to transmissions from aeronautical stations and the use of the band 894–896 MHz is limited to transmissions from aircraft stations.

700B *Additional allocation:* in Belarus, the Russian Federation and Ukraine, the bands 806–840 MHz (Earth-to-space) and 856–890 MHz (space-to-Earth) are also allocated to the mobile-satellite, except aeronautical mobile-satellite (R) service. The use of these bands by this service shall not cause harmful interference to, or claim protection from, services in other countries operating in accordance with the Table of Frequency Allocations and is subject to special agreements between the administrations concerned.

* * * * *

United States (US) Footnotes

* * * * *

US330 In the frequency bands 901–902 MHz, 930–931 MHz, and 940–941 MHz, the only fixed services permitted are ancillary services used in support of mobile personal communications services.

* * * * *

3. A new part 99 is added to read as follows:

PART 99—PERSONAL COMMUNICATIONS SERVICES

Subpart A—General Information

Sec.
99.1 Basis and purpose.
99.3 Permissible communications.
99.5 Terms and definitions.

Subpart B—Applications and Licenses

99.11 Scope.
99.12 Licensed service areas.
99.13 Eligibility.
99.14 [Reserved]
99.15 License term.
99.17 Construction requirements.

Subpart C—Technical and Operating Requirements

99.401 Scope.
99.403 Equipment authorization.
99.405 Frequencies.
99.406 Authorized bandwidth.
99.407 Power/antenna height limits.
99.409 RF hazards.
99.411 Emission limits for the 901–902 MHz, 930–931 MHz, and 940–941 MHz bands.
99.417 Co-channel separation criteria in the 901–902, 930–931, and 940–941 MHz bands.
99.419 Frequency stability requirements for the 901–902, 930–931, and 940–941 MHz bands.

Authority: Secs. 4, 302, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, 303, and 332, unless otherwise noted.

Subpart A—General Information

§ 99.1 Basis and purpose.

This section contains the statutory basis for this part of the rules and provides the purpose for which this part is issued.

(a) *Basis.* The rules for the personal communications services (PCS) in this part are promulgated under the provisions of the Communications Act of 1934, as amended, which vest authority in the Federal Communications Commission to regulate radio transmission and to issue licenses for radio stations. The rules in this part are in accordance with applicable statutes, international treaties and agreements to which the United States is a party.

(b) *Purpose.* This part states the conditions under which stations may be licensed and used to provide PCS in the frequency bands specified in subpart C of this part.

§ 99.3 Permissible communications.

PCS licensees may provide any mobile communications service on their assigned spectrum. Fixed services may be provided only on an ancillary basis to mobile operations. Broadcasting as defined in the Communications Act is prohibited.

§ 99.5 Terms and definitions.

Assigned frequency. The center of the frequency band assigned to a station.

Authorized bandwidth. The maximum width of the band of frequencies permitted to be used by a station. This is normally considered to be the necessary or occupied bandwidth, whichever is greater.

Average terrain. The average elevation of terrain between 3.2 and 16 kilometers from the antenna site.

Base station. A land station in the land mobile service.

Basic Trading Area (BTA). One of the geographic areas by which narrowband PCS is licensed. The 487 BTAs are defined in the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, pp. 36–39. Additionally,

American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and United States Virgin Islands are licensed separately and are treated as if BTAs for licensing purposes.

Effective radiated power (e.r.p.) (in a given direction). The product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction.

Fixed service. A radiocommunication service between specified fixed points.

Fixed station. A station in the fixed service.

Height Above Average Terrain (HAAT). Height of the center of the radiating element of the antenna above the average terrain. See § 90.309(a)(4) for calculation method.

Land mobile service. A mobile service between base stations and land mobile stations, or between land mobile stations.

Land mobile station. A mobile station in the land mobile service capable of surface movement within the geographic limits of a country or continent.

Land station. A station in the mobile service not intended to be used while in motion.

Major Trading Area (MTA). One of the geographic areas by which narrowband PCS is licensed. MTAs are defined in the Rand McNally 1992 Commercial Atlas and Marketing Guide, 123rd Edition, pages 36–39. For licensing purposes Alaska is a separate area from the Seattle MTA. Guam and the Northern Mariana Islands are treated as a single MTA. Puerto Rico and United States Virgin Islands are treated as a single MTA. American Samoa is treated as a single MTA.

Mobile service. A radiocommunication service between mobile and land stations, or between mobile stations.

Mobile station. A station in the mobile service intended to be used while in motion or during halts at unspecified points.

Narrowband PCS. PCS services operating in the 901–902 MHz, 930–931 MHz, and 940–941 MHz bands.

Personal Communications Services (PCS). Very broadly defined and flexible radio services that encompass a wide array of mobile and ancillary fixed communication services, which could provide services to individuals and business, and be integrated with a variety of competing networks.

Subpart B—Applications and Licenses

§ 99.11 Scope.

This subpart contains procedures and requirements for filing applications for licenses to operate radio facilities in the Personal Communications Services. Part 1 of the Commission's rules contain additional applicable rules governing forms (§ 1.922 of this chapter), fees (§ 1.1102 of this chapter), processing procedures (§ 1.953 of this chapter), special temporary authority (§ 1.925 of this chapter), assignment or transfer of control (§ 1.924 of this chapter), and environmental impact (§ 1.1301 of this chapter). Part 17 contains applicable rules regarding tower lighting (§§ 17.7 through 17.17 of this chapter).

§ 99.12 Licensed service areas.

(a) Narrowband PCS nationwide licensed service area: 50 states, District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and United States Virgin Islands.

(b) Narrowband PCS regional licensed service areas: 47 Major Trading Areas as defined in the Rand McNally 1992 Commercial Atlas & Marketing Guide, except that Alaska is separated from the Seattle MTA and is licensed separately. Guam and the Northern Mariana Islands are treated as a single MTA. Puerto Rico and United States Virgin Islands are treated as a single MTA. American Samoa is treated as a single MTA.

(c) Narrowband PCS local licensed service areas: 487 Basic Trading Areas as defined in the Rand McNally 1992 Commercial Atlas & Marketing Guide. American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and United States Virgin Islands each are licensed separately.

§ 99.13 Eligibility.

Any person or entity not excluded by 47 U.S.C. 310 is eligible to hold a license under this part.

§ 99.14 [Reserved]

§ 99.15 License term.

Licenses for service areas will be issued for a term of ten years from the date of original issuance or renewal.

§ 99.17 Construction requirements.

For narrowband PCS systems:

(a) Licensees of nationwide service area channels must construct at least 250 base stations within five years of being licensed and at least 500 base stations within ten years of being licensed and notify the Commission when each benchmark is met.

(b) MTA licensees must construct base stations to provide coverage to approximately 25% of the geographic area of their licensed service area within five years of being licensed and 50% of the geographic area of their licensed service area within ten years of being licensed. Alternatively, licensees of MTA service area channels must construct at least 25 base stations within five years of being licensed and 50 base stations within ten years of being licensed. In either case, the MTA licensee must notify the Commission when each benchmark is met.

(c) Licensees of BTA service area channels must construct at least one base station and begin providing service in their licensed service area within one year of being licensed and notify the Commission when the benchmark is met.

(d) In evaluating compliance with the above construction requirements, each base station will be considered to serve a geographic area of 3000 square kilometers. In the case where a licensee constructs low power base stations, compliance with the construction requirements will be determined by aggregating the actual service areas of the low power stations divided by 3000 square kilometers to determine an equivalent number of base stations.

(e) Failure by any licensee to meet the above construction requirements will result in forfeiture of the license and the licensee will be ineligible to regain it.

Subpart C—Technical and Operating Requirements

§ 99.104 Scope.

This subpart sets forth the technical requirements for use of the spectrum and equipment in the radio services governed by this part. Such requirements include frequency channelizations and standards for equipment authorization, transmitter power, antenna height, and signal strength. Included in this subpart are interference criteria for co-channel operations.

§ 99.403 Equipment authorization.

(a) Each transmitter utilized for operation under this part and each transmitter marketed, as set forth in § 2.803 of part 2 of this chapter, must be of a type that has been authorized by the Commission under its type acceptance procedure for use under this part.

(b) The Commission periodically publishes a list of type accepted equipment, entitled "Radio Equipment List, Equipment Accepted for Licensing." Copies of this list are available for public reference at the Commission's offices in Washington, DC., and at each of its field offices.

(c) Any manufacturer of radio transmitting equipment to be used in these services may request equipment authorization following the procedures set forth in subpart J of part 2 of this chapter. Equipment authorization for an

individual transmitter may be requested by an applicant for a station authorization by following the procedure set forth in part 2 of this chapter. Such equipment if approved or accepted will not normally be included in the Commission's Radio Equipment List but will be individually enumerated on the station authorization.

(d) Applicants for type acceptance of transmitters that operate in these services must submit a statement confirming that the equipment complies with IEEE C95.1–1991 (also designated as ANSI/IEEE C95.1–1992), "IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz." Measurement methods are specified in IEEE C95.3–1991 (also designated ANSI/IEEE C95.3–1992). "IEEE Recommended Practice for the Measurement of Potentially Hazardous Electromagnetic Field—RF and Microwave." Copies of these standards can be ordered from the Institute of Electrical and Electronic Engineers, Inc. (IEEE), Attn: Publications Sales, 445 Hoes Lane, PO Box 1331, Piscataway, NJ 08855–1331, 1–800–678–IEEE; or can be ordered from the American National Standards Institute (ANSI), 1–212–642–4900. The applicant for type acceptance is required to maintain a record showing the basis for the statement of compliance with IEEE C95.1–1991 (ANSI/IEEE C95.1–1992).

§ 99.405 Frequencies.

(a) Licensed personal communications radio services will be authorized in the 901–902 MHz, 930–931 MHz, and 940–941 MHz bands. Licenses under this part will be issued based on the following frequency blocks, which are listed by center frequency. Unless otherwise specified, the frequencies are paired.

Nationwide Blocks (MHz)

Base	Mobile
50 kHz	*50 kHz*
940.025	901.025
940.075	901.075
940.125	901.125
940.175	901.175
940.225	901.225
50 kHz	*12.5 kHz*
930.425	901.75625
930.475	901.76875
930.525	901.78125

50 kHz Unpaired

940.775
940.825
940.875

MTA Blocks (MHz)

Base	Mobile
50 kHz	*50 kHz*
940.275	901.275
940.325	901.325
940.375	901.375
940.425	901.425
50 kHz	*12.5 kHz*
930.575	901.79375
930.625	901.80625
930.675	901.81875
930.725	901.83125
930.775	901.84375
930.825	901.85625
930.875	901.86875

50 kHz Unpaired

940.925
940.975

BTA Blocks (MHz)

Base	Mobile
50 kHz	*12.5 kHz*
930.925	901.88125
930.975	901.89375

12.5 kHz Unpaired[1]

901.90625
901.91875
901.93125
901.94375
901.95625
901.96875
901.98125
901.99375

(b) A single licensee is permitted to hold licenses for up to three 50 kHz channels, paired or unpaired. This limit is based on the total spectrum in the licensee's nationwide, regional, and local licenses at any geographic point.

§ 99.406 Authorized bandwidth.

The maximum authorized bandwidth of narrowband PCS channels will be 10 kHz for 12.5 kHz channels and 45 kHz for 50 kHz channels. For aggregated adjacent channels, a maximum authorized bandwidth of 5 kHz less than the total aggregated channel width is permitted.

§ 99.407 Power/antenna height limits.

(a) Stations transmitting in the 901–902 MHz band are limited to 7 watts e.r.p.

(b) Mobile stations transmitting in the 930–931 MHz and 940–941 MHz bands are limited to 7 watts e.r.p.

(c) Base stations transmitting in the 930–931 MHz and 940–941 MHz bands are limited to 3500 watts e.r.p. per authorized channel and are unlimited in antenna height except as provided for in paragraph (d) of this section.

[1] These mobile station frequencies are restricted to entities licensed under parts 22 and 90 of this chapter.

(d) MTA and BTA base stations located between 200 kilometers (124 miles) and 80 kilometers (50 miles) from their licensed service area border are limited to the power levels in following table:

Antenna height above average terrain in meters (feet)	Effective radiated power (e.r.p.) (watts)
183 (600) and below	3500
183 (600) to 208 (682)	3500–2584
208 (682) to 236 (775)	2584–1883
236 (775) to 268 (880)	1883–1372
268 (880) to 305 (1000)	1372–1000
305 (1000) to 346 (1137)	1000–729
346 (1137) to 394 (1292)	729–531
394 (1292) to 447 (1468)	531–387
447 (1468) to 508 (1668)	387–282
508 (1668) to 578 (1895)	282–206
578 (1895) to 656 (2154)	206–150
656 (2154) to 746 (2447)	150–109
746 (2447) to 848 (2781)	109–80
848 (2781) to 963 (3160)	80–58
963 (3160) to 1094 (3590)	58–42
1094 (3590) to 1244 (4080)	42–31
1244 (4080) to 1413 (4636)	31–22
Above 1413 (4636)	16

For heights between the values listed above, linear interpolation shall be used to determine maximum e.r.p.

(e) Regional and local base stations located less than 80 kilometers (50 miles) from the licensed service area border must limit their effective radiated power in accordance with the following formula:

$P_w = 0.0175 \times d_{km}^{6.6666} \times h_m - 3.1997$

P_w is effective radiated power in watts

d_{km} is distance in kilometers

h_m is antenna height above average terrain in meters.

(f) All power levels specified above are expressed in terms of the maximum power, averaged over 100 millisecond interval, when measured with instrumentation calibrated in terms of an rms-equivalent voltage with a resolution bandwidth equal to or greater than the authorized bandwidth.

(g) Additionally, PCS stations will be subject to any power limits imposed by international agreements.

§ 99.409 RF hazards.

Manufacturers are required to comply with IEEE C95.1–1991. For the purposes of determining compliance with this standard, all equipment shall be considered to operate in an "uncontrolled" environment.

§ 99.411 Emission limits for the 901–902 MHz, 930–931 MHz, and 940–941 MHz bands.

(a) The power of any emission shall be attenuated below the transmitter power (P) in accordance with the following schedule:

(1) For transmitters authorized a bandwidth (B) greater than 10 kHz:

(i) On any frequency outside the authorized bandwidth and removed from the edge of the authorized bandwidth by a displacement frequency (f_d in kHz) of up to and including 40 kHz: at least 116 Log_{10} ((f_d + 10)/6.1) decibels or 50 plus 10 Log_{10} (P) decibels or 70 decibels, whichever is the lesser attenuation;

(ii) On any frequency outside the authorized bandwidth and removed from the edge of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 40 kHz: at least 43 Log_{10} (P) decibels or 80 decibels, whichever is the lesser attenuation.

(2) For transmitters authorized a bandwidth (B) of 10 kHz:

(i) On any frequency outside the authorized bandwidth and removed from the edge of the authorized bandwidth by a displacement frequency (f_d in kHz) of up to and including 20 kHz: at least 116 Log_{10} ((f_d + 5)/3.05) decibels or 50 plus 10 Log_{10} (P) decibels or 70 decibels, whichever is the lesser attenuation;

(ii) On any frequency outside the authorized bandwidth and removed from the edge of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 20 kHz: at least 43 plus 10 Log_{10} (P) decibels or 80 decibels, whichever is the lesser attenuation.

(b) The measurements of emission power can be expressed in peak or average values provided they are expressed in the same parameters as the transmitter power.

(c) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

(d) The following minimum spectrum analyzer resolution bandwidth settings will be used: 300 Hz when showing compliance with paragraphs (a)(1)(i) and (a)(2)(i) of this section; and 30 kHz when showing compliance with paragraphs (a)(1)(ii) and (a)(2)(ii) of this section.

§ 99.417 Co-channel separation criteria in the 901–902, 930–931, and 940–941 MHz bands.

The minimum co-channel separation distance between base stations in different service areas is 113 kilometers (70 miles). A co-channel separation distance is not required for the base stations of the same licensee or when the affected parties have agreed to other co-channel separation distances.

§ 99.419 Frequency stability requirements for the 901–902, 930–931, and 940–941 MHz bands.

(a) The frequency stability of the transmitter shall be maintained within ±0.0001% (± 1 ppm) of the center frequency over a temperature variation of −30 degrees to +50 degrees C at normal supply voltage, and over a variation in the primary supply voltage of 85% to 115% of the rated supply voltage at a temperature of 20 degrees C.

(b) For battery operated equipment, the equipment tests shall be performed using a new battery without any further requirement to vary supply voltage.

(c) It is acceptable for a transmitter to exceed this frequency stability requirement over a narrower temperature range provided the transmitter ceases to function before it exceeds these frequency stability limits.

[FR Doc. 93–19178 Filed 8–10–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–49; RM–8193; RM–8344]

Radio Broadcasting Services; Los Lunas, Espanola and Pojoaque, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Elliott McDowell, substitutes Channel 273C for Channel 273C2 at Los Lunas, New Mexico, modifies Station KOYT's license to specify the higher class channel, substitutes Channel 225C3 for Channel 272C3 at Espanola, New Mexico, and modifies Station KIOT's license to specify the alternate Class C3 channel. See 58 FR 16518, March 29, 1993. At the request of Cheryl S. Potter, her counterproposal to allot Channel 225C3 to Pojoaque, New Mexico, is dismissed. Channel 273C can be allotted to Los Lunas with a site restriction of 51.8 kilometers (32.2 miles) northeast, at coordinates North Latitude 35–12–42 and West Longitude 106–26–57, to accommodate petitioner's desired transmitter site. Channel 225C3 can be allotted to Espanola with a site restriction of 16.2 kilometers (10.1 miles) northeast, at coordinates 36–04–41; 105–56–16, to avoid short-spacings to Stations KRWN, Channel 225C1, Farmington, and KRST, Channel 222C, and KKOB–FM, Channel 227C, Albuquerque, New Mexico, and to accommodate petitioners's desired transmitter site. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 20, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–49, adopted July 21, 1993, and released August 5, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 272C3 and adding Channel 225C3 at Espanola, and by removing Channel 273C2 and adding Channel 273C at Los Lunas.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–19174 Filed 8–10–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

48 CFR Parts 925 and 952

Acquisition Regulation; Acquisition of Nuclear Hot Cell Services

AGENCY: Department of Energy.

ACTION: Interim final rule; discussion of comments.

SUMMARY: The Department of Energy (DOE) today publishes a notice to provide its disposition of public comments received in response to an invitation to comment on an interim final rule which amends the Department of Energy Acquisition Regulation (DEAR) to implement section 2305 of the Energy Policy Act of 1992. The Act requires selection for contract award of nuclear hot cell services in a way that affords United States companies and foreign companies an equal competition for contracts. The interim final rule provided that it would automatically